

IN THE EXEMPTION APPLICATION OF:-

INYAMEKO TRADING 193 CC

Applicant

and

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

Respondent

DECISION

1. The Applicant applied for exemption not to contribute to the Leave Pay Fund, Holiday Pay Bonus Fund and Sick Leave Funds for the period ending 31 October 2011..

2. The matter appeared on the Agenda of the Exemptions Body meeting held on the 18th July 2011.

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 M. Brown-Engelbrecht - Member of RFEA
 - 3.4 Mr T. Short - Member of RFEA
 - 3.5 Mr J. Gys - MTWU
 - 3.6 Mr E. Kock - Senior Agent of NBCRFLI

- 3.7 Ms T. Stroh - NBCRFLI
3.8 Mr P. Mndaweni - Committee Secretary of NBCFRLI

4. Apologies were received from:

- 4.1 Ms R. Manning - Member of the Exemptions Body

5. **APPLICANT'S SUBMISSIONS**

The Applicant submits, inter alia, as follows:

"As mentioned to Cliff, and our many consultation sessions, the primary reason for Inyameko's financially difficult situation is due to the loss of contracts, the major fuel increase, the industrial strike and our previous contractor paying on 47 day-term – See letter from LCS attached, as well as original contract.

We at Inyameko are doing our best at obtaining better work opportunities but until then we appeal to you that we be exempted from the funds mentioned in (4). We assure you that we are not in favour of the position that we are in, and we will do everything we can to revive Inyameko from that we are in, as quickly as possible.

As a matter of immediately, we have terminated our contract with LCS and began with Liketh Investments. We are also investigating other lucrative opportunities, that can benefit both the company and our employees. However, until then we ask you to look at the approval of our application, just as you provide us with a bit of relief financially and allowing us to rectify the situation we are in, especially in terms of cash flow.

Our main concern, given our financial situation is that a possible solution, would be to gain a retrenchment program, in order to maintain the Bargaining Council company contributions. Please note that this is not the solution that we want to pursue.

At Inyameko we would like to stress our very clean record. We have kept to all and every payment from the time we have registered. We have a very good and well maintained financial record with the Council. Please see January's statement attached.

We seek financial relief up to and including the month of October 2011. This would give us sufficient time to manage our cash flow situation to a better position.

We at Inyameko are not looking at depriving our employees of their benefits completely. Therefore only the Company's contribution will be withheld and not the employee's. Further to this, if any employee wishes to claim against their sick, holiday or leave fund, we will compensate them respectively. This will be easier for us to manager, rather than having to contribute for the bulk of the employees.

Unfair Competition:

In the true sense of unfair competition we understand the exemption application might put Inyameko on unequal terms in the industry, however it is a temporary disadvantage to Inyameko, as it is not illegal or criminal. More importantly, if this exemption is granted Inyameko will be given the opportunity to present the company at a better playing level in the industry, equal to compete fairly again.

Collective Bargaining:

It is our understanding that we at Inyameko have complied and will always comply with Bargaining Council requirements as our

employees is a top priority. Inyameko prides itself on adhering to the lawful wage scales, our working hours within the legal limits set by the industry, training, health and safety are allowed to be adhered to, due to the nature of our industry and we allow exercise and open door policy, so employees can always express their emotions and grievances.

Potential for labour unrest:

As mentioned above, there should be no reason for any sort of unrest, due to our open door policy, we are a small company and we operate on very open, unbiased communication channels. If any of our employees have reason to speak to us, we will be ready and willing. We do believe that everything can be negotiated and discussed. Many of our employees have worked for us, for many, many years and know that they are the driving force behind our company's name; and that they also want to see this company grow.

Increased employment:

As we stand at the moment, we are running a single shift on all the vehicles. To increase the productivity of these vehicles we might decide to add another shift of drivers to optimise production and time. Another alternative is to reduce the fleet, or reduce the employees, this will be solely dependent on whether employees help the company reach optimal production.

Exploitation:

For the record, whether it be for ethical, or socio-economical reasons there will be no need for us to exploit our employees. As much as they might not be able to benefit from Bargaining Council temporarily all our employees receive all that is owed/due to them. We have addressed this issue with all our employees and all are in agreement

with our decision. (Please see letter attached). As they understand that we will as a company do everything we can to protect them and the company's interests.

Job preservation:

As mentioned before, so long as the company can, all employees will be protected within our means. However, if we are not approved the grace period by exemption, we would have to begin the retrenchment programme in due to maintain payments as per usual.

Sound conditions of employments:

We at Inyameko assure you that all conditions of employment will remain status quo. Inyameko employees will remain protected within the rules and regulations that have protected them from the invitation of their employment. We are associated to COEFSA as well, to assist us in providing and addressing all our employees needs at all times.

Possible benefits:

If Inyameko is awarded the exemption, our understanding is that it would be for a temporary period. Thereafter, employees will be paid all benefits that are due to them from that, the reason that we at Inyameko appeal to you, is due to not wanting to decrease staff, but rather to maintain our staff employees, and whatever is due to them in terms of their lawful salary and in this way we as a company can source other work, whilst maintain our full staff compliment.

Health and Safety:

This is a non-negotiable aspect of our operation. Due to the industry that we are in, coal transport, health and safety is a zero tolerance area. We do not take any chances with health and safety regulations. We can assure you that Inyameko will always comply with all that is necessary, if we don't we would not be allowed to operate. We are

continuously being audited with regard to health and safety with a very sound record. Our employees are fully protected in this regard to safety and health and always will be.

Infringement of basic rights:

There will be no violation of any employee's rights. As we understand this exemption to be a grace period for us to manage and bring back Inyameko to a financially stable level, however it has nothing to do with manipulating and abusing our employees basic rights. It's mentioned before, we have discussed this at length with our employees and if they did not agree, we would not be applying for this exemption and they would have not signed this letter, if they did not agree.

Financial stability:

Provided that Inyameko is granted the exemption, we as Inyameko management will ensure that we action on all work opportunities that will improve Inyameko's current financial situation and bring to it a better level of stability. The exemption will definitely be a tool in providing us with time to work on Inyameko's financial situation.

Impact of productivity:

Maintaining and increasing productivity will only mean that we would use the assistance of the exemption for a shorter period when addressing our employees. It was clearly mentioned that, the employees have control over how long we would need to be exempted from contributing to Bargaining Council, as it is purely based on their production. The general consencious is that our employees understand this aspect and they will do everything in their means to improve production.

Future relationship with employees' trade union:

We at Inyameko have and always maintained a good relationship with all Unions. We have a mutual respect for each others responsibilities and work. So any future relationships with trade Unions would be something that Inyameko will not shy away from. We at Inyameko are confident in everything that we do and how we operate our business, therefore there is no reason for us not to open with any trade Union."

6. **COUNCIL'S SUBMISSIONS**

The Council submitted, inter alia, as follows:

"The Applicant is registered with Council since the 11th April 2008 and has a poor record of compliance in not submitting their monthly returns for 2011. For the current year the Applicant has only paid its May 2011 return."

7. **RFEA, SATAWU AND MTWU**

The parties did not have any comments to make on the application.

8. **ANALYSIS**

8.1 The submissions made were carefully considered. The Applicant seeks a blanket exemption from the above funds. There motivation appears to be based on financial considerations. This does not constitute a special circumstance.

- 8.2 In the Appeal Body decision of **Fleet Street Logistics CC and the National Bargaining Council for the Road Freight Industry** (26th January 2010) the Appeal Body states as follows on special circumstances:

"To qualify for an exemption an Applicant must be in a situation which is somehow exceptional and not merely run-of-the-mill. However, proof that the Applicant is in an exceptional situation does not in and of itself warrant the granting of an exemption. The exceptional situation of the Applicant must constitute circumstances which are of a nature and type which warrant the granting of an exemption. In short, special circumstances must not only exist to differentiate an Applicant from others, but such special circumstances must be of a nature which merits exceptional treatment. In judging whether the special situation of Applicant does indeed merit exceptional treatment in this case, one must be fair to the interests of the three parties involved, namely employer, employee and the industry; mindful of special circumstances and the possible setting of precedent and the fact that Applicant has a good record of compliance."

- 8.3 It is also evident that the Applicant has not been compliant with Council's funds. There is also no proof of consultation with employees.

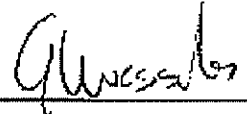
9. DECISION

In the circumstances, the Applicant has not made out a case for the granting of the application and the application is refused.

DATED THE 1st DAY OF August 2011 AT BRAAMFONTEIN,
JOHANNESBURG.



MR. Y. NAGDEE
Chairperson of the
Exemption Body



MR G. WESSELS
Member of the
Exemption Body