

IN THE EXEMPTION APPLICATION OF:-

COLYNS TRANSPORT CC

Applicant

and

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

Respondent

DECISION

1. The Applicant applied for exemption from the Road Freight Industry Provident Fund.
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:

The exemption is in terms of the participation in the Road Freight Industry Provident Fund.

We have requested quotations from the private sector and believe the product chosen provides a better benefit in terms of retirement funding.

The relevant quotation is attached for ease of reference.

The benefits quoted is done on the same benefit structure as currently in place."

- 5.2 In a communication dated the 13th August 2012, the Applicant submits as follows:

"We hereby wish to apply for exemption from our membership to the bargaining council's Provident Fund. We have made this

application due to the following reasons:

- **We are of the opinion we will be able to get more money into our retirement funding portion of the fund due to better risk rates.**
- **Better funeral benefits than currently in place.**
- **The lack of service continues to be a problem from the bargaining council and our active, former, and beneficiaries of deceased members are not getting the service they deserve.**

Attached are the relevant documents for your perusal, we will appreciate it if confirmation of exemption can be provided as a matter of urgency, as the new arrangement will commence on the 1st of September 2012."

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 NBCRFLI provident is an industry and is compulsory for employers who did not have an established fund prior to the 01st**

May 1999.

- 3. In a letter dated 13th August 2012 attached to the application the Applicant alleged that a lack of service continues from the Bargaining Council administration, without giving any supporting evidence thereof. We therefore request that these comments may not be taken into account when making your decision.**
- 4. The Applicant state that no precedent will be set as this is an individual application. We disagree; the granting of this application will definitely open the fluid gates for similar types of exemptions and will have a negative impact on collective bargaining.**
- 5. Furthermore the Applicant's contention is that more money will go into the retirement fund of the new fund. In previous unreported cases of the Independent Appeals Body it was shown that better or more benefits does not necessary constitute a good reason for the granting of an exemption, refer to Street Fleet Logistics VS NBCRFLI and Ram International VS NBCRFLI.**
- 6. Finally, the Council submits that the Applicant has raised absolutely nothing in the way of special circumstances that warrants the granting of an exemption. The Applicant has not shown anything that distinguishes it from other employers to such a degree that an exemption is warranted."**

7. ANALYSIS

The Exemptions Body is required to consider the application in terms of the criteria set out under clause 4(8) of the Dispute Resolution Agreement. Clearly, the tribunal is not limited to a consideration of the listed criteria. The first three criteria are the Applicant's past record of compliance with the provisions of Council's collective agreements; any special circumstances that exist; and any precedent that might be set. Thereafter the criteria of "the interests of the industry", "the interests of employees" and "the interests of employers", each of which is broken down into various sub categories of criteria which are listed.

7.1 PAST RECORD

The Applicant submits that it is compliant with Council's collective agreement. The Applicant appears to be complaint with Council's Collective agreements.

7.2 SPECIAL CIRCUMSTANCES

7.2.1 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.”

7.2.2 The Appeal Body went on to state that the correct approach as canvassed in the cases referred to is that the Appellant has to show special circumstances and that this factor is not to be elevated above the others and is merely a factor to be weighed along with all the others.

7.2.3 In the present matter the Applicant has not provided grounds that demonstrate special circumstances.

7.3 **ANY PRECEDENT THAT MIGHT BE SET**

7.3.1 The Applicant contends that no precedent will be set as this is an individual application.

7.3.2 The Exemptions Body is of the view that Applicant does not address in detail why granting the Exemption it seeks will not set a precedent.

7.4 **INTERESTS OF EMPLOYEES AND CONSULTATION WITH TRADE UNION**

7.4.1 The Applicant states that Members have been briefed and they agree to the change. In the Appeal Body decision of **SATAWU, National Bargaining Council for the Road Freight Industry and RFEA** the Appeal Body emphasised the importance of consultation with employees or their representatives.

7.4.2 In the circumstances of this matter, the Applicant has notified employees that it will apply for exemption from the relevant Council and will commence with the new fund with an effective date of the 1st September 2012.

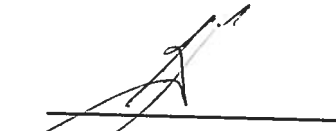
7.4.3 The Applicant's approach to proceed with the application without the Exemption application being determined is ill conceived.


8. **DECISION**

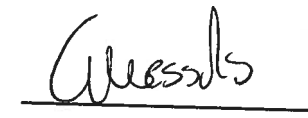
8.1 Having regard to the criteria analysed above, the Exemptions Body is not satisfied that the Applicant has met the criteria for the granting of an application in respect of exemption from the Provident Fund.

8.2 Accordingly, the application for exemption 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