

IN THE EXEMPTION APPLICATION OF:-

CITISPRINT CC

Applicant

and

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

Respondent

DECISION

1. The Applicant applied for exemption to have the 13th cheque paid to the employer and not directly to the employees.

2. The matter appeared on the Agenda of the Exemptions Body meeting held on the 15th October 2012.

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 E. Kock - Senior Agent of NBCRFLI

4. The Applicant did not attend the hearing and requested that the application be dealt with on the papers.

5. **APPLICANT'S SUBMISSIONS**

- 5.1 The Applicant submitted, inter alia, as follows:

"NATURE OF APPLICATION:

Applying to have all Holiday Pay Bonus, Sick Pay and Leave Pay to be paid back into Citisprint bank account and not individual employees' bank accounts, reasons – PAYE to be deducted off employees and paid to SARS on Holiday Pay.

Leave Pay and Sick Pay is paid to employees during the year. They do not have to apply from Bargaining Council for that. This has to come back to the Employer."

- 5.2 The Applicant further submitted in a letter dated the 30th August 2012 as follows:

"With regard to the Year End Holiday Pay Bonus, etc. and SARS (Paye), it is understood that the individual employees will be paid directly the Gross Holiday Pay Bonus by yourselves, which means that Paye will not be deducted. The normal situation each year is that we pay the Holiday Pay Bonus to the staff member and it gets added to their salary/wage and PAYE is calculated and deducted, and then paid

over to SARS, by us. If IT3A's are issued by yourselves for the individual employee it will thus leave him or her owing SARS money at the end of February 2013.

For the sake of accurate records for SARS (Paye) and Skills can we not resume to having the Holiday Pay Bonus paid to Citisprint Bank account and get an affidavit from the staff instructing us to allow this, and we will send you signed copies of their salary/wage slips, once we have paid them out, and therefore the PAYE will be accurate and staff are not left with a debt to SARS at the end of February 2013.

All Leave Pay and Sick Pay monies must all be paid back to us as our staff take leave during the year and get paid by the company. They do not apply to Bargaining Council for their leave pay.

Therefore we would like the Year End Payout to be continued being paid into the Citisprint Bank account, as has been done so for many years, and the staff will be paid according to the year payout schedule and TAX deductions will be correct."

6. COUNCIL'S SUBMISSIONS

The Council submitted, inter alia, as follows:

- "1. These submissions are presented on behalf of the National Bargaining Council for the Road Freight and Logistics Industry ("The Council") in support of the Council opposition to the application brought by the Applicant.**

2. *The Applicant seeks to be exempted to have holiday pay bonus paid to the employer and not to the employees directly, during the December period.*
3. *It was explained to the Applicant that sick leave and leave pay will be refunded to the Applicant once the Applicant has provided proof to the Council that these monies were paid to the employees of the Applicant. The Applicant then indicated that the Applicant will not continue with an application on the said funds.*
4. *The Applicant's main contention in seeking exemption is to enable the Applicant to make tax (paye) deduction from the bonuses paid by Council. This however can still be done as the Council send a remittance advice to the Applicant with all the amounts paid to the employees.*
5. *Furthermore paye should be deducted on a monthly basis as these benefits that are paid to Council constitute an earning and are taxable. The Applicant's contention does not show special circumstances and is not a good reason why exemption should be granted."*

7. ANALYSIS

- 7.1 The submissions made were carefully considered. The Applicant is not proceeding with the application in respect of sick leave and leave pay.

- 7.2 The Applicant's application does not address all the criteria to be dealt with in an application for exemption. The Applicant has also not addressed the criteria of special circumstances.
- 7.3 In the Appeal Body decision of **Fleet Street Logistics CC and the National Bargaining Council for the Road Freight Industry** (26th January 2010) the Appeal Body states as follows on special circumstances:
- "To qualify for an exemption an Applicant must be in a situation which is somehow exceptional and not merely run-of-the-mill. However, proof that the Applicant is in an exceptional situation does not in and of itself warrant the granting of an exemption. The exceptional situation of the Applicant must constitute circumstances which are of a nature and type which warrant the granting of an exemption. In short, special circumstances must not only exist to differentiate an Applicant from others, but such special circumstances must be of a nature which merits exceptional treatment. In judging whether the special situation of Applicant does indeed merit exceptional treatment in this case, one must be fair to the interests of the three parties involved, namely employer, employee and the industry; mindful of special circumstances and the possible setting of precedent and the fact that Applicant has a good record of compliance."***
- 7.4 The only reason advanced for the exemption application is for tax to be deducted. Council's contention in this regard is that the tax can still be deducted. In the circumstances there is no compelling reason for the granting of the application.

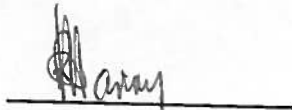
8. **DECISION**

Accordingly the application is refused.

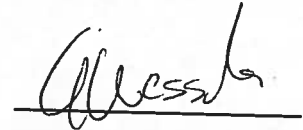
DATED THE 29th DAY OF October 2012 AT BRAAMFONTEIN,
JOHANNESBURG.



MR. Y. NAGDEE
Chairperson of the
Exemption Body



MS R. MANNING
Member of the
Exemption Body
I agree



MR G. WESSELS
Member of the
Exemption Body
I agree