

IN THE EXEMPTION APPLICATION OF:-

KELLY INDUSTRIAL

Applicant

and

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

Respondent

DECISION

1. The Applicant applied for exemption to register employees placed at DHL's Warehousing after the end of the current financial year (30 September 2011).

2. The matter appeared on the Agenda of the Exemptions Body meeting held on the 15th August 2011.

3. The following were present:-
 - 3.1 Mr Y. Nagdee - Chairperson of the Exemptions Body
 - 3.2 Ms R. Manning - Member of the Exemptions Body
 - 3.3 Mr T. Short - Member of RFEA
 - 3.4 Mr J. Gys - MTWU
 - 3.5 Mr E. Kock - Senior Agent of NBCRFLI
 - 3.6 Ms T. Stroh - NBCRFLI
 - 3.7 Mr P. Mndaweni - Committee Secretary of NBCFRLI

4. Apologies were received from:

- 4.1 Mr G. Wessels - Member of the Exemptions Body
4.2 Ms M. Brown–Engelbrecht - Member of RFEA

5. **APPLICANT'S SUBMISSIONS**

The Applicant submits, inter alia, as follows:

“The Applicant has not applied for exemptions in the past and this application is a request for extension of time to register employees with the Council as a result of extension of the scope of the Council.

Kelly Industrial supplies workers to its Client, DHL, at its warehouse operation in Boksburg.

Kelly Industrial, the Applicant, has understood that the client's warehouse operation fell outside of the scope of the Council and as such has applied BCEA conditions in respect of the workers at that site.

The Applicant was recently advised by an agent of the Council that the DHL warehouse in Boksburg now falls under the jurisdiction of the Council.

This was the first time the Applicant was made aware of this change which apparently occurred in September 2010.

There was no prior consultation on this change and neither was the Applicant canvassed for a mandate regarding this material change.

The change affects both the Applicant and its employees in that it occurs during a financial year in which commercial arrangements have already been agreed between the Applicant and its client DHL.

To effect the change in the middle of a financial year would cause financial loss for the Applicant and a reduced net take home pay for employees.

Therefore the Applicant is compelled to exemption from registering its employees at the Council until the beginning of the new financial year commencing 01 October 2011.”

6. COUNCIL'S SUBMISSIONS

The Council opposed the Applicant's application on, inter alia, the following basis:

- 6.1 The employees in the logistics division should have registered with Council;
- 6.2 The Company did not have a valid explanation;
- 6.3 The Employees who are members of PTWUSA are opposed to the application;

7. DECISION

- 7.1 The submissions made by the Applicant were carefully considered. The Applicant has not met the criteria contained in Clause 4 of the Disputes and Exemptions

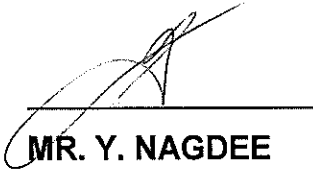
Collective Agreement.

- 7.2 The Applicant has not shown that special circumstances exist for the granting of the application. In the Appeal Body decision of Street Fleet the Appeal Body stated as follows:

“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.”

- 7.3 The application is refused.

DATED THE 31 DAY OF August 2011 AT BRAAMFONTEIN,
JOHANNESBURG.



MR. Y. NAGDEE

Chairperson of the
Exemption Body



MS R. MANNING

Member of the
Exemption Body