

IN THE EXEMPTION APPLICATION OF:-

LOVERMORE BROS TRANSPORT

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 | | |

This application was for exemption from all the provisions of the Main Collective Agreement of the NBCRFI (Council). The basis of the application went to the root of the issue of the jurisdiction of the NBCRFI (Council) as the Applicant alleged that its employees were not "drivers" in the strict sense of the word and that most of their employees riggers and not transporters. In the words of the Applicant, it explained in the Application for Exemption that :-

- "1. The machine moving and rigging industry unique within the transport sector.*
- 2. We undertake "contracts" whereby we are responsible for the full work spectrum of:*

- a) *disconnect machinery*
 - b) *dismantle machinery*
 - c) *"rig-out" machinery from the factory*
 - d) *load machinery onto crane trucks and lowbeds*
 - e) *driver the trucks to the other site whether it be next door or in Johannesburg*
 - f) *off load the machinery*
 - g) *"rig-in" the machinery*
 - h) *Assemble the machinery*
 - i) *Connect the machinery*
3. *As such our artisans and operators are multi-skilled and not "drivers"!*
4. *They are essentially Supervisors with many skills. They organise their crews, operate the cranes, drive the trucks, work the rigging gear, operate tools, etc.*
5. *They are also paid accordingly and that their rates of pay have no relationship to the categories listed with the NBCRFI."*

The facts presented in this matter by way fall short of the implication and consequences of the exemption sought.

On the application itself, it is impossible for the Exemptions Body to determine this matter in terms of the guidelines of Clause 4 of the Exemptions and Dispute Resolution Agreement of the NBCRFI (Council) which are:-

- "(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."*

These guidelines are clearly indicative of the onerous task and power vested in the Exemptions Body, which cannot, without a full and thorough investigation of all the facts of any Application for Exemption. Furthermore, to simply declare that an employer is not a party to the Main Collective Agreement purely on a written submission that employees are not drivers would prove to be a most frivolous if not ridiculous display of the Exemptions Body as a very important decision making Body in the Industry which it serves. It would also be to, without any rhyme or reason, defray the closely woven threads of the most valued concept of Collective Bargaining. This is the very background against which and written with, the Exemptions Body was created.

The NBCRFI (Council) is therefore requested to make a thorough investigation of the Applicant's operations the report which Council compiles as a result of such an investigation must be submitted to the Applicant in order for it to respond.


The Applicant is also given the opportunity to amplify its Application for exemption, taking into account the sentiments expressed in this decision.

The Applicant is also notified to attend in person when this matter is next set down.

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