

IN THE EXEMPTION APPLICATION OF:-

STREET FLEET LOGISTICS

Applicant

and

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

Respondent

DECISION

1. The above matter appeared on the Agenda of the Exemptions Body meeting held on the 20th July 2009.

2. The following were present:-
 - 2.1 Mr. Y. Nagdee - Chairperson of the Exemption's Body
 - 2.2 Mr. G. Wessels - Member of the Exemption's Body
 - 2.3 Mrs. R. Manning - Member of the Exemption's Body
 - 2.4 Mr. T. Short - Chairperson of the RFEA
 - 2.5 Mr G. Van Niekerk - Member of RFEA
 - 2.6 Mr. Paul Mndaweni - Secretariat of NBCRFI (Council)
 - 2.7 Mr. E. Kock - Senior Agent of NBCRFI
 - 2.8 Mr J. Gys - MTWU Representative
 - 2.9 Mr. C. Beckenstrater - Attorney from Moodie & Robertson
For Council Attorneys

Apologies were received from Miss M. Brown of the RFEA.

3. In terms of a previous decision of the Exemptions Body dated the 2nd June 2009, the Applicant was required to index and paginate the bundle of documents. This was duly attended to.

4. The Applicant and Council's representative were afforded an opportunity to deliberate on the matter but could not reach agreement;

5. **APPLICANT'S SUBMISSIONS**

Mr Tony Yeo, Senior Marketing Advisor for Momentum on behalf of the Applicant submitted, inter alia, as follows:

- 5.1 The Applicant carried out a comparison by taking into account salient features of the Council's Fund and comparing these with Applicant's Fund and came to the conclusion that 6 items were comparable but the Momentum Fund was better in some 23 respects;
- 5.2 Momentum was the only Company who had a web system with a real time system, whereby values could be accessed every day;
- 5.3 The Momentum fund covered permanent disability as well as temporary disability. Council's fund covered permanent disability only;
- 5.4 In terms of retirement there was always income available to individual and family members;
- 5.5 The Council's fund did not have an education benefit;
- 5.6 It was submitted that the benefits provided by Momentum were in many respects superior and more appropriate to those provided by Council;
- 5.7 It was submitted that conflicting information was provided in terms of the information by Council in respect of Death benefits. The Administrators provided different information as opposed to what was in the Rules.

- 5.8 Mr Yeo made reference to the fact that Momentum may be uncompetitive on an individual basis, but its ratings operated on a post claims basis;
- 5.9 Mrs Lockwood made reference to the submissions made in writing which did not require repetition;
- 5.10 The Applicant sought a permanent Exemption from the Council's Provident Fund.

6. COUNCIL'S SUBMISSIONS

- 6.1 Mr Bopape disputed that there was factual inaccuracy. It was submitted that quotes were obtained from Momentum previously but they were extremely expensive in relation to costs. Momentum would not be able to fulfil commitments it made to members;
- 6.2 Mr Beckenstrater made, inter alia, the following submissions:
- 6.2.1 The Council was prepared to accept for purposes of argument that the benefits by Momentum were better. But on a policy basis Council was opposed to the application. The issue was also who were the fund advisers. A party could make a conscious choice as to whether it sought better retirement benefits as opposed to other benefits;
- 6.2.2 The industry reached an agreement on the structure. If the industry wishes to change on the structure, it could do so. On a policy level it was submitted that the Applicant's contentions were not relevant;
- 6.2.3 Reference was made to the Appeal Body's decision in the matter of **M4 Couriers & Accounting and National Bargaining Council for the Road Freight Industry (2003) 24 ILJ 1042 (BCA) paragraph 14**

where it was held:

Whether or not a precedent will be created in this case is a factor which requires consideration. I consider that there is no merit in the contention that, because the applicant pay its employees better than what is provided for in the agreement, that entitles it to the exemption. I agree with the contention made on behalf of the respondent that many employers who pay their employees better than what is provided for in their agreement, will no doubt seek to be exempted simply on that basis. This will negate the underlying basis for concluding the collective agreements in the first place. In any event, there is nothing that distinguishes the applicant's conduct in paying its employees more than what is provided for in the agreement, from other employees who do the same thing."

- 6.2.4 Mr Beckenstrater also referred to previous decisions of the Exemptions Body, viz, **Milltrans and National Bargaining Council for the Road Freight Industry (2002) 23 ILJ 1930 (BCA)**, **RAM International Transport (Pty) Ltd and National Bargaining Council for the Road Freight Industry (2002) 23 ILJ 1943 (BCA)**, and **Loutrans and National Bargaining Council for the Road Freight Industry (2008) 29 ILJ 498 (BCA)**;
- 6.2.5 It was submitted that in this context a "special circumstances" must be one which warranted an accommodation of non-compliance motivated by inability to comply. This would generally be for a temporary period to allow resuscitation and/or recuperation, and once the member has been restored to "full health" the exemption would fall away;
- 6.2.6 In respect of better administration of funds it was submitted this was not a ground to interfere with collective bargaining structures. If there were problems with administration that could be improved and this is

not permanent;

7. **SUBMISSIONS BY OTHER PARTIES**

The MTWU expressed its opposition to the granting of the application and the RFEA left the decision to the Exemptions Body.


8. **DECISION**

8.1 The submissions made by the parties were carefully considered. On a conspectus of all the facts before it, the Exemption Body is of the view that the Applicant has not demonstrated that special circumstances exist for the granting of the application.

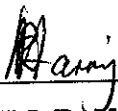
8.2 Even if regard is had to the emphasis on superior benefits provided by Momentum, this is not a ground for a special circumstance. In fact this negates the underlying purposes of entering into collective bargaining and the granting of an application of this nature will have the effect of undermining Collective Bargaining. The principle of centralised collective bargaining is a paramount and a primary objective of the Labour Relations Act. The issue is whether there should be a deviation from the established framework. Based on the submissions by the Applicant no such case has been made out by the Applicant;

8.3 In the premises, the application is refused


DATED THE 31 DAY OF JULY 2009 AT BRAAMFONTEIN, JOHANNESBURG.



MR. Y. NAGDEE
Chairperson of the
Exemption Body



MRS R. MANNING
Member of the
Exemption Body
I agree



MR G. WESSELS
Member of the
Exemption Body
I agree