

IN THE EXEMPTION APPLICATION OF:-

L. J. VILJOEN

Applicant

and

NATIONAL BARGAINING COUNCIL FOR THE
ROAD FREIGHT INDUSTRY (Council)

Respondent

DECISION

This matter appeared on the agenda of the meeting of the Exemptions Body held on the 20th October 2008 on the 2nd Floor, Boardroom of the Road Freight House West, 29 De Korte Street, Braamfontein.

Present on this day were:-

- | | | | |
|----|---------------------|---|--|
| 1. | Adv. R. Rawat | - | Chairperson of the Exemption's Body |
| 2. | Mr. Y. Nagdee | - | Member of the Exemption's Body |
| 3. | Mr. T. Short | } | Road Freight Employers Association
(RFEA) |
| 4. | Mr. M. Brown | | |
| 6. | Mr. A. Ramakgolo | } | South African Transport & Allied Workers
Union (SATAWU) |
| 7. | Mr. J. Gamede | | |
| 5. | Mr. P. Mndaweni | } | National Bargaining Council for the
Road Freight Industry (Council) |
| 6. | Mr. N. Van Der Stys | | |
| 8. | Mr. L. J. Viljoen | - | Owner |

In this application what was sought was an exemption to work a 4 day week short time due to a slow turnover and the high costs of fuel.

Mr. Viljoen stated in his application that the work load at his Company had fallen by 25% during the months of April and may and was even worse in July 2008.

He expressed a desire to avoid retrenching 25% of his workforce as many of his workers had been in his employ for +/- 20 years.

Attached to the application for exemption was the following agreement:-

"AGREEMENT REGARDING SHORT TIME

It is regarded as follows between:

L. J. VILJOEN TRANSPORT (Company)

And

SATAWU obo MEMBERS

1. *There has been a dramatic decline in the work load.*
2. *Due to the decline it is regarded between the parties to implement short time.*
3. *The short time will be worked on a trail basis of 2 months starting from 8th September 2008 for 4 days a week.*
4. *After 2 months the parties will meet to revise the short time.*
5. *All the employees have agreed to his and their signatures are attached hereto.*

Signed and agreed on the 4th day of September 2008.

COMPANY

SATAWU"

The agreement was signed by a representative of the Company and the Union representative of SATAWU. It also has a rubber stamp of WYPE Transport.

The Chairperson of the Exemptions Body, enquired as to the agreement as this would have meant that the exemption applied for was already in force. Mr. A. Ramakgolo the

SATAWU representative present at the meeting was also requested to make enquiries from the SATAWU representative who signed the agreement and an adjournment was accordingly granted for such investigation to be done.

On return, Mr. Ramakgolo informed the Exemptions Body that Mr. Sakie Makgalemele had signed the agreement. The intention of the parties to the agreement had been to avoid retrenchments. The parties had agreed that the situation of a 4 day work week would be tested for a period of 2 months and thereafter, the Company's position would be reassessed. The agreement, had, however not been put into operation and the employees were at the time of the Exemptions meeting on the 20th October 2008 working normal hours.

The Union added that it has no objection to the Application for Exemption and was fully satisfied with the level of consultation that had taken place. The RFEA representatives present also indicated their consent to the application.

The Exemptions Body voiced its willingness to favourably consider the application, but, for a period of 2 months only, during which time the Applicant and SATAWU are to liaise on a regular basis to ascertain how the position of the Applicant stands and to monitor the situation. The expectation of the Exemptions Body is that the Applicant is to report back in the new year on the result of the period for which the exemption is granted. The Applicant expressly agreed not to retrench any staff during this period. Contracts of employment which expire during this period will not be renewed as per the request of the Applicant.

All parties present, including the Applicant, agreed to this condition and the Applicant undertook to return to the Exemptions Body early in the new year (2009).

The Exemptions Body is guided by Clause 4 of the Exemptions and Dispute Resolution Agreement which reads:-

- “(a) The Applicant's past record (if applicable) of compliance with the provisions of Council's Collective Agreements and Exemption Certificates;***

- (b) any special circumstances that exist;**
- (c) any precedent that might be set;**
- (d) the interests of the Industry as regards:-**
 - (i) unfair competition;**
 - (ii) collective Bargaining;**
 - (iii) potential for labour unrest**
 - (iv) increased employment.**
- (e) the interests of employees' as regards:-**
 - (i) exploitation;**
 - (ii) job preservation;**
 - (iii) sound conditions of employment;**
 - (iv) possible financial benefits;**
 - (v) health and safety;**
 - (vi) infringement of basic rights.**
- (f) the interests of the employer as regards:-**
 - (i) financial stability;**
 - (ii) impact of productivity;**
 - (iii) future relationship with employees' trade union;**
 - (iv) operational requirements."**

This Applicant has established a set of facts which can be assisted by a period of grace which an exemption from the requisite clause will bring.


The Exemptions Body considers this application to be one which meets the criteria of Clause 4 of the Dispute Resolution and Exemptions Agreement. Amongst other considerations, this is a special circumstance which aims to prevent the loss of jobs. The Applicant's expression of concern over employees who have served him for 20 years or more must be needed, hence the condition attached to the certificate for exemption.

In the premises, the Application for Exemption succeeds and the Applicant is permitted to work a 4 day week on the condition that it liaises with SATAWU during this time and undertakes not to retrench staff during period of +/- 2 months starting from the 20th October 2008 until the end of December 2008. The Applicant is to report back to the Exemptions Body early in the new year.

DATED THE 4th DAY OF November 2008 AT BRAAMFONTEIN, JOHANNESBURG.

EXEMPTIONS BODY
Chairperson: *R Rawat*

ADV. R. RAWAT
Chairperson of the
Exemption Body



MR. Y. NAGDEE
I agree