

## **IN THE EXEMPTION APPLICATION OF:-**

**MULTI LOADS (PTY) LTD**

**Applicant**

**and**

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

**Respondent**

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### **DECISION**

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1. The Applicant applied for exemption to renew previous exemption pertaining to double manning. Fixed term contracts of employment signed by employees that mention double manning.
2. The matter appeared on the Agenda of the Exemptions Body meeting held on the 18<sup>th</sup> June 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 Ms R. Manning - Member of the Exemptions Body
  - 3.4 Mr P. Mndaweni - Committee Secretary of NBCFRLI
  - 3.5 Ms J. Nel - Exemptions Officer of NBCRFLI

- 3.6 Mr L. Jordaan - IR Manager
- 3.7 Mr F. De Wit - Director

4. Apologies were received from the following:

- 4.1 Ms T. Stroh - Acting CEO of NBCRFLI

5. **APPLICANT'S SUBMISSIONS**

5.1 The Applicant submitted, inter alia, as follows:

**"NATURE OF APPLICATION:**

1. ***The application is an application to renew an existing exemption agreement and to accommodate an agreement with the Applicant's main client, THE SOUTH AFRICAN BREWERIES LIMITED, (SAB) and the contract the Applicant have entered into with them, to supply a service in accordance with a 24 hour service delivery cycle and which entitled the client to use the Applicant's trucks 24 hours a day during every day of the week.***
2. ***The above agreement has resulted in a double manning system, as it was not possible to return the trucks to the site in Rosslyn after every shift.***
3. ***The application is made to allow the Applicant to pay the drivers as follows:***

- 3.1 That each driver be paid for 9 hours per shift normal time during a 24 hour cycle;**
- 3.2 That each driver will be paid 6 hours overtime in every 24 hour cycle.**

**STATEMENT OF MATERIAL FACTS:**

- 1. The Applicant has been involved in the transport of goods for this specific client for a number of years.**
- 2. The terms of this agreement was accepted by the National Bargaining Council for the Road Freight Industry, Serial Number EB32/2011 for a period of initially one year and extended to 28 February 2013. The Applicant is applying for an extension of this agreement on the same terms as the contract with the client was entered into for a period of 3 years:**
- 2.1 That the subsistence allowance would be paid as prescribed in the Main Agreement.**
- 2.2 That both drivers would be paid as per the Main Agreement for hours worked on a Sunday and a Public Holiday.**
- 2.3 That the employment contracts would include that the employees would be paid in accordance with the NBCRFI for double or single drivers.**

- 2.4 That the vehicles would be fitted with sleeping berths to permit the employees not driving to rest. The driver will be given at least 10 hours off at the end of each week.**
- 2.5 It was accepted that these conditions would be included should the Application be approved.**
- 3. The employees resigned from their previous union and are in the process of becoming members of the TAWUSA union. The recognition process has not been finalised.**
- 4. The terms of the contract with the South African Breweries it did not allow the Applicant to pay the drivers for more than the 9 hours per shift normal time and 6 hours per shift overtime, as approved previously;**
- 5. The Applicant's business would suffer severely if this application was not approved, as it would in all possibility have to terminate its contract with SAB and it would therefore result in a substantial number of job losses;**

**APPLICANT'S PAST RECORD:**

**The Applicant complies with all provisions of the Council's Collective Agreements. This application was initially approved on 3 October 2011 for a period of one year, Certificate Number EB32/2011 and subsequently extended to 28 February 2013.**

***The Applicant became aware of the terms of the extension on 12 April 2013 and immediately drafted this application.***

**Special provisions:**

***As stated above in this application, the Applicant would be prepared to include the following provisions in this application:***

- 1. That the substance allowance would be paid as prescribed in the Main Agreement.***
- 2. That both drivers would be paid as per the Main Agreement for hours worked on a Sunday and a Public Holiday.***
- 3. That the employment contracts would include that the employees will be paid in accordance with the NBCRFI main agreement for double or single drivers.***
- 4. That the vehicles would be fitted with sleeping berths to permit the employees not driving to rest. The drivers will be given at least 10 hours off at the end of each week.***

**ANY PRECEDENTS THAT MIGHT BE SET:**

***The Applicant was not aware of any precedent that this application might set in the industry.***

**UNFAIR COMPETITION:**

*This application was specifically directed to accommodate the terms of the contract of one of our clients, SAB. It was therefore not intended to be a general exemption. The Applicant did not foresee that it would result in unfair competition in any way.*

*Any other contractors who wished to enter into service agreement with the SAB will have to apply for this exemption.*

**COLLECTIVE BARGAINING:**

*The Applicant understood this exemption an application to meet the specific demands of client. It is an application to address a specific situation and not a way to hinder the collective bargaining process in any way.*

**POTENTIAL FOR LABOUR UNREST:**

*The Applicant did not foresee that the application as such would result in labour unrest. The employees have in the past always accepted and agreed to this proposal. The employees who have signed the employment contract (Annexure "B") would be used on the double manning shifts, or employees who would be prepared to accept this contract.*

**INCREASED EMPLOYMENT:**

*The Applicant had to purchase and make available a certain number of trucks to accommodate the needs of the SAB. In terms of the agreement, every truck had to be manned by two drivers, excluding the leave relieves and standby drivers. This resulted in a substantial number of extra drivers which the company had to employ.*

**EXPLOITATION:**

*The Applicant did not believe that this application could result in the exploitation of its employees in any way. The Applicant was prepared to adhere to all of the stipulations of the main agreement pertaining to the substance allowance, the payment for work on Sundays and Public Holidays, to ensure that the drivers would be comfortable as possible when not actually driving and to ensure that the drivers were given a rest period at the end of each shift.*

*The approval of this application would also result in the fact that the Applicant could meet its obligation with the client and in all possibility renew the contract with the client. This would result in a substantial number of drivers having a secure job.*

**JOB PRESERVATION:**

*The approval of this exemption application would most definitely result in the drivers who were presently employed to man the SAB vehicles, having a secure job for at least the duration of the exemption period.*

**SOUND CONDITIONS OF EMPLOYMENT:**

*This proposal, if accepted, would result in a driver being paid additional 30 hours overtime on top of his weekly wage. The employees will therefore be paid at least double their normal weekly wage.*

**POSSIBLE BENEFITS:**

*The main benefit, as stated above, would be the employees' opportunities to earn a substantial better wage and to provide for his family with the knowledge that he could be sure of his income. Unlike normal overtime which would be worked as the need determined, this would be a fixed number of hours and therefore a fixed income.*

**HEALTH AND SAFETY:**

*The Applicant accepted that this was a major concern to parties. Experience has taught the Applicant that the double manning system was no more or less dangerous than any other system where the transport of goods was involved. The fact that the driver had a relief driver with him and that it was possible to change drivers more readily could be seen as a plus factor in this regard.*

**INFRINGEMENT OF BASIC RIGHTS:**

*The Applicant was not aware of the infringement of any of the basic rights of the employees.*



**FINANCIAL STABILITY:**

*The financial stability of the employees who would be involved in the double manning system would certainly increase substantially as they would earn basically double their normal wages.*

**IMPACT OF PRODUCTIVITY:**

*Due to the fact that the employee would spend more time driving and less time travelling from and to work, the productivity would certainly increase.*

**FUTURE RELATIONSHIP WITH EMPLOYEES' TRADE UNION:**

*The Applicant's relationship with the Union is in general very good. The Union and its members were not opposing the double manning system in general, but wanted to be paid more overtime. The Applicant did not foresee the approval of this application would influence the relationship with the Union negatively.*

**OPERATIONAL REQUIREMENTS:**

*Should this application be successful the operational requirements of the company would not change in any significant way. However, should it not be approved, the company would in all possibility not be able to extend the contract with the client and this could result in a drastic change in the operational requirements of the company. The company did not have enough work with other clients to ensure that the present staff compliment be maintained."*

6. **COUNCIL'S SUBMISSIONS**

The Council submitted, inter alia, as follows:

- "1. As per designated agent Musa the Applicant has a good compliance history with Council Agreements. Applicant registered with the Respondent on 30/04/1997 and is situated in Pretoria.***
- 2. Applicant is applying for exemption to renew previous exemption pertaining to double manning. Applicant is compliant with the provisions of the previous exemption that was granted to them on the double manning. Previous Exemption Licence expired on 28/02/2013.***
- 3. Signed fix term contracts attached to the application does not mention double manning.***
- 4. Applicant is not a member of the Employer's organisation. The employees resigned from the previous Union and are in the process of becoming members of the TAWUSA Union.***
- 5. Council is opposed to the application due to that the driver will be given at least 10 hours off at the end of each week. This is unacceptable as a driver might be on the road for 7 days and will not even be given a full 24 hours off. This might cause a health and safety issue.***

6. ***The Exemptions Body is guided by Part 2: Hours of work 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**

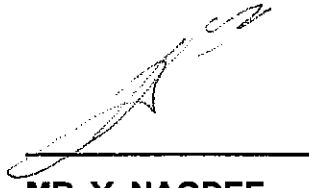
- 7.1 The Applicant was required to consult with its employees and to submit proof to Council.
- 7.2 The proof of consultation with employees was subsequently received. The application is based largely on the contractual obligations that the Applicant has with its client. The Applicant was previously granted an exemption subject to certain conditions.
- 7.3 The Applicant is compliant with Council's agreement. Council indicated its concern with health and safety issues. However the Applicant informed the Exemptions Body that it has a double manning system in place and drivers could be changed readily.
- 7.4 The Exemptions Body is satisfied that special circumstances exist for the granting of the application and it has the support of its employees.

8. **DECISION**

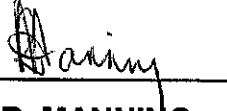
Accordingly the application for exemption is granted subject to the following conditions:

- 8.1 That the subsistence allowance would be paid as prescribed in the Main Agreement.
- 8.2 That both drivers be paid as per the Main Agreement for hours worked on a Sunday and a Public Holiday.
- 8.3 That each driver be paid for 9 hours per shift normal time during a 24 hour cycle.
- 8.4 That each driver be paid 6 hours overtime in every 24 hour cycle.
- 8.5 That each driver be given at least 10 hours off at the end of each week.
- 8.6 That Council's Agent carry out an inspection every quarter.
- 8.7 The application is granted on the above terms for a period of 1 year from 1<sup>st</sup> March 2013 to 28<sup>th</sup> February 2014.

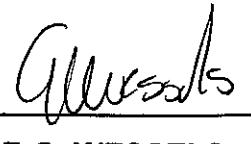
DATED THE 1 DAY OF July 2013 AT BRAAMFONTEIN,  
JOHANNESBURG.



**MR. Y. NAGDEE**  
Chairperson of the  
Exemption Body



**MS R. MANNING**  
Member of the  
Exemption Body  
**I agree**



**MR G. WESSELS**  
Member of the  
Exemption Body  
**I agree**