

IN THE EXEMPTION APPLICATION OF:-

MACHINE MOVING AND ENGINEERING (CAPE (PTY LTD)

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 Provident Fund. Applicant wants to remain with Liberty.

2. The matter appeared on the Agenda of the Exemptions Body meeting held on the 17th June 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

4. Apologies were received from the following:

4.1 Mr D. Koen - National Operations Manager – NBCRFLI

5. **APPLICANT'S SUBMISSIONS**

The Applicant submitted, inter alia, as follows:

"NATURE OF APPLICATION:

The application is for the Applicant to be exempted from all clauses in the Collective Agreement that deals with the provident Fund.

STATEMENT OF MATERIAL FACTS:

The employees of the Applicant that are under the jurisdiction of the Council, are all members of the Applicant's pension fund. The fund's administrator is Liberty Life. Contributions to the fund are 7.5% of gross earnings from both Employer and Employee, meaning that in total 15% of gross earnings of the employees are contributed to the fund.

APPLICANT'S PAST RECORD:

Other than the Provident Fund requirements, the Applicant is in compliance with all the provisions of Council's Collective Agreements.

ANY SPECIAL CIRCUMSTANCES:

The Applicant has its own provident fund since 2005. Some of the employees have been members since then and all new employees also become members when appointed in a permanent position.

Contributions to the fund are 7.5% of gross earnings from both the Applicant and Employee, meaning that in total 15% of gross earnings of the employees are contributed to the fund, which shows that the aim of this application for exemption is not an attempt to save on costs.

ANY PRECEDENT THAT MIGHT BE SET:

No precedent will be set. As stated, contributions to the fund are 7.5% of gross earnings from both the Applicant and Employee, meaning that in total 15% of gross earnings of the employees are contributed to the fund. Therefore the employees will not be disadvantaged and no precedent will be set by the Council for possible future exemption applications by other employers who might be offering provident funds with lesser benefits than those of the Council.”

6. **COUNCIL’S SUBMISSIONS**

The Council submitted as follows:

“1. The Applicant has a good compliance history with Council Agreements. Applicant registered with Respondent on 07/04/2010 and is situated in Cape Town.

2. ***Applicant is applying for exemption not to become part of Council's Provident Fund as employees want to remain on Applicant's Provident Fund (The Fund's Administrator is Liberty Life).***

3. ***The Exemptions Body is guided by the Provident Fund 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 application previously appeared on the agenda of the Exemptions Body meeting on the 16th September 2013.

- 7.2 The matter was postponed to enable the Applicant and officials of Council's Provident Fund to enter into discussions. The matter appeared again on the agenda of the Exemptions Body meeting held on 17th June 2014.

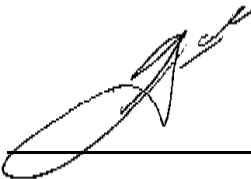
- 7.3 The Applicant was not present nor were Provident Fund officials in attendance. The matter was dealt with on the papers. The Applicant in further submissions pointed out that it has its own provident fund since 1st December 2005. The Applicant has brought its contribution in line with Council's Provident contribution rate of 10%. The Employees support the application.

7.5 The Exemptions Body is satisfied that the Applicant has met the requirements for the granting of an exemption application.

8. **DECISION**

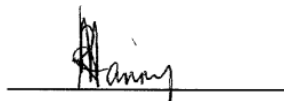
The Applicant is granted an exemption not to become part of Respondent's Provident Fund for the period ending 28th February 2014;

DATED THE 25 DAY OF JUNE 2014 AT BRAAMFONTEIN, JOHANNESBURG.



MR. Y. NAGDEE

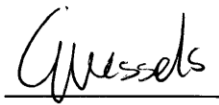
Chairperson of the
Exemption Body



MS R. MANNING

Member of the
Exemption Body

I agree



MR G. WESSELS

Member of the
Exemption Body

I agree