

IN THE EXEMPTION APPLICATION OF:-

**UNITRANS SUPPLY CHAIN SOLUTIONS (PTY) LTD
t/a UNITRANS SUGAR AND AGRICULTURE**

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 and Holiday Bonus Fund.
2. The matter appeared on the Agenda of the Exemptions Body meeting held on the 20th June 2011 and 15th August 2011. The application had been postponed previously to afford the Applicant an opportunity to supplement its application and to confirm consultations took place with shop stewards and also to deal with the issue of compliance for the period beyond 28th February 2011.
3. On the 30th August 2011, the Exemptions Body was requested to deal with the application as a decision had been made by Exco;
4. **APPLICANT'S SUBMISSIONS**

4.1 The Applicant in its application submitted, as follows:

“OBJECT

To be exempted from paying employees' holiday bonus and leave pay contributions to the NBCRFI.

BACKGROUND: SUMMARY

Unitrans evolved from the UK based United Transport Company that established itself in South Africa in 1962. It was listed on the JSE in 1987 as Unitrans Ltd and became a subsidiary of the Steinhoff International Group in May 2007. It is now known as Unitrans (Pty) Ltd. The Applicant is a division of Unitrans (Pty) Ltd and operates on a national basis. Unitrans Supply Chain Solutions consists primarily of three divisions within the Road Freight and Logistics sector. Sugar and Agriculture is one of the divisions and the Applicant in this application.

The Applicant employs approximately 650 employees that fall within the bargaining unit of the National Bargaining Council for the Road Freight Industry (NBCRFI).

EXEMPTION RELATED INFORMATION

Although the previous NBCRFI Main Collective Agreement as amended and published in Government Gazettes No.30041 dated 6 July 2007 and 32463 dated 7 August 2009, has lapsed the guiding conditions to allow Employers to pay holiday bonuses and Leave Pay directly to employees covered by the NBCRFI, without having to pay such money as contributions to the NBCRFI, have been followed by the Applicant in support of this application.

The following is submitted in supported of the Applicant's request for exemption:

BANK GUARANTEE

Attached find Bank guarantees covering the accrued holiday bonus and leave pay liability for twelve months.

YEARS IN BUSINESS

As highlighted in paragraph 1 above, the Applicant is in operation for 46 years.

COMPLIANCE RECORD WITH NBCRFLI

It is submitted that the Applicant has an acceptable record of payment compliance to the NBCRFLI. It is submitted that even where differences regarding compliance issues arose or administrative mistakes occurred, the Applicant always resolved such with the NBCRFLI and complied as agreed or directed.

FINANCIAL STABILITY

The Applicant's track record with regards to both its period of operating as a business and its rendering off payments to the NBCRFLI reflect that it is financially stable. It is further confirmed that there are no material changes that took place, or that are foreseen, which will cause it to be unable to meet its obligations regarding the payment of the holiday bonuses and leave pay in issue. The financial results for the year ending 30 June 2010 further supports the aforementioned financial stability and will be made available to the NBCRFLI's Exemptions Body, if required.

CONSULTATION AND EMPLOYEE SUPPORT

The majority of the Applicant's employees are members of SATAWU. It has been practice, as agreed with the shop stewards, for a number of years that the Applicant pay holiday bonuses directly to employees. The holiday bonus amounts paid over to the NBCRFLI were then

reimbursed by the NBCRFI to the Applicant. This practice was followed with the approval by the NBCRFI. In 2008, the Applicant was exempted from paying the contributions to the NBCRFI and was allowed to continue to pay the holiday bonuses and leave pay directly to its employees. It is therefore submitted that the granting of this exemption will not result in any adverse change to employees' current situation. Notwithstanding the aforesaid, the required exemption from paying holiday bonus and leave pay contributions to the NBCRFI was discussed with its shop stewards and employees. The majority of employees confirmed their support for the exemptions application as reflected in the signed document attached as annexure "A" hereto.

DATE OF BONUS AND LEAVE PAY

The Applicant undertakes to provide by this provision and thus to pay the employees' holiday bonuses and leave pay in issue before or on 15 December 2011.

EXEMPTION REQUIRED

With reference to the above, Unitrans, Sugar Division, herewith request to be exempted from paying holiday bonus and leave pay contributions to the NBCRFI."

- 4.2 The application subsequently provided the Council's Secretariat with the representatives' consent for the following depots, viz, Amatikulu, Hulref and Tongaat.

5. **COUNCIL'S SUBMISSIONS**

It was pointed out that the issue of non compliance of a number of companies in respect of exemption licences that expired on the 28th February 2011 was being

looked at administratively. This will have an impact on the period 1st March 2011 to 31st May 2011.

6. **MTWU**

The MTWU opposed the application by the Applicant on the basis that consultation did not properly take place with the Union and the Union opposed consultations directly with shop stewards.

7. **ANALYSIS**

7.1 The Exemptions Body is required to consider the application in terms of the criteria set out under clause 4(8) of the Dispute Resolution Agreement. The Exemptions Body is not limited to a consideration of the listed criteria. The first three criteria are the Applicant's past record of compliance with the provisions of Council's collective agreements; any special circumstances that exist; and any precedent that might be set. Thereafter 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 categories of criteria which are listed.

7.2 The Applicant's application is premised on administrative considerations. The application is also based on the provisions of Clause 21(12) which has been repealed. If regard is had to factors to be considered by Exemptions Body, the Exemptions Body is unable to find that the Applicant has met the criteria for the granting of the application;

8. **PAST RECORD**

In respect of the past record the Applicant is not in compliance after the 20th May 2011.

9. **SPECIAL CIRCUMSTANCES**

9.1 The Applicant has not addressed the issue of special circumstance. Save as to state that holiday bonus was paid directly to employees and the Applicant was reimbursed by Council.

9.2 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.”

9.3 The Appeal Body went on to state that the correct approach as canvassed in the cases referred to is that the Appellant has to show special circumstances and that this factor is not to be elevated above the others and is merely a factor to be weighed along with all the others.

9.4 The Applicant has not demonstrated special circumstance exist.

10. **ANY PRECEDENT THAT MAY BE SET**

10.1 The Applicant states that there is no precedent and a practice has existed for a number of years with Council's approval.

11. **INTERESTS OF EMPLOYEES AND CONSULTATION WITH TRADE UNION**

11.1 In terms of employees and consultation with Union. The application is opposed by MTWU. However it has the support of SATAWU shop stewards.

11.2 Clause 21(12) of the Main Collective Agreement provides for particular criteria in terms of which the Exemptions Body is mandated to grant an employer exemption to pay holiday bonus and leave pay direct to its employees. The clause was initially introduced for a trial period in 2009. This was extended until 28th February 2011

11.3 On the 20th May 2011, the Minister of Labour extended the collective agreement from 20th May 2011 to 28th February 2013. Clause 4 of the amended agreement provides as follows:

“The Holiday Pay Bonus Fund established under Government Notice No. R.41 of 15 January 1971 is hereby continued. A guaranteed 13th cheque will be paid to employees during December every year at 4.33 weeks of annual basic earnings prorated in the first year of service. The calculation and payment of holiday pay bonus will no longer be linked to 252 shifts.”

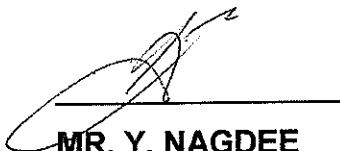
11.4 The parties to the collective agreement have agreed to the deletion of Clause 21(12). It follows that an application in respect of Leave Pay and the Holiday Bonus Fund the guaranteed 13 cheque has to meet the general criteria in terms of the Exemptions and Dispute Resolution Agreement.

11.5 The Applicant’s application is premised on improving administrative efficiency and to align it with the operational reality of its business.

12. DECISION

Having regard to the above, the application is refused.

DATED THE 9th DAY OF September 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