

IN THE EXEMPTION APPLICATION OF:-

WASTE GIANT

Applicant

and

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

Respondent

DECISION

1. The Applicant applied for exemption from paying the minimum wage rate for grade 1 employees and to phase in the minimum wage over a period of 10 years by implementing a 2,8% increase plus ATB annually.

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:

“The nature of this application is to be exempted from the minimum wage rates as per the main agreement limited to grade 1 employees as well as condoning the phase-in model in order to bring the affected employees in line with the minimum wage rates.

The Applicant was registered with the NBCRFI and had only 5 employees registered end of May 2010. we have subsequently registered an additional 170 employees. In order to be in line with the minimum wage rates we have had to make numerous adjustments. All employees except those classified as grade 1 employees are now on or above the minimum wage rates of the Council.

During the exercise to align the wage rates we increased the wage rates of the grade 1 employees with R666.00 per month and they are currently receiving R2166 per month still 28% short of the minimum.

Before the adjustments was made we have also introduced a performance incentive of R175 per week and if that was taken into account as part of their income we are already paying the employees at a rate of R675.23 per week. Although it would have been easy to convert the current performance incentive to wages it was our firm belief that we would have created an anomaly as only one grade will not have the additional income.

Based on the abovementioned we therefore propose to phase-in the grade 1 employees without taking away their performance incentive by passing on 2,8% over and above agreed wage increases for the next 10 years which will ensure proper compliance.

As stated earlier, technically we do comply with the minimum if you take the performance incentive into account, but as stated this was intended to be an additional payment to employees and therefore we wish to rather also phase-in over the stipulated period. Due to the 44% adjustment that was already passed on it would be detrimental if we continue the practice of the performance incentive and comply immediately with the minimum wage rates. We require relief to the extent that no employee will receive less than the minimum if the performance incentive is taken into account, obviously the impact of the performance incentive will reduce as we move close to the minimum wages but we do not intend reducing this in any event.”

6. COUNCIL’S SUBMISSIONS

The Council submits, inter alia, as follows:

- “1. The Applicant is registered with Council since the 16th January 2004 and has a poor record of compliance in not submitting their monthly returns on time. Payments for the year 2008 were only paid in October 2009 and payment for February to September 2009 was only paid in November 2009.***
- 2. The Council obtained an award against the applicant for none payment of its monthly returns for the period 1st October 2007 to December 2007, on the 31st May 2008. The matter is still not***

settled and in January 2011 Council obtained a writ of execution.

3. *Under special circumstances the applicant states "... technically we do comply with the minimum if you take the performance incentive into account," I tend to differ. The applicant's employees need to meet criteria, as set out be the applicant, before they qualify for the performance incentive, thus the incentive is not guaranteed.*
4. *If the performance incentive is taken into account as part of the minimum wage and the Applicant's application be successful, it will allow the applicant to pay less on benefits such as provident fund, leave pay, holiday bonus, sick leave and other levies to Council. Which will result in an unfair advantage been created for the applicant only, against other employers in the industry.*
5. *The applicant's application is not supported by financial statements and no proof of consultation with effected employees are attached to the application.*
6. *The applicant's application should fail as it has not met the requirements of the Exemption and Dispute Resolution Agreement."*

7. **ANALYSIS**

- 7.1 Mr E. Kock informed the Exemptions Body that the Applicant did not provide Council with the necessary information and requested that the application be dismissed.

7.2 The Applicant was not present. The Applicant has also not provided information to the Exemptions Body. In the circumstances the application is dismissed.

DATED THE _____ DAY OF MARCH 2011 AT BRAAMFONTEIN, JOHANNESBURG.

MR. Y. NAGDEE
Chairperson of the
Exemption Body

MRS R. MANNING
Member of the
Exemption Body
I agree