

IN THE EXEMPTION APPLICATION OF:-

STANDER'S TRANSPORT & IMITHWALO TRANSPORT

Applicant

and

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

Respondent

DECISION

1. The Applicant applied for exemption to exceed the prescribed number of overtime hours allowed per day.
2. The matter initially appeared on the Agenda of the Exemptions Body meeting on the 18th March 2013. The application was postponed sine die and the Applicant was invited to motivate its application at the next meeting.
3. The matter appeared on the Agenda of the Exemptions Body meeting held on the 15th April 2013.
4. The following were present:-
 - 4.1 Mr Y. Nagdee - Chairperson of the Exemptions Body
 - 4.2 Ms R. Manning - Member of the Exemptions Body

- 4.3 Mr P. Mndaweni - Committee Secretary of NBCFRLI
4.4 Ms J. Nel - Exemptions Officer of NBCRFLI

5. Apologies were received from the following members:

- 5.1 Mr G. Wessels - Member of the Exemptions Body
5.2 Ms T. Stroh - Acting CEO of NBCRFLI

6. **APPLICANT'S SUBMISSIONS**

The Applicant in its application submitted, inter alia, as follows:

"NATURE OF APPLICATION:

Clause 8(9) of the National Bargaining Council for the Road Freight Industry Main Collective Agreement prescribe that an employer shall not require or permit an employee to work overtime for more than 6 hours on any day, except Saturdays, provided that the maximum hours of work on any day shall not exceed 15, including ordinary hours of work, overtime hours and meal intervals prescribed by this agreement.

We as employer request exemption from the limitation of 6 hours overtime per day and request that it be extended to 9 hours overtime per day.

STATEMENT OF MATERIAL FACTS:

Up to date of inspection by the NBCRFLI on 23 January 2013 we only had one driver on a truck and therefore they exceeded the 6 hours overtime limitation. We are currently in the process of appointing more drivers in order for the drivers to double up on one vehicle meaning double manning. As we spend long hours at our clients leading and mostly after hours we would still require an exemption of the 6 hours overtime as the one driver who loaded needs to sleep while the other driver will be driving. At the various parts in SA it sometimes takes more than 24 hours to load a container. If this 6 hours overtime limitation is enforced, no transporter in this country will transport containers anymore and the parts in this country will come to a standstill. We will also have to cut our service to Clover, Tastic, etc. because we will not be able to load after hours and therefore food distribution in SA will also come to a standstill.

APPLICANT'S PAST RECORD:

Stander's Transport is in compliance with the Collective Agreement with the exception of the limitation of the overtime hours.

SPECIAL CIRCUMSTANCES:

At many of our clients (Clover, Tastic, Tigerbrands, etc) we can only load after hours. We as employer pay our Drivers and General Workers whilst they have to stand in line to load. Therefore most of the drivers overtime is used up to either wait to load or to offload.

ANY PRECEDENT THAT MIGHT BE SET:

No precedent will be set as all the transport companies in SA have to contend with the same circumstances. Should this 6 hours overtime limitation be enforced, it should be enforced on all transport companies. As a matter of urgency, inspections by the NBCRFLI should be conducted at all transport companies. The only precedent set is that we now have to abide to the limitations whilst most others do not.

UNFAIR COMPETITION:

This exemption would have a positive impact on the transport industry in SA. Many companies in SA circumvent hours paid on overtime by paying drivers per completed trip and then reflect that they complied with the 6 hours overtime limitation. We opted not to go that route. As we want to abide by the Agreement we would not gain an unfair advantage.

COLLECTIVE BARGAINING:

Although Stander's Transport is not a member of the Road Freight Employers Association we understand that this Agreement was extended by the Minister of Labour to the whole transport sector in SA. All our staff have indicated that they will be negatively affected by this enforcement by the NBCRFLI.

POTENTIAL FOR LABOUR UNREST:

All the staff at our various depots have indicated that they will not accept this limitation of overtime and have threatened with labour unrest if they are limited to only 6 hours overtime per day. We cannot afford another strike as we are still in the process of recovering from the September 2012 strike.

INCREASED EMPLOYMENT:

We are in the process of appointing more staff in order to accommodate the limitation of overtime.

EXPLOITATION:

No staff member will be exploited, in fact they threaten to strike if they are going to be limited in working overtime.

JOB PRESERVATION:

All jobs will be preserved and even more staff will be appointed, regardless.

SOUND CONDITIONS OF EMPLOYMENT:

Our staff are content with their conditions of employment and went to work more than 6 hours overtime per day.

POSSIBLE BENEFITS:

We will be able to retain our staff as many are now threatening to resign if they are to be forced not to work more than 6 hours overtime per day. We have staff working for us for more than 25 years that now want to resign because of this enforcement.

HEALTH AND SAFETY:

This extension to 9 hours would not effect health and safety as no driver in this company was ever forced to drive if they are not rested. There are drivers that do not want to double up as they are not prepared to put their lives in the hands of another driver.

INFRINGEMENT OF BASIC RIGHTS:

The workers feel that we as employer are forcing them not to work for more than 6 hours overtime whilst we as employers are compelled to abide by the Collective Agreement. The workers contend that their basic rights to earn a proper wage are infringed upon by forcing them to not work more than 6 hours overtime per day.

FINANCIAL STABILITY:

We as employers are now forced to appoint more staff regardless of the extension to 9 hours overtime per day. The only way that this would not have an impact on the finances of the company would be if we are allowed to keep to the status quo as before the inspection of 23 January 2013.

IMPACT OF PRODUCTIVITY:

Should our workers feel that we are not looking after their interest they would become unproductive. Should the extension to 9 hours be approved, the workers would at least see that we tried to accommodate their interest.

FUTURE RELATIONSHIPS WITH EMPLOYEES AND TRADE UNIONS:

We cannot see how SATAWU would be unhappy if we look after the interest of the workers seeing further that we would appoint more staff, regardless the extension to 9 hours overtime per day.

OPERATIONAL REQUIREMENTS:

It would be impracticable for us to pull a truck from the labour once he has reached his 6 hours overtime. This would mean that we have to send out another driver. A truck is assigned to a driver and therefore all his personal belongings must then also be removed from the truck. This enforcement would be detrimental to the operational requirements of our company."

7. COUNCIL'S SUBMISSIONS

The Council submitted as follows:

- "1. The Applicant has a good compliance history with Council Agreements.**

2. ***Applicant is applying for limitation of 6 hours overtime per day and request that overtime is extended to 9 hours overtime per day.***

3. ***According to Applicant's application they are referring to double up (double manning). An exemption should be sought for double manning if not yet done so.***

4. ***An extension to 9 hours might have an effect on health and safety due to that the driver will not have enough sleep and might cause an accident;***

5. ***The Exemptions Body is guided by Part 2 – Hours of work – Clause 6, 10 and 17 of the Main Collective Agreement. We therefore trust that the panel will make their decision accordingly."***

8. **ANALYSIS**

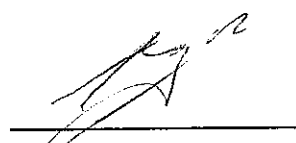
- 8.1 The Applicant failed to attend the meeting. The Exemptions Body is not satisfied that the Applicant has fully motivated its application. The Exemptions Body is of the view and health and safety issues have not been addressed.

- 8.2 Insofar as the Applicant is returning to double manning an application for exemption is required.

9. **DECISION**

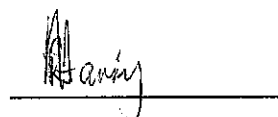
In respect of the application to exceed the prescribed number of overtime hours, the Applicant's application is dismissed.

DATED THE 26 DAY OF April 2013 AT BRAAMFONTEIN,
JOHANNESBURG.



MR. Y. NAGDEE

Chairperson of the
Exemption Body



MS R. MANNING

Member of the
Exemption Body

I agree