



THE FINANCIAL SERVICES TRIBUNAL

CASE NO.: PFA3/2026

In the matter between:

TRANSPORT SECTOR RETIREMENT FUND

Applicant

and

JACK TRANSPORT (PTY) LTD

First Respondent

JOHAN FRANCOIS DE JAGER

Second Respondent

ADELE BRAND

Third Respondent

PENSION FUNDS ADJUDICATOR

Fourth Respondent

LEHLOHONOLO RABOTAPI N.O.

Fifth Respondent

TRIBUNAL PANEL: Judge L.TC Harms & Adv A Saldulker

Appearance for Applicant: n/a

Appearance for Respondent: n/a

Date of hearing: n/a

Summary: Application for reconsideration in terms of section 230 of the FSR Act 9 of 2017 and condonation

DECISION

1. This is an application for reconsideration brought in terms of section 230 of the Financial Sector Regulation Act 9 of 2017 (“the FSR Act”).
2. The applicant seeks reconsideration of a determination made by the Pension Funds Adjudicator (“the Adjudicator”) on 17 November 2025, in terms of which the Adjudicator declined to entertain a complaint on the basis that it lacked jurisdiction.
3. The complaint concerns the alleged failure by the first respondent, Jack Transport (Pty) Ltd (“the employer”), to pay arrear pension fund contributions due to the applicant in terms of section 13A of the Pension Funds Act 24 of 1956 (“the Pension Funds Act”), as well as the alleged personal liability of the second and third respondents as persons responsible for the financial management of the employer.
4. The applicant contends that the Adjudicator materially erred in concluding that it lacked jurisdiction, and in failing to consider the effect of section 13A(8) of the Pension Funds Act.
5. The Adjudicator’s decision was based on the following reasoning:
 - 5.1. That the employer was in the process of voluntary liquidation;

- 5.2. That the Adjudicator is precluded from dealing with complaints relating to arrear contributions where the employer is no longer in business;
 - 5.3. That any order compelling payment would be futile; and
 - 5.4. That, on this basis, the complaint could not be adjudicated due to a lack of jurisdiction.
6. The Adjudicator did not engage with the provisions of section 13A(8) and (9), nor with the potential personal liability of the cited responsible persons.

ISSUE FOR DETERMINATION

7. The central issue is whether the Adjudicator was correct in concluding that it lacked jurisdiction.
8. This requires consideration of:
 - 8.1. The scope of the Adjudicator's jurisdiction under section 30A of the Pension Funds Act;
 - 8.2. The proper interpretation and effect of section 13A, particularly section 13A(8);
 - 8.3. Whether the liquidation or operational status of the employer affects jurisdiction; and

8.4. Whether considerations of alleged futility can constitute a jurisdictional bar.

THE STATUTORY FRAMEWORK

9. The Pension Funds Act confers jurisdiction on the Adjudicator to determine complaints relating to the administration of a fund, including disputes concerning the payment of contributions.
10. Section 13A imposes peremptory obligations on employers to pay contributions timeously and in full.
11. Section 13A(8) provides that persons who are regularly involved in the management of the employer's overall financial affairs are personally liable for compliance with section 13A and for the payment of contributions.
12. Section 13A(9) supplements this regime by providing mechanisms for identifying such responsible persons.
13. The evident purpose of these provisions is to ensure that pension fund contributions are paid and to prevent the evasion of such obligations through corporate structures or financial distress.
14. Jurisdiction is determined by statute. The Adjudicator is required to determine complaints that fall within section 30A of the Pension Funds Act. Accordingly, a complaint concerning the non-payment of pension fund contributions falls squarely within that jurisdiction.

15. The Adjudicator's reasoning reflects a conflation between the existence of jurisdiction and considerations relating to enforcement or practicality.
16. The fact that an employer is in liquidation or no longer trading does not remove the Adjudicator's jurisdiction.
17. This Tribunal found in *Transport Sector Retirement Fund v Pension Funds Adjudicator and 2 Others (PFA60/2019) (9 March 2020)*:

"It is clear from the above that the Adjudicator reached its conclusion on the basis that the Employer no longer existed as a legal entity and that such "business status" precluded it from ordering the Employer to comply with its duties as contemplated in the PFA. However, the Adjudicator did not and could not state authority for its alleged lack of jurisdiction. Section 30A(3) envisages a scenario in which the Fund, after demanding payment¹⁴ from the employer who does not respond, would then have the option of enforcing the employer's duty to pay (both under the PFA and in terms of the Rules) through the Adjudicator's order. In this scenario the PFA makes no particular reference to the Employer's business status nor does it make it a requirement that the Employer must have ability to pay. It follows that there is no basis on which the Adjudicator should decline to grant the order."

18. This Tribunal also found in *Transport Sector Retirement Fund v Pension Funds Adjudicator and Others (PFA37/2020) [2020] ZAFST 22 (16 November 2020)* the following:

"Another is that the PFA did not make any order against the employer because, said the PFA, she did not have "jurisdiction" over the CC in liquidation. Quite clearly, the fact that a CC is under liquidation does not mean that it disappears but what difference this makes to the complaint or determination is impossible to fathom. The PFA cannot order the liquidator to pay the outstanding contributions to the Fund. There is a concursus creditorum. Claims must be proved, and so it goes. Any order by the PFA would have been a brutum fulmen. It is in any event the statutory duty of the Fund to

pursue the employer where the Fund knows or has reason to believe that the employer is indebted to the Fund – see sec 13A of the Pension Funds Act, 1956.”

19. Section 13A(8) creates a direct statutory personal liability. This liability is not derivative of the employer’s liability but exists independently and attaches to those persons responsible for the employer’s financial affairs. It is specifically designed to address situations where the employer fails to meet its obligations, including circumstances of financial distress or liquidation.
20. The record reflects that the second and third Respondents were identified as responsible persons for purposes of section 13A.
21. Accordingly, the Adjudicator has clearly failed to consider whether this statutory liability arose, which constitutes a material misdirection.
22. The interpretation of section 13A(8) was confirmed in *Engineering Industries Pension Fund and Another v Installair (Pty) Ltd (in liquidation) and Others (Western Cape Division, Case No. 1633/2023, 16 January 2025)*. In that matter, the Court held that section 13A(8) creates a direct statutory basis for personal liability, enabling funds to hold directors liable for unpaid contributions without the need to pierce the corporate veil.
23. The Court granted relief against the directors notwithstanding that the employer was in liquidation.
24. This authority demonstrates that:
 - 24.1. Liquidation does not extinguish liability under section 13A;

24.2. Directors and responsible persons remain personally liable notwithstanding the employer's financial position; and

24.3. The statutory scheme is designed to operate precisely in such circumstances.

25. The Adjudicator's reliance on the alleged futility of an order cannot justify a refusal to exercise jurisdiction. Jurisdiction is concerned with the power to determine a dispute, not the ease with which a resulting order may be enforced.

26. In any event, where personal liability under section 13A(8) is engaged, an order is not inherently futile.

CONCLUSION

27. In view of the above, we find that the Adjudicator's reasoning reflects a material misdirection as the complaint falls squarely within the jurisdiction of the Adjudicator. The Adjudicator erred in treating the employer's liquidation as determinative of jurisdiction and in its failure to consider the effect of section 13A(8).

28. The application should thus succeed.

ORDER

29. The following order is made:

29.1. The application for reconsideration is upheld.

29.2. The determination of the Pension Funds Adjudicator dated 17 November 2025 is set aside.

29.3. The matter is remitted to the Pension Funds Adjudicator for reconsideration.

SIGNED ON BEHALF OF THE TRIBUNAL ON THIS THE 30th DAY OF MARCH 2026.

 Sgd A Saldulker
Adv A Saldulker
For self and on behalf of LTC Harms (Chair)