BEFORE THE INDEPENDENT APPEAL BODY OF THE NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT LOGISTICS INDUSTRY

In the matter between:

SUPER GROUP TRADING (PTY) Ltd Applicant / Appellant/ The Company

and

NATIONAL BARGANING COUNCIL FOR THE ROAD FREIGHT & LOGISTICS INDUSTRY Respondent / Council

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RULING OF THE INDEPENDENT BODY

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1 The appeal hearing in the above matter was held on 22 September 2011. Presiding were M. Antrobus SC and L.T. Sibeko SC. The appellants were represented by Mr G. Barnard, Human Resources Executive at the applicant company and Mr F. Faul, Employment Relations Manager at the company. Present for the respondent council were Mr. E. Kock, Senior Agent of the council and Mr P. Mndaweni, Committee Secretary of the council.

2 The two council officials did not however represent the respondent fully in the proceedings but were present to assist in the administration of the hearing and, if necessary, to provide information regarding the standing of the applicant

company with the council. In effect therefore, the council was unrepresented at the appeal hearing. This was in consequence of the council having resolved at a meeting held on 31 August 2011 that in proceedings before the Exemptions Body and the Independent Exemptions Appeal Body the "... *Council Administration will not be an interested party at these meetings but would provide information regarding the standing of the applicants/appellants.*"[1]

3 Super Group Trading (Pty) Ltd applies to be exempt from its obligations under the main collective agreement to pay employees' holiday bonus[2] and leave pay fund[3] payments to the council for the period 1 March 2011 until 28 February 2013 for all those of its employees who are subject to the administration of the council. The applicant company proposes that when such payments fall due it will make the required leave pay and holiday bonus payments directly to its employees rather than periodically to the council for annual transmission to the affected employees.

4 The company conducts the business of general supply chain management services. It operates on a national basis doing both long-distance transport and short haul transport and warehouse functions ancillary thereto. The company launched its application for exemption[4] on 8 February 2011. This application was placed before the Exemptions Body together with the answering affidavit of

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[1] The Independent Body was informed of this fact in a letter dated 15 September 2011 handed up at the outset of the appeal hearing

[2] Clause 21 of the Main Collective Agreement dated 21 April 2009 as amended by the agreement signed on 9 June 2009 and promulgated by the Minister on 7 August 2009 and extended to non-parties with effect from 17 August 2009 for the period ending 28 February 2011 (Government Notice No. R817, Government Gazette No. 32463 of 7 August 2009 read together with the Main Collective Agreement signed on 21 April 2009)

[3] Clause 19(a) of the Main Collective Agreement signed on 21 April 2009 supra in the previous footnote

[4] Bundle A to the appeal documents

the council's administrative staff in which the relief sought was to have the exemption application dismissed. The applicant company filed a replying affidavit. In support of its notice of appeal and accompanying supporting appeal affidavit, the company filed a bundle of appeal documents[5] and written heads of argument.

5 The council is a corporate body which accordingly has to be represented by a natural person or persons. This appears to have been common cause before the Exemptions Body and company representative Mr Barnard accepted this. We understood him further to accept, correctly in our view, that the evidence presented before the Exemptions Body, whether or not it was presented by the council's administrative staff, does constitute evidence before this appeal. It was the company's submission however that regard should not be had to the arguments which have previously been put up by the council employees in opposition to the exemption application, as they have now been instructed not to appear at the appeal for purposes of opposing the exemption application.

6 The company's contention is that past practice, whereby the administrative officials of the council represent the council for purposes of opposing exemption applications, has prejudiced the company's position in terms of applying for an exemption. The company's case is that it never was the role of the council's administrative employees to oppose exemption applications and they have never been properly mandated by the council to do so. The company contends that the approach of council's administrative staff in opposing this exemption

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[5] Bundle B to the appeal documents

application is not necessarily in line with the council's official line and approach towards exemption applications.

7 We as the Independent Body had no prior notice of the development whereby, unlike was previously the case, the council's employees were prevented from representing the council and making submissions at the appeal hearing in opposition to the exemption application. Consequently, at the appeal hearing we invited the representatives of the company to comment on which portions of the appeal papers they contend should be disregarded by virtue of their having been submitted by the council's administrative staff as distinct from by the council itself. In answer to this invitation Mr Faul for the company emphasised that we should have regard to the company's reply to council's submissions where emphasis was placed on the irregularity of the council's submissions which, it is contended constitute for the most part argument as distinct from evidence presented on behalf of the council. The company submits that these arguments constitute speculation on the part of the council's administration as to how the company conducted itself in relation to the administration of its holiday bonus and leave payments. It was submitted for the company that the only part of the submissions of the council administration employees which could be taken into account as constituting evidence was the evidence of the company's past compliance.

8 Mr Barnard emphasised the frustration of the company occasioned by the fact that the administrative arm of the council, whose role is to administer the exemptions process, actively opposed the application. He said that it was for this reason that despite the first meeting of the Exemptions Body having been

held on 21 February 2011, the matter was still not finalised by late September 2011. He contends that the matter should have been disposed of long ago.

***Locus Standi* of council's administrative staff**

9 In its written submissions the company set out extensive arguments for why the council administration, as distinct from the council itself, does not have *locus standi* to oppose the exemption application in the manner which it has. Given the development whereby the council itself has now resolved to limit the extent to which its administrative employees can engage in the exemption application process, the council has in effect conceded that its administrative staff may not represent the council for the purpose of opposing exemption applications. The question of the *locus standi* of the employees of council administration in this appeal is therefore no longer in issue and does not require to be determined.

Background and facts

10 The legislative history to this matter is that the holiday pay bonus fund clause of the main agreement was amended by agreement between the parties to the council signed on 12 February 2007[6] so as to include a new provision for exemption, contained in clause 21(12)(a), which read as follows:

> *"(12) Exemption*
>
> *(a) For a 1 (one) year trial period, the Exemptions Committee, assisted by a person with financial expertise and who is acceptable to the Executive committee as defined in the Council Constitution, shall grant an employer a 1 (one) year exemption to pay holiday bonuses direct to its employees in the event that:*

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[6] GN R. 559 GG 6 July 2007, clause 11 of the Amendment of Main Collective Agreement

(i) the employer provides, on a annual basis, a guarantee from a banking institution that the employer has the funding available to cover the accrued holiday bonus liability failing which the bank will make good the liability; or

(ii) the employer provides a certificate from its auditors that it has made adequate provision in its accounts to cover the accrued holiday bonus liability; and

(iii) the employer had conducted its business for at least 3 (three) years; and

(aa) the employer has an acceptable record of payment compliance to the Council; and

(ab) the Exemptions Committee is satisfied that the employer is financially stable; and

(ac) the Exemptions Committee is satisfied that the employer has consulted appropriately with its employees on the direct payment.

(b) Any employer who is granted exemption to pay holiday bonus pay directly to employees shall do so on or before 15 December."

11 The main agreement which contained the insertion of the original clause 21(12) remained in force until 28 February 2009.[7]

12 At the time of the introduction of this clause into the main agreement there was no similar clause dealing with exemptions from leave pay fund payments. However, the introductory portion of clause 21(12)(a) was later amended by an agreement between the parties to the council which was signed on 9 June 2009 and which read as follows:

"*(a) For the duration of this Agreement, the Exemptions Committee assisted by a person with financial expertise and who is acceptable to the Executive Committee, as defined in the Council Constitution, shall grant an employer exemption to pay holiday bonuses and leave paid direct to its employees in the event that: ...*" (underlining added).

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[7] GN R. 559 GG 6 July 2007, clause 1A of the Amendment of Main Collective Agreement

This clause came into effect in respect of non-parties on 17 August 2009[8] and remained in force until 28 February 2011.[9]

13 The effect of this amendment to clause 21(12)(a) was to apply to leave pay an identical exemption regime to that which had already been made applicable to holiday pay bonus payments. This amendment further expressly limited the application of the exemption provisions to the period of the duration of the main agreement by the insertion of the first underlined words in the above quoted amendment.

14 It is important to understand that prior to the introduction of clause 21(12)(a) applications for exemption from the provisions of the council's collective agreements were governed by the provisions of clause 4 of the Exemptions and Dispute Resolution Collective Agreement of the council.[10] Clause 4(3) of that Dispute Resolution Agreement sets out the requirements for an exemption application as follows:

> *"(3) Applications shall comply with the following requirements*
>
> *(a) Be fully motivated.*
>
> *(b) Be accompanied by relevant supporting data and financial information.*
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> *(c) Applications that affect employees' conditions of service shall not be considered unless the employees or their representatives have been properly consulted and their views fully recorded in an accompanying document.*
>
> *(d) If the nature of the relief sought dictates, the application shall be accompanied by a plan reflecting the objectives and strategies to be adopted to rectify the situation giving rise to the application and indicating a time frame for the plan.*

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[8] GG No. 32463 of 7 August 2009
[9] GG No. 32463 of 7 August 2009, clause 1A to the schedule of Amendment of the Main Collective Agreement
[10] Signed on 14 August 2007 and referred to herein as the "Dispute Resolution Agreement".

(e) Indicate the period for which exemption is required."

15 Clause 4(8) of the Dispute Resolution Agreement then proceeds to set out the relevant factors which the Exemptions Body and Independent Body are required to take into consideration. Those factors may include, but shall not be limited to, the following criteria:

(a) the applicant's past record of compliance with the provisions of council's Collective Agreement 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;
(ii) potential for labour unrest;
(iv) increased employment;
(e) the interest 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.

16 It will immediately be seen that the nature of the requirements which have to be met in making application for an exemption under clause 4 differ materially from the requirements for exemptions sought under clause 21(12)(a). This latter form

of exemption is of a very different nature and an employer is under that clause entitled to obtain such an exemption merely by complying with the requirements of clause 21(12)(a). An exemption from holiday pay bonus payments sought under clause 21(12)(a) (and similarly an exemption from leave pay payments under clause 19) is an exemption which can be obtained as a matter of right if certain stipulated and well defined conditions laid out in the section are met. (For convenience in the remainder of this ruling reference will be made to clause 21(12) only, but the identical arguments prevail in relation to clause 19.)

17 In its founding application the exemption applied for by the company was in the first instance made for an exemption from the holiday bonus fund contributions (under clause 21(12)(a)[11]), from the leave pay fund contributions (under clause 19(1)(a)), and from the sick and absence fund contributions (under clause 22(1)(a)) of the main agreement.[12] The sick leave contribution exemption application was not pursued in argument despite this being included in the relief sought by the company in its founding affidavit. In the alternative, the company sought an exemption from those contributions under clause 4 (8).

18 At the appeal hearing Mr Barnard for the company accepted that the present exemption application, which was launched on 8 February 2011 and which sought an exemption for the two year period 1 March 2011 to 21 January 2013, does not fall under the provisions of clauses 21 and 19 of the main agreement but falls to be determined under the provisions of clause 4 of the Dispute Resolution Agreement.

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[11] Paragraphs 3.1 – 4 of its founding application
[12] Exemption application paragraph 5

19 Although the clause 21(12)(a) ground for exemption was not pursued by the company in the appeal hearing, a few comments in that regard are apposite.

19.1 As has been set out above, clause 21(12)(a) was introduced for a trial period of one year and then later extended until 28 February 2011, but has no application beyond that date. This is evident not only from the terms of the main agreement itself, but also from clause 8 of the amendments to the collective agreement which was concluded between the parties on 21 July 2011.[13]

19.2 It is also apparent that the letter of 3 February 2011 by the company's auditors KPMG on which reliance was placed, in any event fails to meet the requirements of clause 21(12)(a)(ii) in that it does not certify that the employer "*has made adequate provision in its accounts to cover the accrued holiday bonus liability*". That liability would become due over the two year period for which the exemption is sought. Instead, the letter refers to adequate accrual for all amounts due in the previous financial year.[14] It is therefore apparent that the applicant's allegation that adequate provision has been made to cover the accrued holiday bonus and leave liability up until the end of February 2013 is not borne out by the letter from the auditors.[15]

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[13] Record page 350 at page 354
[14] Record page 112
[15] Application Founding Affidavit, paragraph 22, Record page 18

20 Both in its heads of argument and at the appeal hearing the company has submitted that we should not take into account the contentions by the council administrative staff other than those in relation to whether the company's past record of compliance with the provisions of the collective agreements is acceptable to the council.[16] As was raised with the company representatives at the hearing, the difficulty with this approach is that insofar as the appeal record before us contains evidence presented to the Exemptions Body, and for that matter any additional evidence on appeal, such evidence is before this tribunal and there is no bar to any of the council employees, like any other person, from being a competent witness who can present evidence. The fact is that such evidence has therefore now been presented and cannot be wished away and simply ignored insofar as it is relevant to the issue of the exemption sought.

21 The company representatives further submitted that quite apart from evidence presented by council's administrative staff, the submissions and arguments proffered by those persons should similarly be ignored. The tribunal's decision in a matter of this nature is of course made on the basis of the admissible evidence together with the legal conclusions which this tribunal draws from such evidence. That is the process with which we are engaged. The determination of this exemption is not dependent upon the submissions of the council's administrative staff which may have been put up and which are contained in the record. It is however unavoidable that such submissions and

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[16] As envisaged in terms of clause 4(8)(a) of the Dispute Resolution Agreement. The similar provision contained in clause 21(12)(a)(iii)(aa) of the main agreement does not apply as the present exemption determination is not being made under that clause.

arguments will come to the attention of the tribunal in the course of our considering the exemption application papers and the record thereof on appeal.

22 The issue before the Exemptions Body, and indeed before this Independent Body, was and is therefore whether the exemption application satisfies the criteria laid down in clause 4(8) of the Dispute Resolution Agreement.[17] It is to those criteria that we now turn our attention as clause 21(12)(a) is quite simply no longer of application.

The facts of the applicant's case for exemption

23 The applicant company was established in 1972 and is listed on the Johannesburg Stock Exchange as a public company. The company is a member of the Road Freight Employers' Association. The exemption application relates to contribution payments for approximately 1 600 employees who fall within the scope of the council and who are administered by the company under levy number 10478. The company annexed the December 2010 D-Form payment schedule for levy number 10478.[18] These employees are deployed at the sites of clients such as SASKO, USABCO, Goodyear, Premier Foods, Nucoal, Pepsi, Progress Milling, Sasol, Kimberly Clark and Nampak as well as at various Super Group sites. In addition to the 1 600 employees who form the subject of this application the company employs a further approximately 3 000 employees who do not resort under the scope of the council but who fall under the scope of various other councils or sectoral determinations. The company has a Payroll Department which administers all statutory and related benefit payments directly

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[17] Signed on the 14th of August 2007
[18] Record page 6, paragraph 7 read with pages 44 - 105

to all its employees including those within the scope of the council as well as its other employees. The company has in place a system whereby the effectiveness of its Payroll Department is measured on a monthly basis in order to remedy shortcomings within the department and to ensure that it is coping with the payment demands of its employees in order to pro-actively avoid dissatisfaction arising from erroneous remuneration payments.

24 The company contends that its Payroll Department on average achieves a successful processing rate of 98%. The company accordingly contends that it has the necessary resources and capabilities to make holiday pay bonus and annual leave payments directly to all is employees, including those which resort within the scope of the council.

25 The company contends that it has never been found to be in default in relation to the payment of bonuses, annual leave or sick leave towards any of its employees outside of the scope of the council (being the 3 000 employees referred to above) in respect of whom payments are administered directly from the company's Payroll Department. Whilst historically the company has engaged the services of temporary employment service providers (i.e. labour brokers) it has since September 2006 adopted a programme of appointing those persons employed through labour brokers to positions as full-time company employees. The company states that it continues to be engaged in this strategy to the point where all labour broker usage could be eradicated.[19]

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[19] Paragraph 10, page 10 of the Record

26 Clauses 19(1) and 19(8)(b) and 21(1)(a) and 21(3) of the main agreement provide for the process by which leave payments and holiday pay bonus payments respectively are collected by the council on a monthly basis and then paid over annually by the council to employees. These clauses require that the employers are obliged to remit monthly contributions to the council and then, shortly before each employee's annual leave pay or holiday bonus payment is due, to request the council in writing to pay the employee the amounts due annually to the employee, which the council is then obliged to pay to the employee subject only to the availability of funds to the credit of that employee. These clauses also provide for payment by the council to the employer for onward payment to the employee of such holiday bonus and leave payments. The point is that these payments are made on a periodic basis to the council and then when the due annual date for such payment to the employee arrives, the funds collected and held by the council through such monthly payments are made over to the employee directly or to the employer for payment to the employee at that stage. Though this may appear a cumbersome process, that is the agreed procedure in terms of the collective agreement. What is not provided for in the collective agreement is a simple direct payment by the employer to the employee of the annual leave pay and holiday pay bonus payments as and when they fall due. Such direct payments were made possible under section 21(12)(a) for a trial period, but as discussed above, that system of payment is no longer applicable, hence the company's application for an exemption.

27 In its founding affidavit the company addressed the issue of its compliance with holiday pay bonus payments for the period ended December 2009[20] by reference to the council's audit on its payments under its various levy numbers as a consequence of which the company stated that the council had said that it "*preferred that the applicant made direct payments to employees in line with clause 21(3) of the main agreement*". Against this background the company set out in some detail the events which led to a series of wildcat strikes and work stoppages by its employees at its White River, Pretoria, Alrode, Johannesburg and Isando. The company's contentions in this regard are that on the recommendation of the council's administration the company engaged the consulting services of Industrial Secretaries to assist "*in streamlining its processes for its submission of returns on a monthly basis*". In the course thereof the company employees resorting under the scope of the council were since February 2010 incorporated under single consolidated levy number being 10478.

28 The company contends that as the December 2010 deadline for payment of holiday pay and leave pay benefits to its employees neared, it was known that the council administration was having difficulties in processing these payments. The council failed to provide guarantees to the company in regard to such payments being made on time and in the correct amounts. The company sought assurances from the council in this regard, but none were forthcoming. Despite an assurance sought through its attorney, the company was still not provided with an undertaking by the council administration. The situation was

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[20] Record page 11, paragraph 11

that previously in December 2009 the company had itself paid holiday pay and leave payments directly to its employees. That year, as early as November 2009, management was in consequence able to communicate to employees the precise amounts payable and the precise proposed dates of payment. However, the following year in December 2010, such assurances regarding these pay outs could not be given by the company to its employees in light of the council's lack of assurances and constructive feedback. In consequence thereof, prior to 15 December 2010 being the date when such payments were due, the company faced labour unrest at a number of its major client sites. In some cases worker representatives were even taken to the council administration to seek explanations and assurances that all was in order. However, in the absence of concrete assurances to the company from the council administration and even after the company had pointed to the potential labour unrest which it would face if late or incorrect payments were made to its employees, the council administration failed to engage with the company representatives in this regard. When the company's attorneys again sought formal assurances from the council administration none were given and according to the company, "*a lack of capacity was tendered as the primary excuse for not being able to provide any assurances about correct and/ or timeous payment to the company's employees*".

29 The upshot of this was that by close of business on 15 December 2010 the holiday pay bonuses and leave pay benefits were not paid to the company's employees. 16 December 2010 was a public holiday and the remittance advices from the council for such payments were only received by the company after the close of business on 15 December 2010. The company arranged for

staff to work on the public holiday to sort out these remittance advices applicable to each of the company's sites and to send those to the site mangers so that they could be distributed amongst employees on Friday 17 December 2010. Most employees only received their payments on 17 December 2010 and some had to wait until 18 December before they received their payments. Approximately 70 employees only received their payments a week after 15 December 2010.

30 It was in these circumstances that the industrial action already referred to arose. Whilst management was able to defuse these strikes within a matter of three hours at the majority of sites, this was not the case at the Premier Isando premises. There, and despite all employees having received remittance advices, only some employees received payment from the council on 17 December 2010. During the ensuing strike the company's request for assistance from the council administration to deploy an agent to talk to employees about their dissatisfactions, went unheeded.

31 The end result was that employees went on an unprocedural strike at the Premier site as they had refused to work for the entire day or to follow formal prescribed procedures. Disciplinary hearings were held and ultimately 116 employees were dismissed. The company states that it incurred damages in the amount of approximately R534 000.00 as a result of the strike action at this site.

32 In addition, the company contends that its management continuously received complaints from its employees about late payment of sick and annual leave benefits during the 2010 calendar year. In these circumstances the company

contends that, if an exemption is granted, it will be better able to control the situation in relation to payment of holiday bonus and annual leave payments and be able to make sure that such payments are made when due. In addition the company points out that in respect of its Super Rent entity certain employees received inflated payments from the council. The contention of the company in this regard appears to be that despite an agreement that the company should make payments to these employees directly and that council administration would repay such monies to the company, the council thereupon proceeded to pay some of those employees directly.[21]

33 In its answering affidavit the council disputes that the company's past record of compliance with required payments is good. (It will be recalled that in respect of this evidence there is no dispute that the council's administrative staff are entitled to furnish evidence on behalf of the council.) The council's evidence is that the company's payment record for 2009 and 2010 is far from good and that this was primarily because of the company's inability during these periods to comply with the reporting requirements of the collective agreement. The council states that during this time the company "*repeatedly made many errors on its returns resulting in the payments made by it to the council not balancing and the information provided by it to the council being incorrect. This eventually required the company's returns going back to the first half of 2009 to be totally re-calculated and re-submitted by the applicant*".[22]

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[21] Record page 17, paragraph 20
[22] Record page 342, paragraph 91

34 The council contends that it is as a result of these reporting errors on the part of the company that by the end of 2009 it had not paid to the council all amounts due to all employees falling under the council's jurisdiction. The council was therefore not able to pay out all annual bonuses. The returns rendered by the company by that stage did not allow for the monies which had been paid to be appropriated to the correct individuals. It is contended that it was against this background that in December 2009 the company elected to make payment of holiday bonus monies directly to its staff, this being in breach of the collective agreement which made no provision for such direct payments.

35 The council denies the allegation that the December 2009 payment took place "*without any legal ramifications flowing therefrom*" and states that there were a multitude of ramifications including multiple entries captured in the books of the council which had to be reversed, the overpayment of some employees of the company and massive confusion amongst employees of the company as to their payment entitlement. The council contends that it was a result of the on-going poor administration of the company that around April 2010 the council recommended that the company contract the consulting services of Industrial Secretaries to assist in the submission of and rectification of returns.[23]

36 Council denied that this recommendation was made to assist the company in "*streamlining its processes*" but states it was rather made to assist the company in rectifying the on-going errors which had accompanied its payments and returns for more than a year at that stage. According to the council notwithstanding the employment of these consultants the company's returns

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[23] Record pages 343, paragraph 9.4

were only finally corrected and submitted in up to date form in November 2010. This then required many man-hours on the part of the council's employees to rectify and correct its records so as to properly capture the company's records at that late stage. Council therefore denies the company's allegation that it has the internal staff and capacity to ensure that its human resource administration will be timeously affected and that it has a 98% accuracy in respect of payments to its employees. The council points out that prior to November 2010 the accuracy of the company's returns did not approach anything like that level of accuracy.

37 In reply, these allegations by the council were challenged by the company. It states that the council erroneously registered the company as a "labour broker" or Temporary Services Provider rather than as a normal employer, which the company contends resulted in the council not raising error logs with the company. This the company realised in about mid-2009 when it informed the council and the company's registration was amended to that of a normal employer. The company does not deny there were what it terms "*such teething problems*" but contends that it has an acceptable record of compliance and that the deponent for the council has not gainsaid this submission.[24] The company contends that the majority of errors constituted instances where the company had "*over contributed*" for its employees and in many cases, contributed double the required amounts. The company then lays at the council's door this problem by stating that the council merely paid out to employees whatever amounts were paid by the applicant in relation to their respective council numbers,

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[24] Record page 395 paragraph 20

without questioning these payments.[25] This explanation on the part of the company fails to indicate why the company "*over contributed*". Where the system is that the employer must remit an advice and accompanying contribution to the council in the first place, it would appear that the error originated with the company if the council merely paid out in accordance with the company's remittance advices. Any erroneous payment made to an employee in these circumstances is not simply a consequence of the council having failed to identify the error on the part of the company, the cause of the wrong payment is also related to the company's erroneous remittances.

38 The company contends that the council staff insisted that the company make the December 2009 bonus payments directly to its employees. While this is disputed by the council, the company maintains that no enforcement action was taken against the company, and indeed there does not appear to be any evidence of such enforcement. Neither is there an explanation from the council as to whether any such enforcement action would have been required, and if so why it was not taken.

39 The company's contention that the deponent for the council did not and cannot gainsay the submission that the company had an unacceptable record of compliance is clearly a contention which cannot be sustained on the evidence. This aspect was quite clearly disputed in the council's affidavit. While it is so that certain aspects of the evidence cannot be gainsaid by the council, for example the company's statement that the administration of its payments to those of its employees who do not fall under the auspices of the council were

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[25] Record page 396 paragraph 21

made smoothly and without incident, clearly the council does have knowledge of those aspects of the system of payment which it deals with, such as the company's remittances.

40 The company states that in relation to the question of the company's past record of compliance, the council has previously accepted that the applicant is compliant. The company states that at the Exemptions Body hearing on 21 February 2011 the council administrative employees confirmed that the company was compliant in relation to its application for exemption under clause 21(12), but now submits that the company is not compliant insofar as it's application falls under clause 4(8) is concerned, which is contradictory.[26] This evidence is however new evidence first presented in reply on this aspect. An applicant is required to make out its case in its founding affidavit so that the respondent has the opportunity to refute the allegations in its answering affidavit. The evidence in the council's answering affidavit is not reconcilable with a statement to the effect that the company has a good record of payment compliance historically.

41 The company points out, correctly, that the council does not dispute the fact that there was a late payment of bonuses in December 2010 to the company employees and that this was an issue raised by employees particularly at the Premier Isando operation where the unprocedural strike arose, as well as elsewhere at other sites where employees were dissatisfied in consequence of late payments.

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[26] Record page 398 paragraph 24

Evaluation of the merits of the exemption applied for

42 Clause 4(8) enjoins this tribunal in considering an application for exemption to take into consideration all relevant factors which may include, but which are not limited to the criteria listed in subparagraphs 8(a) to (f) of that clause. Clearly, the tribunal is not limited to a consideration of the listed criteria.

Consultation with employees or their representatives

43 Clause 3(c) of the Dispute Resolution Agreement stipulates that an exemption application shall not be considered unless "the *employees or their representatives have been properly consulted and their views fully recorded in an accompanying document.*"[27] The evidence of the company's consultation with its employees is set out in its founding affidavit.[28] The Operations Manager confirms that he distributed a letter dated 25 January 2011[29] to all affected employees in which management noted the dissatisfaction over the late payment of the holiday a bonus in December 2010 and dissatisfaction with late payment of annual leave and sick leave payments. The letter notified workers that the company intended to apply for an exemption from the main agreement so that payments of holiday pay and leave pay could in future be made directly by the company. The letter goes on to inform workers that the council's agents will continue to monitor and enforce compliance by the company with the provisions of the collective agreements. The letter then invites employees to make representations either to management or the council

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[27] Clause 3(c) of the Dispute Resolution Agreement
[28] paragraphs 26-30
[29] Record page 118

to voice any objections they may have against such an exemption application. In essence the proof of consultation consisted of a pro forma set of minutes provided to the management at each site. Inserted at the outset of those minutes are the designations of the persons present for management and the worker representatives present at the meeting at each site. Thereafter the minutes set out what management was required to communicate to the worker representatives. An individualised response from each site is contained in clause 7 of each such set of site minutes. The Operations Manager confirms that meetings took place at each of the 40 sites on the dates indicated in the various site minutes and that the input of the employee representatives was captured in paragraph 7 of each set of minutes. The company states that in the majority of cases the worker representatives did not object to the application for an exemption. In those cases where employees did record objections the company has addressed each such objection.[30] In essence the company then denied that it was responsible for the confusion and late payments, and states that the Council Administration was to blame for this.

44 The worker representatives at SASKO Klerksdorp addressed a letter to the company expressing their wish on behalf of 52 employees that the leave pay and holiday bonus payments be administered through the council.[31] The company criticises this communication as not being motivated. Similarly, a letter was received from SATAWU in Germiston on behalf of 66 employees recording that it objects to the application for an exemption and states that

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[30] in paragraph 27 of the founding affidavit
[31] record page 226

employees are happy with the current payment system as paid by the council.[32] The company's affidavit then refers to its Super Rent operation where 6 employees it says submitted written representations that they would like to remain on the council's payment system. However, the minute of the meeting held at Super Rent site actually reflects something different and contrary to what the company states, namely that those employees feel it would be better if Super Rent took over all the administrative work.[33] The company confirms that no further objections or additional representations were received from its employees. This evidence regarding consultation is not contradicted by the evidence in the answering affidavit from the council. As this evidence is unopposed it does establish *prima facie* what the company contends for, namely that the employees or their representatives have been properly consulted and their views recorded. Whilst it is true that some employee representatives have recorded their objection to the proposed exemption application, that fact does not in itself bar the company from proceeding with its exemption application. This tribunal is accordingly required to consider the exemption application on its merits, as was the Exemptions Body.

45 The first three criteria are the applicant's past record of compliance with the provisions of the council's collective agreements; any special circumstances that may exist; and any precedent that might be set. Thereafter follow the criteria of "*the interests of the industry*", "*the interests of employees*" and "*the interests of employers*", each of which is broken down into various sub

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[32] Record page 227
[33] Record page 210

categories of criteria which are listed as fully set out above.[34] The approach to applying these criteria was considered previously by the Independent Body in the case of *M4 Carriers & Accounting and National Bargaining Council for the Road Freight Industry*[35] and reference will be made below to that approach. It would be unwise to attempt to rank those criteria in terms of their importance or precedence in determining whether an exemption should be granted or not. That is not the way that the clause is formulated. The applicant in the present appeal addressed the listed criteria and we turn to consider those arguments.

Past record of compliance

46 The first criterion is the applicant's past record of compliance with the provisions of the council's collective agreements. In this regard, there is a factual dispute as discussed above. The company maintains that it has a good record of compliance. This is disputed on affidavit by the council. There is a dispute as to whether it was the conduct of the company or the conduct of the council which was ultimately responsible for the late payment of employees in December 2010. This is an exemption sought on affidavit. The approach generally adopted by our courts to determining disputes of fact in application proceedings where the evidence is recorded on affidavit and where a final order is sought, is that relief may be granted if the facts averred in the applicant's affidavits which had been admitted by the respondents, together with the facts alleged by the respondent, justify such an order. Where the respondent's

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[34] See paragraph 15 above
[35] The published report of that case reported at (2003) 24 ILJ 1042 (BCA) is not the final signed award by the Independent Body but is an earlier draft of the final judgement and should therefore be approached with caution

affidavit raises real and *bona fide* disputes of fact, the general rule is that the applicant is bound to accept the respondents' version of the facts. Thus the matter must be decided on respondent's version of the facts, unless the respondent's version can be described in the words of Corbett JA as *"so far-fetched and clearly untenable that the court would be justified in rejecting it merely on the papers"*.[36] The council's version in the present case is not inherently improbable. The company itself admits to "*teething troubles*" and can hardly in the face of that admission contend, as it does, that there is *no evidence* that it has not got a good compliance record. On the test discussed above it is the council's version of what occurred leading up to the late payments in December 2010, namely that the company has a history of poor compliance when it comes to the remittance of returns for holiday bonus and leave pay, which is the version to be accepted. There is also a dispute as to the reasons why the council recommended the company engaged the services of Industrial Secretaries. On this issue too it is the council's version of the facts in the answering affidavit which we are bound to accept, namely that the council recommended that the company engage the services of Industrial Secretaries precisely because of the poor state of the company's holiday pay and leave pay remittances.

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[36] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd 1984 (3) SA 623 (A) at 634 H-635C*
Hudson v The Master 2002 (1) SA 862 (G) at 870 B-D

Special circumstances

47 The next criterion to consider is whether any "special circumstances" exist.[37] This tribunal previously considered in some detail the question of what constitutes special circumstances and in that regard has stated the following:[38]

"39. "Special circumstances" are not defined in the Dispute Resolution Agreement. This tribunal has previously expressed the view that this expression is not capable of any hard and fast definition. In ***Rex v Botha 1952 (4) SA 713 (O) at 713*** *it was held that in construing the words "special circumstances" regard must first of all be had to the contrasting general circumstances in order to determine whether the particular circumstances under consideration are special or not. Though this comment was made in the context of a criminal case, and is therefore not directly applicable, the general approach to construing and understanding the meaning of the words "special circumstances" is, I believe, apposite. The* ***RAM International Transport*** *case referred to above adopted a similar approach.*

40. The Shorter Oxford English dictionary (3rd edition) defines the word "special" as "of such a kind as to exceed or excel in some way that which is usual or common; exceptional in character, quality or degree" .... "marked off from others of the kind by some distinguishing qualities or features; having a distinct or individual character".

41. In the ***NUTW v Industrial Council for Clothing Industry*** *case the Industrial Court considered a number of previous cases in which the courts had interpreted the phrase "special circumstances". These cases included* ***R v Botha 1952 (4) SA 713 (O), Federated Employees'***

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[37] Clause 8(b)
[38] Unreported decision of the Independent Body in *Rocket Trading 133 CC t/a Govendor's Transport v the National Bargaining Council for the Road Freight Industry* dated 12 November 2004, at paragraphs 39 to 44

Insurance v Magubane 1981 (2) SA 710 (A) at 719; Coetzer v Santam Versekeringsmaatskaappy 1976 (2) SA 806 (T) 810 and Webster v Santam Insurance 1977 (2) (SA) 874 (A) at 881. *The* ***Webster*** *case and the* ***Coetzer*** *case both collected and considered a number of previous authorities which interpreted this phrase. Both those cases concerned the interpretation of a section of the compulsory Motor Vehicle Insurance Act, 1972 in which the court had to decide whether there were special circumstances which had interrupted the running of prescription. The context in which those cases were decided renders such decisions not of much assistance. What can and should be gleaned from those decisions is the principle that the phrase "special circumstances" is very wide and comprehensive and that, like the courts, this tribunal should not seek to lay down any exhaustive definition of those words. This is in line with the previously expressed view of this tribunal that the expression is not capable of any hard and fast definition. A second principle to be gleaned from those decisions is that the meaning of the phrase "special circumstances" must be considered in the context of the relevant legislation and with due regard to the policies of the legislature expressed in the applicable legislation. The legislative context within which the phrase "special circumstances" occurs must be taken into account. Indeed the Industrial Court in the* ***National Union of Textile Workers v Industrial Council for Clothing Industry*** *case (at page 335 C) stated that "special circumstance within the context of the Act may be sui generis in order to further the objects of the Act". The case law as to what constitutes "special circumstances" was not argued in detail before us and accordingly the aforegoing survey and comments suffice for the purposes of this appeal.*

42. *In my view it is not appropriate to grant an exemption merely because to do so would enhance the profitability or efficiency of an enterprise. On that test, many employers would no doubt qualify for an exemption. To this extent, I am in agreement with the views of arbitrator Hutchinson in the case of* ***Armstrong Interiors v Furniture, Bedding and Upholstery Industry Bargaining Council*** *(2001) 22 ILJ 552 (BCA).*

43. 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.

44. I am mindful too of the dangers referred to by arbitrator Hutchinson who commented as follows in the ***Armstrong Interiors*** *case:*

> *"The adoption of a generalised and abstract approach does not adequately lend itself to a proper investigation into the specific merits of any particular individual case. Taken to its logical conclusion, if one maintained such an approach, it is unlikely that any exemptions, even deserving ones, would succeed. Hence, the net would be cast too wide by the adherence to a fixed and rigid formula". (at p 555 J)"*

48 It is not appropriate to seek to circumscribe the precise parameters of the meaning of the term "special circumstances" in all circumstances. It is probably fair to observe that the more common instance in which an exemption will be granted is where a temporary exemption is sought and is found to be warranted, motivated by a temporary inability to comply and in order to permit the employer to recuperate from its financial ills and that once the financial

health of the employer has been restored the temporary exemption will fall away. That is not the situation in the present appeal.

49 The crux of the notion of "special circumstances" is that an applicant must show that the situation is such that it distinguishes it from the run-of-the-mill situation in which all or a great many other employers in the industry will find themselves. What is being applied for is an exemption. The very notion of an exemption suggests something which departs from the usual arrangements laid down by the collective agreement.

50 The company contends that special circumstances exist because of the number of complaints from employees about late payment of leave benefits and the industrial action which the company faced in December 2010.[39] In support of its submission that special circumstances prevail the company further contends that it has the infrastructure to make such payments directly to its employees as it currently does for its remaining 3000 employees who do not fall within the scope of the council. It is submitted that the late payment of the December 2010 holiday pay bonuses impacted on the company's relationship with its principal clients and that it cannot afford similar disruptions in its operations in future.

51 Further in support of special circumstances the company contends that clauses 19(8)(b) and 21(3) of the main agreement make specific provision for employers to pay leave pay and bonus amounts directly to its employees. This is not correct as both those clauses envisage a payment by the council to the

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[39] Record page 29 paragraph 36

employee, alternatively a payment by the council to the employer for onward transmission to the employee. Neither clause envisages a simple direct payment by the employer to the employee without the involvement of the council. The company also sought to rely on clause 21(12) as catering for exemption from payments to the council administration, but, as has already been discussed, that clause is no longer applicable and cannot be relied on.

52 The company submits that exemptions are only appropriate in instances where an employee is facing financial difficulty and there is a real threat to the payment obligations to the employees not being met, alternatively where the employer is suspected of dubious conduct in relation to payment of benefits to its employees.[40] The approach to be adopted in assessing special circumstances has been discussed in detail above, from which it will be clear that the test for special circumstances in relation to the grant of an exemption is clearly not at that simple financial ability to pay on the part of the employer and the absence of dubious conduct is not sufficient to establish special circumstances.

53 In its replying affidavit the company contends that the opinion of the council's employees as to what constitutes special circumstances is irrelevant to the decision of the Exemptions Body, such being a matter with which the council administration should not concern itself as it should limit its evidence to the question of the company's past record of compliance.[41] What this argument fails to recognise is that most of the evidence presented by the council's

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[40] Record page 30 clause 37
[41] Record page 399, paragraph 26

employees, albeit under the heading "*Absence of special circumstances*"[42] is in fact evidence about the company's past compliance. Indeed in its replying affidavit the company itself makes the point that the contents of this paragraph of the council's affidavit repeats what has been said in the previous section - which deals with the company's past payment record.[43] The council's allegation that there was a massive problem with the rendering of accurate returns by the company which required an extraordinary effort on the part of outside consultants recommended by the council before the problem could be resolved is all about the company's failure to comply. In similar vein is the statement in the council's answering affidavit that the problem was caused by the company's original failure to render proper returns to the council and its subsequent failure for many months to properly rectify those errors. Reference has already been made above to the company's furnishing corrected returns in November 2010 which was during the end-of-year pay-out period when the council's resources were already stretched.

54 The emphasis placed by the company on the harm which it suffered in consequence of the unprocedural strike is however something which cannot be simply laid at the door of the council. On the company's own version the strike was un-procedural. Accordingly, even on the company's version the cause of employees going on strike was not simply the council's conduct but was the intervening cause of the workers having decided to embark on an unprocedural strike. The strike obviously had an adverse impact on the company and looms large in the picture painted by the company as to why it has lost confidence in

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[42] paragraph 10 of council's affidavit
[43] record page 399, paragraph 26

the council's administration. But while the conduct of the council's administration is a factor in the factual matrix leading up to the strike, it is only one factor amongst others, including the company's submission of erroneous returns to the council in the first place and the belated remedying of that problem by the company as well as the unprocedural and illegal conduct of workers in embarking on the strike.

55 In conclusion, weighing up the various considerations discussed above in relation to special circumstances, it cannot, we think, be said that the evidence establishes special circumstances which distinguish the applicant company from many employers in the industry.

Precedent

56 The next criterion to consider is whether any precedent might be set by the grant of an exemption to the applicant.[44] The company submitted that no precedent would be set if an exemption is granted as the main agreement makes specific provision for such exemption to be granted.[45] It was further submitted in support of this criterion that the company administers direct payments to its 3000 other employees who do not fall within the ambit of the council, and that the main agreement makes provision for payment to employees directly upon receipt of the contributed funds. Neither of the latter two factors really addresses the issue of whether a precedent would be set and as we have pointed out the main agreement does not provide for direct payment to employees without the intervention of the council. The fact is that

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[44] Clause 4(8)(c)
[45] Paragraph 5(c)of the Notice of Application for Exemption; Founding Affidavit paragraph 38

the main agreement makes provision for an exemption similarly does not address the question of whether granting an exemption in this instance would create a precedent in the industry. To grant an exemption in the case of the applicant's situation would probably create a precedent for other employers who are similarly placed. We have already considered above that the company has not established that it should on the basis of special circumstances be differentiated from other employers in the industry. If the fact that a company also employs other persons not within the ambit of the council and pays those persons their benefits directly were a reason to grant an exemption, numerous other companies with some employees falling within the scope of the council and others outside of its scope would similarly qualify for the exemption and would, we think, not be distinguishable from the applicant company and thus a precedent would be set.

Interests of the Industry

57 We turn to consider the criterion of the interests of the industry as regards unfair competition, collective-bargaining, potential for labour unrest and increased employment.[46]

57.1 The company submits that no unfair competition would flow if an exemption is granted. It submits that the costs of such benefits would still be paid by the company and the exemption would merely exempt it from first having to pay these contributions over to the council administration before they are paid out to the qualifying

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[46] Clause 4(8)(d)

employees.[47] What this argument fails to address is why the applicant company should be exempt from a payment method which has been agreed upon through the collective bargaining process to which it is a party.

57.2 The company suggested in argument that the council had an interest in the matter in that it earned revenue from the monies held by it pursuant to the periodic payments made by employers for the holiday pay bonus and leave pay payments. We understand that the council earns interest on the monies made up by the monthly contributions held by it which are made in advance of the annual payment of benefits to employees. If the applicant company retained those contributions then the company rather than the council would benefit by earning such interest and this source of income would be lost to the council. This consequence must be borne in mind when regard is had to the fact that this method of advance collection of benefit payments is one which has been agreed upon through collective-bargaining. If therefore that is a consequence which needs to be varied, the answer to achieving such variation lies in an amendment to the collective agreement through negotiation – as was done in respect of the amendment to clause 21(12)(a) for a trial period – rather than through obtaining an exemption. Permitting the company to obtain the benefit of earning such interest would constitute unfair competition in relation to other companies who

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[47] Record page 30 paragraphs 39-41

remain obliged to make monthly contributions to the council and who would not enjoy such cash flow and interest earning advantages. The granting of an exemption to the applicant would constitute an unfair advantage being granted to the applicant in comparison to other employers and would therefore constitute unfair competition in relation to other employers similarly placed in the same industry.

57.3 An exemption of the nature sought would generally serve to undermine collective bargaining in that the agreed provisions whereby holiday bonus payments and leave pay payments have to be made to the council is a process which has been determined by the process of collective bargaining to which the company, as a member of the RFEA, is party. That is the generally agreed standard to be applied to all employers and employees in the industry. The company contends that the present exemption is only a "partial exemption" in that it does not exempt the employer from payment of the benefit monies but merely exempts it in relation to the "payment method".[48] But why should other employers subject to the main agreement not also simply adopt the attitude that the agreed payment method does not suit them and apply for and obtain an exemption on the same basis? In fact that argument would be open to all employers in the industry. There is no merit in the contention that this exemption is only in relation to the payment method. As discussed above, an exemption from the system of payment of

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[48] at paragraph 40

contributions to the council also has cash flow and interest earning impacts on employers which should not be ignored. It is clear that the arrangement reached by means of collective-bargaining in the form of the main agreement would be undermined if such an argument constituted a ground for exemption.

57.4 The company points out that it has already faced labour unrest at some sites due to the late payment by the Council Administration in December 2010 of holiday pay bonuses and leave benefits. It contends that there "is therefore a real risk for future labour unrest" for which the company would remain responsible. The company submits that if the exemption is granted it would at least be in a position to intervene proactively in regard to payment of such benefits to its employees.[49] In relation to the factor of potential for labour unrest, there is no suggestion that industry wide labour unrest is a factor. The labour unrest which requires to be considered under clause 4(8)(d) is under the head of "*interests of the industry*" as regards the potential for labour unrest, not the narrower interests of the particular applicant employer. This is not a case where the company has shown a total or systematic breakdown in the council administration. There is simply no evidence to that effect. On the contrary what the evidence shows is a considerable element of administrative problems on the part of the company as well as the council in furnishing accurate returns. The company itself admits to

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[49] record page 32 paragraph 41

"teething troubles" but plays these down. The evidence of the council is to the effect that these administrative problems on the part of the company had the knock-on effect of placing the council under undue pressure in making correct payments. No doubt the council administration is not perfect, but the evidence does not establish a probability that the same or similar problems will occur in the future. Neither does the evidence show that it is purely and simply the council which is at fault in the circumstances. The company's contention that there is a real risk for future labour unrest (whether at company level or more widely in the industry as a whole) is therefore in our view largely speculative in the absence of evidence to show that the same problems are likely to occur in the future.

57.5 The company did not present evidence in relation to the factor of increased employment unrest.

Interests of Employees

58 We turn to consider the company's contentions in regard to the interests of employees as regards exploitation, job reservation, sound conditions of employment, health and safety and infringement of basic rights.[50]

58.1 In regard to these factors the company points out that the council's agents would continue to inspect the company and that the leave and holiday pay bonus benefits would continue to be calculated and paid in the same amount as required by the main agreement so that

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[50] Clause 4(8)(e); record page 32 paragraphs 42-43

employees would therefore not receive inferior benefits. Compliance with the collective agreement would remain enforceable under the proposed exemption. The company further contends that the exemption would not alter the terms and conditions of employment of its employees. The company contends that payment of benefits would likely be made more timeously and in that sense the employees' conditions of service would improve. The company pointed out that it already has in place internal systems to ensure measurement of the effectiveness of its Payroll Department in regard to accurate payments. This evidence is of course contradicted by the evidence of the respondent council to the effect that there was a significant problem with the inaccuracy of the remittances received from the company, which problem was only remedied late in the 2010 year.

58.2 The efficacy of the council's overview function in ensuring that holiday pay bonus and leave pay payments are correctly made to employees is probably greater under the current agreed system whereby employers must make periodic payments over to the council than would be the case if the council's agents were merely to inspect the company's administrative systems for direct payments. A relevant factor not mentioned under the exemption to be granted is the risk of loss to employees where the employer becomes insolvent while holding unpaid holiday pay and leave pay monies due to its employees. This risk is reduced where payments have been made

over to the council, but in the present case the company should probably not be regarded as a significant insolvency risk.

58.3 In our view these various factors in relation to the interests of employees are largely neutral in weighing up whether an exemption is appropriate in this instance.

Interests of the Employer

59 Finally, we turn to consider the interests of the employer[51] as regards financial stability, impact on productivity, future relationship with employees' trade union and operational requirements.

59.1 The company contends that if the exemption is granted this will provide stability to its operations, the primary reason being that it will, so the company says, be less likely to face the type of labour unrest which occurred on December 2010 following the late payments. The company's further submissions under this head constitute no more than a statement of good intent, namely that it intends for the period of the exemption to take every possible measure to ensure that payments of these benefits are made on time and accurately and that it will continue to monitor its Payroll Department's effectiveness because this would assist to improve productivity of the workforce.

59.2 In relation to the factor of the future relationship with the employees' trade union the company submits that its workforce is not

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[51] Clause 4(8)(f)

represented by trade unions and that an exemption would have a minimal impact on such relationships, particularly as the company intends, in its own interests, to administer the these payments accurately to its employees. The evidence referred to above where two unions notified the company that they preferred the retention of existing administration of these payments through the council is also relevant in this regard and tends to show that the trade unions do not favour a departure from the provisions of the collective agreement.

CONCLUSION

60 In conclusion, and having regard to the above considerations and in the light of the evidence and arguments presented, and having weighed the factors as discussed above, we are not persuaded that the applicant has shown that this is a case which warrants an exemption from the general requirement applicable under the collective agreement. We therefore rule as follows:

60.1 the appeal against the Exemptions Body's refusal of an exemption is dismissed; and

60.2 no order is made as to costs.

DATED at JOHANNESBURG on this the 18th day of October is 2011

Independent Body Member

D. M. Antrobus SC

Independent Body Member

L.T. Sibeko SC