

THE FINANCIAL SERVICES TRIBUNAL

Case No: PFA74/2023

In the matter between:

LATIEFA MAJAL

Applicant

and

TRANSMARINE LOGISTICS (PTY) LTD

First Respondent

THE PENSION FUNDS ADJUDICATOR

Second Respondent

**CORPORATE SELECTION
UMBRELLA PENSION FUND**

Third Respondent

LIBERTY GROUP LTD

Fourth Respondent

Summary: Application for reconsideration in terms of section 230 of the Financial Sector Regulation Act, 9 of 2017 – not able to consider resubmission and reconsider its earlier decision - *functus officio* and is no longer seized with the matter

DECISION

1. The applicant applies for reconsideration of the decision of the Pension Funds Adjudicator (“the PFA”) dated 17 October 2023.
2. The present application is made under section 230 of the Financial Sector Regulation Act, 9 of 2017 (“the FSR Act”).
3. The applicant was employed by Transmarine Logistics (Pty) Ltd, the first respondent in this matter, from December 2007 to October 2020.
4. The first respondent was a participating employer in Corporate Selection

Umbrella Fund, the third respondent (“the Fund”). The applicant was at all relevant times a member of the Fund administered by Liberty Group Limited.

5. The decision of the PFA which the subject of this application is captured in one paragraph as follows:

“Once a settlement letter has been issued, our office becomes functus officio and is no longer seized with the matter. We will be closing our file as out of judication.”

6. The challenged decision attached the earlier settlement letter from the PFA dated 10 May 2021 confirming the veracity of the aforementioned decision.
7. The applicant now approaches this Tribunal and her grounds for reconsideration of the decision are that the initial complaint she lodged with the PFA was against Liberty Group Limited Ltd and the resubmission of her claim on 20 February 2023 is against her ex-employer. She submits that the employer was not investigated.
8. Further, the applicant submits, as part of her grounds, that information was communicated from the employer regarding increase of the employer’s provident fund contribution from 3% to 5%. Further, the applicant submits that the employer was aware that the rules of the fund had to be amended.
9. Furthermore, the applicant augmented her grounds of reconsiderations

and summarised same by stating that her claim has two components.

10. The first component is that the first respondent had underpaid incorrect contributions for months to the applicant's provident fund between 2008 and 2020. She states that the rules of the Fund from inception shows employer 3% and employee 3% contribution of the pensionable salary. Further she states that after each salary increase, the first respondent failed to update the provident fund administrators.
11. The applicant submits that the second part of her grounds, so as augmented, is that the first respondent failed in its duty to have the rules of the Fund amended.
12. The first respondent, in response to the grounds for reconsideration, submitted, amongst other things, that the alleged claims of the applicant had been addressed by the PFA. The first respondent submits that the applicant does not want to accept the outcomes.
13. The record before us shows that during March 2021 the applicant lodged her complaint with the PFA and the nature and details the complaint are the same as the complaint lodged during March 2023.
14. The initial complaint of March 2021 refers to the applicant having discovered that that the first respondent (the then employer) not increasing the percentage of contribution of employee/employer provident fund contribution when increases were effective on January 1st of each year. This complaint is part of March 2023 resubmission of

complain.

15. Further, in the March 2021 complaint, the applicant refers to the first respondent's employees receiving an email that the employer's provident fund contribution will be increased from 3% to 5% with effect from March 2010. Same details are referred to in the March 2023 complaint.
16. It is noted that the applicant acknowledges that this is a resubmission the complaint. However, she states that at that stage of the 10 May 2021 ruling, the first respondent was not investigated.
17. The settlement letter from the PFA dated 10 May 2021 stands as we have no record or information that it was ever brought before the Tribunal in terms of the FSR Act for reconsideration and set aside. The resubmission of complaint on same factual basis is against same parties in March 2023, does not assist the applicant.
18. After having considered the record before us, we find no basis to interfere with the decision of the PFA dated 17 October 2023. The PFA is not able, in law, to reconsider its own decision taken in May 2021.

ORDER:

- (a) The application for reconsideration is dismissed.

Signed on 25 March 2024

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Adv W Ndinisa (Member) and

_____ For self and Adv
Ndinisa _____
LTC Harms (Deputy Chair)