

THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: PFA69/2024

In the matter between:

WZ TRUCKING CC

APPLICANT

and

RESEMATE STEFAANS CHABALALA

FIRST RESPONDENT

TRANSPORT SECTOR RETIREMENT FUND

SECOND RESPONDENT

THE PENSION FUND ADJUDICATOR

THIRD RESPONDENT

Summary: Reconsideration of a decision of the Pension Funds Adjudicator (30M) in terms of Section 230 of the Financial Sector Regulation Act 9 of 2017.

DECISION

- 1 The applicant, WZ Trucking CC, is an employer in the logistics and transport sector who applies for reconsideration in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 (“the FSR Act”). The application for reconsideration is against the Pension Funds Adjudicator’s (PFA’s) determination issued in terms of section 30M of the Pensions Funds Act, 24 of 1956 (“the Pension Funds Act”) on 23 August 2024.
- 2 The facts are largely common cause. The parties have waived their right to a formal hearing, the matter is determined on papers and this is the decision of the Tribunal.
- 3 The present application also included an affidavit where the employer applied for the suspension of the determination by the PFA. The application for suspension of the PFA’s determination was granted by this Tribunal in an order dated 25th of October 2024¹.

¹ Part A of the record at pages 81-88.

4 The first respondent, Mr Resemate Stefaans Chabalala, a former employee of the applicant until 13 December 2023, submitted a complaint on 11 January 2021 with the third respondent, the Pension Funds Adjudicator (PFA) because he was dissatisfied with the amount of his withdrawal benefit by the Transport Sector Retirement Fund. The latter is an approved fund where Mr Chabalala's pension benefit was invested by the applicant.

5 In its determination, the PFA identified the issues as largely concerning the failure by the employer to timeously register as a participating employer with the fund, and to timeously register the complainant as a member thereof effective from 25 April 2008 and pay the provident fund contributions on his behalf.

6 Upon receipt of the complaint lodged with the PFA, the PFA acting in terms of its rules and procedures referred the complaint to the applicant and in their letter dated 4 February 2024 stated as follows:

"We are, accordingly hereby referring the complaint to you on the complainant's behalf in order to resolve it directly with the complainant" (quoted as is)

7 In response to the PFA's letter of 4 February 2024 referred to above, the applicant entered into substantive negotiations with the first respondent who was represented by his family. As a result of these negotiations, the applicant and the first respondent entered into a settlement agreement. Despite having provided the PFA with a copy of a settlement agreement dated 14 March 2024², and concluded between the applicant and the first respondent in the presence of two of his (first respondent's) representatives, the PFA in its determination found that the first respondent did not withdraw his complaint. The PFA also found that the settlement agreement was unlawful and not binding³.

8 The PFA states in its determination that *"...the settlement agreement provided by the employer is not a lawful and binding document."* No explicit reasons for this finding are

² Part A of the record, Annexure D pages 46-48.

³ Part A of the record, pages 20-21.

given, although it may be inferred from the document that the PFA reached its conclusion on the strength of the first Respondent's latter day denial of the existence of the settlement agreement.

- 9 However, despite the PFA's finding, it remains common cause that a settlement agreement was concluded between the applicant and the first respondent. This forms part of the record and the merits of the matter which must be properly assessed. The existence of a settlement agreement in resolving the complaint cannot be simply dismissed as "unlawful and unbinding" by the PFA without proffering any reasons for such a finding. The PFA's dismissal of the settlement agreement based on the fact that the first respondent did not withdraw his complaint with that office does not seem to pass muster. When one considers the time when negotiations commenced between the parties, this agreement served to settle the complaint. The conclusion of the settlement agreement disposed of the complaint and the PFA ought to have dealt with the matter on that footing when considering the merits of the complaint.
- 10 A copy of the first respondent's complaint lodged with the PFA forms part of the record⁴ and is factually unrelated to any pension or provident fund. It appears to have escaped the PFA that the purpose of first referring the matter to the parties is to enable them to come to a mutually suitable agreement. This is precisely what happened in this matter because the parties reached a settlement agreement.
- 11 The PFA in its determination states that the first respondent commenced employment with the applicant from 03 January 2005 to 13 December 2023. He was a registered member of the fund by virtue of his employment. The employer participates in the fund. The first respondent had a fund credit of R 61 620.27 as at 20 March 2024.
- 12 According to the PFA, despite the first respondent having commenced employment in 2005, he was only registered as a member of the fund on 01 April 2010 through the bargaining

⁴ Part B of the record, pages 1-9.

council fund which was provisionally registered as a fund in terms of the Act on 25 April 2008. The PFA in its determination found that the member ought to have been registered as a member of the fund on 25 April 2008 and that failure to do so rendered the fund non-compliant with its rules. [the Act can only apply to the fund from date of its provisional registration. PFA's jurisdiction commenced from 25 April 2008 which is the date of the bargaining council's provisional registration as a fund].

- 13 In its determination, the PFA ordered the fund to register the first respondent as its member effective from 25 April 2008, and within one week of the PFA's determination. The PFA also ordered the employer (the applicant in this reconsideration application) to pay the fund an amount of R 197 535.28 in respect of provident fund contributions owed on behalf of the first respondent for August 2008 to March 2010, May 2010, and August 2012 to December 2023.
- 14 Pursuant to the order of the PFA, the applicant was ordered to submit all outstanding contribution schedules to the fund which they had done so through the administrator of the fund. In terms of the contribution schedules, the first respondent made nett contributions to the fund totalling an amount of R 23 630.00. The employer's participation in the fund was terminated from July 2012 due to inactivity. The last contribution payments received from the employer were in July 2012. As at 24 March 2024 the first respondent had a fund credit of R 61 274.65 which was made up of his total nett contributions and an investment income of R 37 644.62.
- 15 It is common cause that the first respondent commenced employment with the applicant from 03 January 2005 to 13 December 2023. The first respondent turned 65 years of age on 28 February 2015 (normal retirement age), but chose to stay as a part-time employee of the applicant until 13 December 2023. Thus, the first respondent's status as a member of the fund changed when he reached his retirement age. The PFA nonetheless ordered the applicant to make payments to the fund "*for the period August 2012 to December 2023*" In the absence of the relevant fund rules relating to this period, it is not clear on what basis

the PFA came to that conclusion. the Applicant contests the PFA's decision to order payment of a withdrawal benefit without reference to the applicable rules, contending that this approach is erroneous and ultra vires.

16 We have already pointed out that the PFA disregarded the settlement agreement reached between the applicant and the first respondent. It failed to give reasons for doing so. The PFA also did not take into account the fact that the first respondent reached a retirement age of 65 but chose to remain a part time employee. The PFA also failed to consider the complaint in light of the applicable fund rules. As a result of these material misdirections on common cause facts, it is our view that the PFA did not properly assess the merits of the complaint and the facts before it. On the objective consideration of the facts, the PFA should have dismissed the complaint on the basis that the parties had reached a settlement agreement.

17 As a result, the application for reconsideration must succeed.

18 The following Order is made:

ORDER: This reconsideration application must succeed. The determination of the PFA dated 23 August 2024 is set aside and the matter is sent back to the PFA for reconsideration.

Signed on behalf of the Tribunal on 27 March 2025.

A handwritten signature in black ink, appearing to be 'Zama Nkubungu-Shangisa', written over a light gray grid background.

Zama Nkubungu-Shangisa with Judge LTC Harms.