

IN THE EXEMPTION APPLICATION OF:-

TANKER SERVICES FOOD AND CHEMICALS DIVISION

Applicant

and

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

Respondent

D E C I S I O N

1. The Applicant applied for exemption to exceed the maximum daily working hours.

2. The matter appeared on the Agenda of the Exemptions Body meeting held on the 20th June 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 R. Manning - Member of the Exemptions Body
 - 3.4 Mr T. Short - Member of RFEA
 - 3.5 Mr J. Gys - MTWU
 - 3.6 Mr S. Mothibe - MTWU
 - 3.7 Mr E. Kock - Senior Agent of NBCRFLI
 - 3.8 Ms T. Stroh - NBCRFLI
 - 3.9 Mr P. Mndaweni - Committee Secretary of NBCRFLI

3.10 Ms F. Rahman - NBCRFLI

4. Apologies were received from:

4.1 Ms M. Brown–Engelbrecht - Member of RFEA

5. **APPLICANT'S SUBMISSIONS**

The Applicant submits, inter alia, as follows:

“Tanker Services Food and Chemicals division – a division of Imperial Group (Pty) Ltd is a registered company with the NBCRFI. The company operates throughout the country and has more than 300 drivers operating locally and some on long distance assignments. The company complies with the provisions of the NBC collective agreement. However, with regards to the long distance drivers – the company constantly encounters challenges pertaining to the maximum hours worked per week and the maximum overtime hours allowable per week.

MAIN COLLECTIVE AGREEMENT NBCRFI

Clause 5(1)(a) of the NBC main collective agreement states that ‘the ordinary hours of work of an employee shall not exceed 45 in any week’. The company complies with this clause in its entirety however with clause 8 – Overtime work, the nature of the long distance make it highly impossible to comply with this clause as drivers are often away on a trip making it impossible to comply with this clause. The clause says ‘An employer shall not require or permit an employee to work overtime for more than:

- (a) **6 hours on any day, except Saturdays: Provided that the maximum hours of work on any day shall not exceed 15, including ordinary hours of work, overtime hours and meal intervals prescribed in this Agreement; or**
- (b) **30 hours in any week from Monday to Saturday.....'**

In a nutshell this clause requires employees not to exceed 90 hours in week whilst complying with maximum daily work hours per DAY including Saturdays. This clause however does not include Sunday Work which is treated differently as per clause 9 of the Main Collective agreement.

WHY EXEMPTION IS SOUGHT OR CLARITY

Our drivers are often away on a long distance trip on average for seven working days and they do stick to the stipulated compulsory rest period which is 9 hours per day. This aspect is monitored internally with tachograph and other internal systems however seeing that WHEN they are away for seven days they end up working seven DAYS times fifteen hours per week (7 x 15 hrs = 105) which adds up to 105 hours per week – a week in this case includes Sunday work (15 hours Sunday work). This exceeds the maximum allowable hours by 15 hours. Obviously, a 36 hours rest days is given after such a trip and normal weekend offs as per our roster.

Provided our understanding and analysis is correct – we therefore seek to be exempted in the application of these two clauses namely 5 & 8.

CONSULTATION WITH THE AFFECTED EMPLOYEES

Consultations and discussions were held with the employee representatives and employees with regards to this matter. Employees

are comfortable on continuing with this system as they understand that it is practically impossible to comply given the nature of their work. We attach proof a letter where employee representatives wrote to management after they had their own private meeting with the drivers.

FINANCIAL IMPLICATION OR UNDUE COMPETITIVE EDGE

There is no financial implication except to say the company seeks to bring this matter to your attention for further guidance or exemption. No undue competitive edge is achieved by this.

HEALTH AND SAFETY

As mentioned above, compliance to the internal safety processes and compulsory rest periods is non-negotiable. This is known to all the drivers given the stringent audits we have with our customers.

We therefore request the exemption committee to address our request.”

6. **COUNCIL'S SUBMISSIONS**

Mr E. Kock submitted that the Applicant is compliant with the rest periods.

7. **RFEA**

The RFEA supported the Applicant's application.

8. **ANALYSIS**

8.1 The submissions made by the Applicant were considered. The application is premised on its operational requirements and has the support of its employees.

8.2 The Exemptions Body is satisfied that the Applicant has met the requirements for the granting of the application. It is also satisfied that health and safety issues are not compromised.

9. **DECISION**

Having regard to the above, the Applicant is granted an exemption for the period 1st March 2011 to the 28th February 2012 to exceed the daily maximum hours worked.

DATED THE 5 DAY OF July 2011 AT BRAAMFONTEIN, JOHANNESBURG.



MR. Y. NAGDEE
 Chairperson of the
 Exemption Body

MRS R. MANNING
 Member of the
 Exemption Body
I agree

MR G. WESSELS
 Member of the
 Exemption Body
I agree