

IN THE EXEMPTION APPLICATION OF:-

DTB CARTAGE CO. (PTY) LTD

Applicant

and

**NATIONAL BARGAINING COUNCIL FOR THE
ROAD FREIGHT AND LOGISTICS INDUSTRY (Council)**

Respondent

DECISION

1. The Applicant applied for exemption not to contribute to the Leave Pay.

2. The application appeared on the Agenda of the Exemptions Body meeting held on the 22nd March 2011.

3. The following were present:-
 - 3.1 Mr. Y. Nagdee - Chairperson of the Exemptions Body
 - 3.2 Mrs. R. Manning - Member of the Exemptions Body
 - 3.3 Mr. T. Short - Member of RFEA
 - 3.4 Mr J. Gys - MTWU
 - 3.5 Mr J. Gamede - SATAWU
 - 3.6 Mr. E. Kock - Senior Agent of NBCRFLI
 - 3.7 Mr P. Mndaweni - Committee Secretary of NBCFRLI

4. Apologies were received from:

- 4.1 Ms M. Brown–Engelbrecht - Member of RFEA
4.2 Mr .G. Wessels - Member of the Exemptions Body

5. **APPLICANT'S SUBMISSIONS**

The Applicant submitted, inter alia, as follows:

“Application for urgent exemption from paying Leave Pay to National Bargaining Council for the Road Freight Industry (NBC) in terms of Clause 21, as amended, of the Main Agreement.

Reasons for exemption application are as follows:

LEAVE PAY

DTB grant employees with 5 years service an additional 2 days leave each year, i.e. 17 days which increases to an additional 5 days each year for those who have more than 10 years service, i.e., 20 days.

The calculation of leave pay for employees with long service is very difficult to calculate as leave pay applications would include normal NBC leave as well as additional leave due by DTB and both would have to be calculated separately which would be impossible.

If DTB paid all leave due.

All employees would be paid the total leave due to them whether NBC or DTB.

All leave and deductions would be calculated at the employees current wage rate. Employees would not have to give 3 weeks notice of leave before taken. Sometime employees in agreement with management take a portion of their leave giving short notice.

Employees would not have to wait for NBC to pay leave.

All year to date totals in the payroll would be up to date.

DISADVANTAGES IF NBC PAID LEAVE PAY

3 weeks notice is required for NBC leave to be paid.

NBC would not process casual leave, i.e., 1-3 days. Therefore employees will be out of pocket for this casual leave taken.

NBC pays employees direct, the gross amount due, which would mean that deductions attributable to that leave which includes taxation would have to be recovered from future earnings. Most employees have weekly deductions for housing loans, garnishee orders, maintenance orders and sundry loans which must be paid to relevant authorities on a monthly basis. These deductions would be in arrears and also have to be deducted from future earnings. Not only would it also be impossible to calculate and keep track of, and process these extra deductions through the payroll, but it would cause major unrest among staff, as they would have less take home pay for a number of weeks after returning from leave.

At the meeting held with employees on the 8th February 2011 it was agreed by majority vote that DTB should continue to pay their leave pay direct to them.

In view of the above we apply for an exemption from paying Leave Pay to the NBC on a monthly basis and request permission for DTB to continue processing all leave pay as it has been doing.”

6. COUNCIL'S SUBMISSIONS

The Council submits, inter alia, as follows:

- “1. The employer is registered with Council since 21/02/1987 and has a good compliance history with Council's Main Collective Agreement.***

- 2. It can also be confirmed that the provision made by the Applicant, is adequate.***

- 3. THE APPLICATIONS IN TERMS OF CLAUSE 21(12) OF THE MAIN COLLECTIVE AGREEMENT***
 - 3.1 Clause 21(12) of the Main Collective Agreement provides for a particular criteria in terms of which the Exemptions Body is mandated to “grant an employer exemption to pay holiday bonus and leave pay direct to its employees” for the duration of the Main Collective Agreement as amended by Government Gazette R.817 of August 2009 – that is for the period 28 February 2011. The clause was initially introduced into the Main Collective Agreement in 2009 for a trial period of 1 year. This trial period was then extended in terms of the aforementioned Government Gazette until 28 February 2011.***

 - 3.2 Clause 21(12) will not be further extended at this stage as***

this was not agreed by the parties to the NBCRFLI during the last round of the national wage negotiations.”

7. **ANALYSIS**

7.1 The provisions of the Collective Agreement and clause 21(12) were extended by Government Gazette No.34020 on the 18th February 2011. The renewal of the collective agreement would be effective from 1st March 2011 to the 31st May 2011.

7.2 Mr G. Wessels has made the following recommendations:

“After full consideration of the matter and the documents presented, I find that the application for exemption be recommended (for Leave Pay only).

The reasons briefly are:

1. ***The financial statements presented has no provision for Holiday Bonus for the year ended 30 June 2010. This might be allocated under accrued expenses; we cannot see the detail of the specific line in the financial statements.***
2. ***The provision for leave pay is sufficient, as per the council submissions.***
3. ***No additional auditor’s letter was submitted to confirm the adequacy of the provision for holiday bonus.”***

8. DECISION

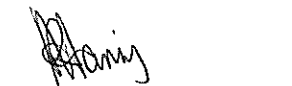
8.1 Having regard to the above, the Exemptions Body is satisfied that the Applicant has met the criteria for the granting of the Exemption in respect of leave pay.

8.2 Accordingly, the Applicant is granted Exemption in respect of Leave Pay for the period 1st March 2011 to 31st May 2011.

DATED THE 8 DAY OF April 2011 AT BRAAMFONTEIN, JOHANNESBURG.



MR. Y. NAGDEE
Chairperson of the
Exemption Body



MRS R. MANNING
Member of the
Exemption Body
I agree

MR G. WESSELS
Member of the
Exemption Body
I agree