

**IN THE EXEMPTIONS APPLICATION**

between

**ROAD FREIGHT EMPLOYERS'S ASSOCIATION (RFEA) obo**  
**THE FURNITURE REMOVAL SECTOR**

APPLICANT

and

**SATAWU AND TAWUSA**

RESPONDENT

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**DECISION**

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1. **BACKGROUND**

The above matter appeared on the Agenda of the Exemptions Body meeting held on the 18<sup>th</sup> January 2010. By agreement between the parties, the matter was postponed to afford the Respondents an opportunity to make submissions. At the request of the SATAWU a further extension was granted to make its submissions.

2. **APPLICANT'S SUBMISSIONS**

The Applicant made the following submissions:

***“(A) INTRODUCTION***

1. ***The Road Freight Employers' Association (RFEA) is a party to the NBCRFI and as such participates, on behalf of its members, in the annual wage and substantive negotiations under the auspices of the NBCRFI.***

2. **The RFEA is currently the only party-employers' association to the NBCRFI.**
3. **The RFEA's membership consists of operators in various sectors within the Road Freight Industry and for the purposes of this application; specifically the needs of the Furniture Removal sector will be addressed.**
4. **The Furniture Removal sector, through its Executive Committee (the Professional Movers' Association or PMA), mandated the RFEA to bring this application on its behalf. The PMA is an interest group within the RFEA and all its members are paid up members of the RFEA, a list of which is attached hereto as Annexure A.**
5. **Furniture Removal Sector, as per the NBCRFI Main Agreement, will mean:**

***"all transport employers within the scope of the Council that exclusively transport and store furniture that is new and or used furniture and or appliances for household and or business"***

**(B) BACKGROUND**

6. **Negotiations preceding the 2009 Agreement literally set the scene for this application. Attached are the signed agreement for 2009 (Annexure B) and the recently published gazette (Annexure C).**
  - 6.1 **2008 Exemption**
    - 6.1.1 **The RFEA brought a similar application in 2008 for increases that were due on 1st March 2008, for Furniture Removal to effect an increase of 1% less on both Minimum (MIN) and Across the Board (ATB) increases, which application was successful and the exemption granted, which outcome is attached hereto as Annexure D.**

**6.1.2 Whilst parties entered into chamber bargaining for the first time during the 2009 Negotiations, SATAWU being the majority union in both General Freight and Furniture Removal, failed to approach the latter as a separate chamber and would not differentiate between increases in these very different sectors.**

**6.1.3 They did however, as they did in previous negotiations, agree that the RFEA may bring this application and that they would not unnecessarily oppose same.**

**6.2 2009 Negotiations:**

**6.2.1 These negotiations were concluded in April 2009 and was promulgated and extended on 22nd May 2009.**

**6.2.2 The 2009 negotiations saw parties enter into chamber bargaining for the first time.**

**6.2.2.1 One such sector, Cash-in-transit (CIT), with its majority union being Motor Transport Workers Union (MTWU) successfully agreed to amend certain conditions of service within the Main Agreement so that those conditions would be applied differently from General Freight (clause 2.6.4, 3 & 4, Annexure B).**

**6.2.2.2 In addition to amending certain substantive conditions, CIT also successfully negotiated separate wages for its different wage categories (clause 2.6 & 2.7, Annexure B).**

**6.2.3 Another of those sectors identified, is the Furniture Removal Sector and this sector entered**

*the negotiations with separate wage proposals to that of General Freight and CIT. Chamber bargaining in this sector however proved less successful for reasons that were explained in 7.1.2 & 7.1.3 above.*

*6.2.4 In May 2009, the RFEA brought an exemptions application, for Furniture Removal to pay 1% less on the MIN and ATB increases as set in the 2009 Gazette. The Exemptions body at the time granted a 1% relief only on MIN increases and only for one year, as opposed to granting 1% less on both the MIN and ATB and for the period of the Agreement (attached, Annexure E).*

*6.2.5 The RFEA appealed this decision (attached, Annexure F) and whilst the appeal body ruled that they had no jurisdiction, they did make reference to an advisory award, which suggests that the Exemptions body should've extended the 1% relief to the ATB increases and that the exemption should've been granted for the complete period of the agreement (attached, Annexure G).*

*6.2.6 The next increases for this sector are due 1st March 2010 and as such we are again bringing an application for the sector to effect 1% less on both the MIN and ATB increases for the remainder of the period of the agreement. The motivation for such application is outlined below.*

#### **(C) MOTIVATION**

#### **7. Furniture Removal Needs and Constraints:**

*7.1.1 The RFEA, throughout the 2009 negotiations maintained a position of at least 1% less on the MIN & ATB increases for Furniture Removal, in comparison to the other sectors, primarily because the Furniture Removal Sector is much more labour intensive than the other sectors.*

- 7.1.2** *However, the intensiveness of the Furniture Removal labour component is no longer our only cause for concern. The global economic downturn has had a direct impact on this sector in that the housing market has been and still is suffering.*
- 7.1.3** *Business in Furniture Removal is dependent on the housing market and a migrant population, both of which are very weak at present. The demand in this sector for household moves is down by approximately 40%. Less of a demand in moves means less business and essentially a very real possibility that a small and already struggling sector faces serious difficulty in surviving.*
- 7.1.4** *As is reality in the South African and the global economy, Furniture Removal companies are faced with serious decisions pertaining to the survival of its business and some of these include retrenchments and even closure.*
- 7.1.5** *What of course is of grave concern is that if the Furniture Sector reduces by a single vehicle, there are potentially 5 employees being affected and who may essentially face job-loss.*
- 7.1.6** *A 1% exemption on the MIN & ATB increases may very well be the difference between keeping the wheels turning or shutting down.*
- 7.1.7** *The official mandate from the RFEA's members within the Furniture Removal sector throughout the negotiations were as per the RFEA's position as mentioned in 6.2.4 above.*
- 7.1.8** *The RFEA succeeded in convincing members to sign the Agreement, only because there was a party agreement that provided for a sector exemption application in this regard.*

**(C) RELIEF SOUGHT**

8. ***The RFEA herewith requests that all Furniture Removal operators, be granted an exemption to pay 1% less on the gazetted MIN & ATB increases, for the remainder of the Agreement, with immediate effect.***

3. **UNION'S SUBMISSIONS**

The Union submitted as follows:

***"We advise that after the meeting of the Exemptions Committee held on 18<sup>th</sup> January 2010 we wish to record the following:***

1. ***Our members are not prepared to accept a reduction of 3% in the increase agreed to both on minimums and ATB for the period under review.***
2. ***Should the RFEA exemptions application be granted it will amount to the creation of a second tier bargaining forum which can therefore, undermine the level where such negotiation normally takes place.***
3. ***The global and local downturn in the economy has seen our members face unprecedented attacks on the purchasing power of their wages over the past year with increasing food and travel costs and general living costs.***
4. ***The increase may mean the difference between our members surviving the economic crisis or not.***
5. ***Your committee is in terms of the gazetted Exemptions and Dispute Resolution Collective Agreement is required to consider detailed input from the Union which was not available at the time when this matter was presented to the Exemptions Committee.***

6. ***Whilst clause 2.5 of the Main Agreement allows the RFEA to approach Council as a group it does not give the Exemptions Committee the right to agree to a blanket exemption without good cause shown by individual companies.***
7. ***The Application by the RFEA makes out no evidential case for any of the assertions made in the application and should be rejected for that reason.***
8. ***Your attention is again drawn to the content of the gazetted Exemptions and Dispute Resolution Collective Agreement and what any application for exemption must include.***
9. ***No agreement to allow the RFEA to approach the Council as a body disposes with the requirements necessary to prove that an exemption is justified.***
10. ***It would appear from the application that no supporting financial information was placed before the exemption committee and neither were workers consulted on this matter.***
11. ***Neither can it be acceptable for you to allow large international companies to ride on the problems which may be faced by small local companies.***
12. ***That fact that your instructions were that we could only deal with our mandate in this letter shows a total disregard for the Union, our members and the serious question that you are being asked to decide.***
13. ***The argument by RFEA on retrenchments, should these companies not be granted this application holds no water in that our members (workers involved in this industry) have/will be subject to this. People that it is alleged are not buying furniture because of the economic down turn will continue doing so whether the industry is granted this application or not."***

4. **APPLICANT'S REPLY**

The Applicant replied as follows:

*"The aforementioned refers.*

*We have noted the letter of SATAWU, dated 9th February 2010. Whilst we note the content thereof we are not at this time going to respond on each submission made. However we deny and we reserve our right to oppose the assertions made, in detail, should this be necessary in the. Moreover we stand by our submissions and representations made on 19th January 2010.*

*We do however wish to submit the following:*

1. *SATAWU was well aware of the application since a copy of same application was served on them prior to the RFEA appearing at the Exemptions Board.*
2. *At the hearing held on 19th January 2010, SATAWU once again came unprepared and wasn't in a position to make any submissions in this regard. Out of courtesy to the Board's request we agreed to a time frame within which SATAWU could submit written submissions, which agreement SATAWU once again did not honour.*
3. *We herewith wish to raise our objection to the Exemptions Board's indulgence of the Union by granting them an extension in this regard which was contrary to the written agreement reached between parties at the aforementioned meeting. This raises the question as to the purpose of having entered into an agreement with the union on this issue in the first place.*
4. *The aforementioned agreement also stipulated that an outcome should be available on 15th February 2010 so that we may advise our members as to what to implement in terms of increases on 1st March 2010. Effectively the extension to SATAWU leaves the RFEA only with 2 days in which to respond to their submissions.*



5. ***We therefore request, in accordance with the NBCRFI Dispute and Exemptions Rules, that the Exemptions Body determines the outcome based on the written and in the RFEA's case, oral submissions made on the subject and we implore you to make your decision available on 15th February 2010 as per the written agreement between parties, failing which we will have to advise our members not to implement increases until such time that this issue is resolved.***
  
6. ***A decision rendered later than the aforementioned date will again create chaos within the industry since there will be uncertainty as to what employers are to implement on 1st March 2010.***
  
7. ***Lastly, it is clear from the Union's letter that they have a total misconception of this particular sector, how it operates and what it transports. Their primary business is that of household furniture removal and relocation and NOT retail –consumer related deliveries. This principle alone makes their submission and the basis thereof questionable.***

***We look forward to your urgent and favourable consideration of our application."***

5. **ANALYSIS OF SUBMISSIONS**

- 5.1 The submissions made by the parties were carefully considered. It is self evident that SATAWU is opposing the application. No submissions were received from TAWUSA.
  
- 5.2 A perusal of the agreement by the parties to Council arising out of the 2009 and 2010 negotiations specifically provides that the RFEA may apply for an exemption on behalf of the Furniture Sector. This is largely based on the premise that the Furniture Removal Sector is unique and has traditionally been dealt with differently because of it being labour intensive and due to its business being cyclical.

- 5.3 It is a matter of record that the Exemptions Body granted a 1% exemption for the 2009-2010 by differentiating between the minimum and ATB, viz: **"exemption to pay 1% less on minimum for the Furniture Removal Sector be granted for the period of one year, starting from 1<sup>st</sup> June 2009 and a 1% reduction will not be applicable on actuals paid in the sector"**. This was the subject of an appeal to the Independent Appeal Body who in the form of an advisory award took the view that the decision to grant the Exemption on the basis of the differentiation between the minimum and ATB it did in the 2009-2010 period, was not rationally connected with the reasons given for that decision.
- 5.4 At the time the primary reason given for the decision to grant an exemption was to retain jobs. The Exemption Body having regard to the facts before it has to determine if special circumstances exist for the granting of the application. Based on the submissions made by the Applicant, viz, the labour intensiveness of the sector and the global economic downturn, its impact on the sector, the influence on the housing market and in particular the demand for household records being down by some 40%, it is self evident that special considerations are at play.
- 5.5 It is also worthy to note that if the furniture sector reduces by a single vehicle, some 5 employees may potentially be affected.
- 5.6 In terms of a survey carried out by the Applicant amongst its members an average drop of 31,3% is reported and the % drop ranges from 10,5% to 63%. Not one member reported trading as the "same" or "better". One has reported the worst seen in the industry in 40 years. This has not been challenged by the Respondent.
- 5.7 The submissions made by SATAWU did not fundamentally challenge the assertions made by the Applicant. The application does not amount to a reduction of 3% but is in fact for an exemption of 1%. We are also not persuaded that the granting of the application would amount to the creation of a second tier bargaining. It is contemplated in the agreement that an application may be applied for which will not be unnecessarily opposed.

5.8 It is self evident that the 2009 year has seen unprecedented number of job losses. Every attempt should be made to curtail further job losses.

5.9 We also do not believe that the granting of the application would amount to unfair competition as it applies to all Employers in the Furniture Removal Sector which sector has different demands. Furthermore the problems faced by the small companies apply equally to the large international companies as the recessionary conditions apply globally;

6. **DECISION**

6.1 Having regard to the above, the Exemptions Body is satisfied that the Applicant has made out a case for the granting of the application;

6.2 Accordingly Employers in the Furniture Removal Sector are granted an Exemption to pay 1% less on the across the board and minimum increases for the period 1<sup>st</sup> March 2010 to 28<sup>th</sup> February 2011;

DATED THE 16<sup>th</sup> DAY OF FEBRUARY 2010 AT BRAAMFONTEIN, JOHANNESBURG.



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**MR. Y. NAGDEE**  
Chairperson of the  
Exemption Body



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**MRS R. MANNING**  
Member of the  
Exemption Body  
**I agree**



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**MR G. WESSELS**  
Member of the  
Exemption Body  
**I agree**