

IN THE EXEMPTION APPLICATION OF:-

**SOUTH AFRICAN COURIER SYSTEMS (PTY) LTD
t/a ROYALE INTERNATIONAL**

Applicant

and

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

Respondent

DECISION

1. The Applicant applied for exemption not to become part of Respondent's Wellness Fund as company has own Medical Aid with Discovery Health.
2. The matter appeared on the Agenda of the Exemptions Body meeting held on the 16th September 2013.
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 P. Mndaweni - Committee Secretary of NBCFRLI
 - 3.5 Ms J. Nel - Exemptions Officer of NBCRFLI

3.6	Adv F. Boda	-	Counsel
3.7	Attorney C. De Vries	-	North Rose Fullbright Attorneys
3.8	Mr Dlamini	-	Candidate Attorney
3.9	Mr R. Small	-	Director
3.10	Ms H. Nefdt	-	Director

4. APPLICANT'S SUBMISSIONS

The Applicant submitted, inter alia, as follows:

"NATURE OF APPLICATION:

Schedule 4: Wellness Fund sub-clause 3 reads:

Exemption from the provision of this clause:

(1) Any employer who has implemented or tends implementing a scheme or programme which provides the following benefits, or substantially similar benefits, may apply in terms of clause 74 of the Agreement to be exempted from some or all the provisions of this clause:

- (a) HIV education and behavioural change interventions;***
- (b) confidential voluntary counselling and testing;***
- (c) treatment and support;***
- (d) basic medical insurance."***

The Applicant has requested that a benefits expert do a comparison of the Discovery Health Scheme benefits with that provided by the Wellness Fund of the Bargaining Council.

In summary, Cindy Van Zyl, the Corporate Health Manager of Discovery Health, with various qualifications including Financial Intelligence Centre Act (FAIS) credits and experience in corporate health and wellness management for over 10 years, found that the Discovery Health Scheme benefits provided by the Applicant was much more favourable than that provided by the Wellness Fund.

In comparing the Discovery Health Scheme to the Wellness Fund in respect of General Practitioners, the Discovery Health scheme pays for unlimited health care at a doctor from the Key care network of doctors for main members and any dependants. In comparison, the Wellness Fund only pays for three visits per main member and three visits per spouse. No provision is made for any children.

In respect of acute medication, the Discovery Health Scheme pays for all medicine if it is prescribed by the chosen Key Care network of general practitioners. In comparison, the Wellness Fund sets a limit of R500 per annum. If the prescription is done in terms of the Universal network, the Wellness Fund provides that the medicine may be obtained from the network pharmacy.

In regards to chronic medication, the Discovery Health Scheme pays for all medicine for a list of chronic conditions. The chronic medication needs to be obtained from the network of pharmacies of chosen general practitioner. If the member gets the medicine anywhere else, he or she will need to make a 20% co-payment. . In comparison, the Wellness Fund pays only for chronic medication for asthma, type 1 and 2 diabetes, emphysema, epilepsy, hyperlipidaemia and hypertension.

In regards to basic radiology, the Discovery Health Scheme pays for listed basic X-rays that the network provides. The Wellness Fund has a list of X-ray procedures that needs to be approved. It pays for only black and white X-rays available through a specialist radiologist identified by the universal network.

The Applicant does not employ the long distance drivers and therefore the road side assistance wellness benefit is of no assistance to it.

APPLICANT'S PAST RECORD:

The Applicant has an exemplary record of compliance with the provisions of the Council's Collective Agreements.

The Applicant is exempted from the Provident Fund Collective Agreement.

ANY SPECIAL CIRCUMSTANCES:

The Applicant is currently contributing to the Wellness Fund as well as providing 100% contribution to Discovery Health to enable its employees to have a medical aid benefit such as with Discovery Health. It impacts on the viability of its business. The Discovery Fund offers superior benefits to Council's Wellness Fund as appears from what has been stated above and the supporting documentation. The Applicant also highlights recent developments in the country attacking the constitutionality of extension agreements, which a deal with in the last portion of this affidavit and emphasises the need for effective

exemption processes such as the present, to avoid a breach constitutional rights. The Applicant further refers to past decisions of the exemptions body. In the decision, the Council granted extensions to employers who subscribe to the Discovery Fund on the basis that the Council was satisfied that the Discovery Fund offers superior benefits. In this respect, reference is made to the 2009 and 2011 decisions in respect of the 2009 and 2011 G4 Security and Colt Transport. The decisions are attached as "N1" to "N2" to the founding papers. The Applicant submits that it should be treated the same.

ANY PRECEDENT THAT MIGHT BE SET:

The Council has already granted exemptions to employer who subscribe to the Discovery Fund. the granting of this application would set a consistent precedent and be beneficial to employees and the Applicant.

UNFAIR COMPETITION:

As the Council has granted applications of this nature to employers previously it would be unfair not to grant this application to the Applicant. Moreover, not to grant this application would be detrimental to small firms in the industry such as the Applicant who would have to contribute twice or sacrifice a superior fund for an inferior one to the prejudice of its workers.

Although COLT Transport is a freight company whilst the Applicant is a courier company, the Applicant does offer freight as a value added service. It therefore potentially competes with COLT Transport should

a customer approach the Applicant with a quote from COLT Transport.

COLLECTIVE BARGAINING:

Collective bargaining can in no way be undermined by granting the present exemption application.

POTENTIAL FOR LABOUR UNREST:

Should the Applicant after following the necessary legislative processes remove the medical aid benefit, this may lead to labour unrest. The Applicant cannot justify contributing to two funds.

INCREASED EMPLOYMENT:

The granting of this application may attract persons to the Applicant as it offers superior benefits.

EXPLOITATION:

The granting of the exemption application will not lead to the exploitation of employees. The refusal, however, will most certainly prejudice them.

JOB PRESERVATION:

This factor cannot be negatively affected by this application.

SOUND CONDITIONS OF EMPLOYMENT:

The Applicant provides more favourable terms and conditions of employment than that required by the Main Collective Agreement.

POSSIBLE BENEFITS:

The Applicant has passed a resolution that the benefit derived from the saving of not contributing to the Wellness Fund will be utilised for the benefit of the employees (see: the resolution annexure "O" to the founding papers). Both the employer and employees will benefit financially by not having to contribute twice and if this application is not granted the Applicant may have to terminate the existing superior benefits because it cannot justify contributing to two funds. This will prejudice the employees.

HEALTH AND SAFETY:

The employees' health and safety is better promoted through the Discovery Fund.

INFRINGEMENTS OF BASIC RIGHTS:

For reasons set out below the refusal of this application will infringe the fundamental rights of the Applicant. Moreover, workers will be prejudiced.

FINANCIAL STABILITY:

Granting this application would prevent contributions to two funds.

IMPACT OF PRODUCTIVITY:

The denial of this application may for reason set out above lead to industrial unrest and dissatisfaction by employees.

FUTURE RELATIONSHIP WITH EMPLOYEES' TRADE UNION:

The Applicant does not recognise any trade union.

OPERATIONAL REQUIREMENTS:

It makes no commercial sense for the Applicant to contribute to two funds."

6. **COUNCIL'S SUBMISSIONS**

The Council submitted as follows:

"1. The Applicant has a good compliance history with Council Agreements. Applicant has 3 levy numbers whereas the oldest levy number registered with Respondent on 12/06/1998 and is situated in Cape Town.

2. ***Applicant is applying for exemption not to become part of Respondent's Wellness Fund as company has own Medical Aid with Discovery Health.***

3. ***Respondent is unable to grant exemption Wellness Fund retrospectively and also unable to grant period until 29/02/2016 as per request from Applicant. Applicant will have to apply on a yearly basis due to that exemption may only be granted during the subsistence of current agreement which expires on 28/02/2014. Next duration will be 01/03/2014 to 28/02/2015 and last one 01/03/2012 to 28/02/2016.***

4. ***The Exemptions Body is guided by Schedule 4 of the Collective Agreement and Clause 4(8) of the Exemptions and Disputes Resolution Agreement. We therefore trust that the panel will make their decision accordingly."***

7. **ANALYSIS**

7.1 The submissions made by the Applicant were carefully considered. The Applicant's employees belong to a Discovery Medical Aid. Some 25 employees are affected by the application. The employees do not contribute.

7.2 The Applicant has a good record of compliance. By way of special circumstances the Applicant highlighted developments in attacking the constitutionality of extension agreements which reinforces the need for exemption procedures to avoid a breach of constitutional rights.

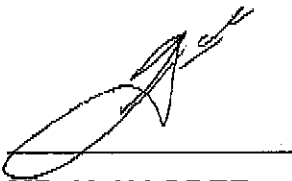
7.3 The Exemptions Body has in the past granted exemptions application in respect of the Wellness Fund where criteria have been met. The present application has the support of employees.

7.4 It was brought Applicant's attention that blanket exemptions are not granted.

8. DECISION

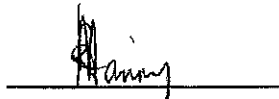
The Exemptions Body is satisfied the Applicant has met the requirements of the granting of the application. The Applicant is granted an exemption from 1st September 2013 to 28th February 2014 in respect of Council's Wellness Fund.

DATED THE 27TH DAY OF SEPTEMBER 2013 AT BRAAMFONTEIN, JOHANNESBURG.



MR. Y. NAGDEE

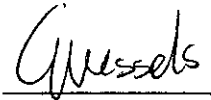
Chairperson of the
Exemption Body



MS R. MANNING

Member of the
Exemption Body

I agree



MR G. WESSELS

Member of the
Exemption Body

I agree