

IN THE EXEMPTION APPLICATION OF:-

HRP DISTRIBUTION SERVICES

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 Fund and Holiday Bonus Fund.

2. The application appeared on the Agenda of the Exemptions Body meeting held on the 18th April 2011.

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

- 3.9 Mr A. Rabie - CEO
- 3.10 J. Enright - Human Resources Manager
- 3.11 Mr M. Malomane - National Human Resources - RTT

4. Apologies were received from:

- 4.1 Ms T. Stroh - NBCRFLI
- 4.2 Ms M. Brown–Engelbrecht - Member of RFEA
- 4.3 Mr N. Pakkies - SATAWU

5. **APPLICANT'S SUBMISSIONS**

The Applicant submitted, inter alia, as follows:

“Application for exemption from Council’s Leave Pay and Holiday Pay Bonus Funds (Clauses 19 and 21 of the Main Collective Agreement).

We attach the following documents in support of this application:

a) A guarantee from our banking institution that we have the funding available to cover the Holiday Pay Bonus and Leave Pay liabilities failing which the bank will make good the liabilities.

OR

b) A certificate from our auditors that confirms that we made adequate provision in our account to cover the accrued Leave Pay and Holiday Pay Bonus liabilities.

- c) ***We confirm that we have conducted business for at least three years and that our record of compliance with Council is good.***
- d) ***We have consulted with our employees in this regard and attached herewith proof of consultation.***
- e) ***We have listed all the levy numbers for which this exemption is sought.***
- f) ***The exemption is sought for the period 22 May 2009 to 1 march 2011 (specific dates required).***

6.1 a) *The Applicant's past record (if applicable) of compliance with the provisions of Council's Collective Agreements and Exemption certificates:*

If I may say I think it is very good.

b) *Any special circumstances that exist:*

No. It is just much more convenient for us to manage it ourselves and ensuring that all employees get their bonuses the same day as all other employees."

6. COUNCIL'S SUBMISSIONS

The Council submitted, inter alia, as follows:

- "1. The Applicant was informed on the 4th August 2010 that its application will not be heard the 16th August 2010 due to the fact***

that its application was incomplete. See correspondence annexed as annexure "A";

2. *On the 10th August 2010 the Applicant submitted a signed application and the proof of consultation. The proof of consultation attached to the application gave the impression HRP Distributions will pay the bonuses directly to its employees and Council will then reimburse HRP Distributions at a later stage. This is also evident from the letter submitted by SATWU, annexed hereto as annexure "B".*
3. *The agent set an appointment with the Applicant to verify as to whether the effected employees were consulted on the exemption application not to contribute to the Leave Pay Fund and the Holiday Pay Bonus fund.*
4. *The Union official from SATAWU had to confirm the above with their members but up to date never responded to the agent's request.*
5. *The financial statements to date are still outstanding. We therefore request the Exemptions Body to decide the matter as per the documents supplied by the Applicant as at the 10th August 2010."*

7. ANALYSIS

- 7.1 The Applicant was requested to clarify the period for which it sought exemption. The Applicant made reference to the exemption application and sought an exemption for a period of 1 March 2010 to 28 February 2011. It also sought an exemption for a period beyond this.

7.2 An application for the period beyond February 2011 was not before the Exemptions Body.

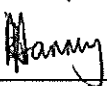
7.3 The application in respect of the earlier period is lacking in detail and does not comply with the requirements of the Main Agreement. No financial statements were submitted and the certificate from the auditors did not cover the period of the exemption application.

8. **DECISION**

Having regard to the above, the application is refused.

DATED THE 30 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