

IN THE EXEMPTION APPLICATION OF:-

DHL SUPPLY CHAIN (PTY) LTD

Applicant

and

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

Respondent

DECISION

1. The Applicant applied for exemption from implementing full increases in 2013/2014 due to financial constraints. Applicant and staff/Union have signed an agreement.

2. The matter appeared on the Agenda of the Exemptions Body meeting held on the 18th April 2013. The application was postponed to enable the Applicant to submit financial information. The matter appeared on the Agenda of the Exemptions Body meeting on the 22nd May 2013.

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 Mr P. Mndaweni - Committee Secretary of NBCFRLI
 - 3.4 Ms J. Nel - Exemptions Officer of NBCRFLI

- 3.5 Mrs M. B. Badul - HR Manager
- 3.6 Ms D. Rambuchan - Financial Manager

4. Apologies were received from the following members:

- 4.1 Ms R. Manning - Member of the Exemptions Body
- 4.2 Ms T. Stroh - Acting CEO of NBCRFLI

5. **APPLICANT'S SUBMISSIONS**

5.1 The Applicant submitted, inter alia, as follows:

"NATURE OF APPLICATION:

DHL Supply Chain (Pty) Ltd – Life Sciences and Healthcare (the Company) intends making an application to the NBC for an exemption from schedule 5 (Remuneration and Other Monetary Benefits of the NBC agreement. The application is made following a dispute that arose around a salary difference between employees in 2011/2012. The Company is a Warehousing and Logistics Company, specialising in the transportation of medical products and devices, with its Head Office in Elandsfontein and operates the following sites: Elandsfontein, PE & Cape Town. The Company has been in operation since 1992. LS & Healthcare employs a total of 75 employees of which 45 falls within the full scope of the NBC.

The Company has been a member of the NBC since 2004, and has at all times complied with the requirements of the NBC. The

Company has a dedicated department dealing with payroll, wages and other related issues. They are equipped to ensure the accurate and prompt payment of increases to staff.

STATEMENT OF MATERIAL FACTS:

- 1. On 15 April 2011, 12 employees were converted from Agency casual labour to permanent, 11 of these employees were put on a base salary of R6200; unaware that there would be a mandatory 2012 NBC 9% increase a few days later.***
- 2. This increased these individuals' salaries to R6758. This has resulted in a ± R500 discrepancy between these individuals and the rest of the staff in the warehouse.***
- 3. Various consultations between the CEPPWAWU and DHL has taken place and it was explained to the employees that it is not financially possible for DHL to increase all salaries to this level.***
- 4. DHL however managed to agree that all employees earning less than the R6200 (affecting about 14 employees) will be raised to this level before the 2012 increases, to allow these employees to benefit from the increases on the new salary. Thus bring all employees in the business to a minimum salary of R6200.***

5. *Further meetings were held with the Union in 2012 and again management explained that the company cannot in the current state afford to bring all salaries up to the same rate. The difference at this stage was about R605.*
6. *On 12 February 2013, the Union referred the case to the CCMA (Case number: GAEK 1420-13).*
7. *The conciliation was scheduled for the 12th of March 2013, but the company was only made aware of that on 11 March 2013 after being contacted by the Union Official.*
8. *The Union official responded to the Company after a meeting request was sent to him for a meeting to discuss this salary matter further.*
9. *Both parties however attended the CCMA Conciliation on 12 March 2013. Commissioner John Shardlow heard the case and gave a settlement in which he gave DHL and the Union up to and including 18 March 2013 to settle the dispute. If the dispute was not solved by Tuesday 19 March 2013, the Commissioner would give the Union a certificate of outcome allowing them to embark on a legal strike.*
10. *Meetings were held on 14 March 2013, 15 March 2013 and*

18 March 2013; on 18 March 2013, a settlement agreement was reached between the Union, DHL and the employees.

- 11. On 19 March 2013, Commissioner Shardlow was informed of the agreement being reached and confirmed that he will close the case.**

- 12. A meeting was held with 2 representatives from the NBC on 20 March 2013 to see how the agreement can now be implemented, as it affects the promulgated NBC increases. The Company and the Union was then advised to apply for the Exemption to make the signed agreement official.**

SPECIAL CIRCUMSTANCES:

By granting this exemption, it will alleviate the current salary discrepancy which exists. Furthermore it must be noted that the Employer and all affected employees have consented and supported this exemption and have signed thereto.

UNFAIR COMPETITION:

By not granting the exemption, not only do we have a salary discrepancy which gets bigger as further NBC increases kick in but the business will not be competitive in gaining new contracts; our labour costs will be too high.

POTENTIAL FOR LABOUR UNREST:

Should we not reach an agreement, we will have to revert back to the case at the CCMA and could face possible strike action. This situation is also causing a lot of negative feelings between fellow employees. Ultimately we could be forced to grant salary increases to place everyone on the same level. This could lead to retrenchments or the business having to shut down."

- 5.2 The Applicant in further submissions amplified its position by pointing that its costs were too high, it had to relook at its infrastructure to remain competitive.

6. **COUNCIL'S SUBMISSIONS**

The Council submitted as follows:

- "1. The Applicant has a good compliance history with Council Agreements.***

- 2. Applicant is applying for exemption from implementing full increases on 2013/2014 due to financial strain. Applicant and staff/Union has a signed agreement.***

- 3. Should application fail salary discrepancy will increase as respondent's increases are implemented. Should application be successful, salary discrepancy will be resolved.***

4. *The Exemptions Body is guided by Schedule 5 of the Main Collective Agreement and Clause 4(8) of the Exemptions and Disputes Resolution Agreement. We therefore trust that the panel will make their decision accordingly."*

7. **ANALYSIS**

7.1 The submissions made were carefully considered. The Applicant sought an exemption for some 10 employees that were paid higher than the minimum. The application has the support of its employees and is the product of a settlement agreement reached with its employees.

7.2 The Applicant has met the criteria for granting an exemption and has shown that special circumstances exist for the granting of the application.

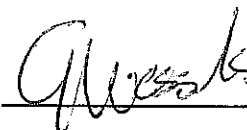
8. **DECISION**

8.1 Accordingly an exemption is granted to pay the new employees referred to as "10 new employees" in the settlement agreement, a 7% increase as opposed to the 10% increase for the period 1st March 2013 to 28th February 2014.

DATED THE 7TH DAY OF June 2013 AT BRAAMFONTEIN,
JOHANNESBURG.



MR. Y. NAGDEE
Chairperson of the
Exemption Body



MR G. WESSELS
Member of the
Exemption Body
I agree