

IN THE EXEMPTION APPLICATION OF:-

IBHAYI CLEARING AND LOGISTICS

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 2014/2015. Applicant can only afford a once off 6% increase for the whole year due to financial constraints. The applicant is seeking exemption for 12 months.

2. The matter appeared on the Agenda of the Exemptions Body meeting held on the 19th May 2014.

3. The following were present:-
 - 3.1 Mr Y. Nagdee - Chairperson of the Exemptions Body
 - 3.2 Ms R. Manning - Member of the Exemptions Body
 - 3.3 Mr P. Mndaweni - Committee Secretary of NBCFRLI
 - 3.4 Ms J. Nel - Exemptions Officer of NBCRFLI

4. Apologies were received from the following:

- 4.1 Mr G. Wessels - Member of the Exemptions Body.
- 4.2 Mr D. Koen - National Operations Manager – NBCRFLI

5. **APPLICANT'S SUBMISSIONS**

The Applicant submitted, inter alia, as follows:

"NATURE OF APPLICATION:

The nature stems from a request by the Applicant to its employees for them to accept, after exemption applied for, a 6% annual increase.

Members / employees were consulted but declined the request.

The reason for the reduced increase is primarily due to the decreased increase the company received from its primary client. This would lead to a shortfall in the company's cashflow abilities to meet obligations, including wages, and in an effort to stave off retrenchments, this reduced increase exemption is applied for.

STATEMENT OF MATERIAL FACTS:

Annual increase notification received – 21/02/14. Applicant advises primary client of increased cost due to wage increase – 8% request. Client declines request. States 6% acceptable – 21/02/14. Employees consulted about reduced increased – 03/03/14. Employees respond

with negative reply – 04/03/14. Applicant contacts SATAWU to address members – 13/03/14. SATAWU addresses members on 17/03/14.

- *Union rep will not sign proof of consultation, stating lack of authority.*

Applicant contacts Honest Siname about situation and he requested the documents to refuse and give back – 19/03/14

Follow up phone calls to Mr Siname (0761099233 / 0744433360), have not been responded to.

Also left a message with SATAWU CL office (0437434362). Finally sent email informing that application has to be submitted without his signature due to delays and non-compliance on his side – 26/03/14.

APPLICANT'S PAST RECORD:

Applicant is compliant with all relevant provisions of agreements per Council audits.

SPECIAL CIRCUMSTANCES:

The Applicant's financial status is dire and thus affordability is paramount to survival and retaining jobs.

POTENTIAL FOR LABOUR UNREST:

There is potential for unhappiness in that they might not get their “full entitlement”, i.t.o., salary increment. The applicant has mitigated the possibility of this by engaging with employees directly and with the union concerned.

Also the applicant doesn't intend for the lowered increase to be a permanent fixture. If financial circumstances improve the applicant is willing to increase the rate to the original 8%.

INCREASED EMPLOYMENT:

The applicant though views this exemption request as if successfully, will preserve jobs.

EXPLOITATION:

All affected employees have been consulted on the matter.

JOB PRESERVATION:

This exemption application seeks to help the company reduce labour costs and to eliminate the need to shed jobs. The 2% saving together with other savings will preserve the jobs of all existing staff.

SOUND CONDITIONS OF EMPLOYMENT:

No variations on an employee's job description is required at this stage. The application merely seeks to address a financial shortfall which the company cannot afford.

POSSIBLE BENEFITS:

All existing employees would retain their jobs and benefits. The applicant will see this goodwill from the employees in a good light and return it in future.

INFRINGEMENT OF BASIC RIGHTS:

No employee's rights will be impacted. Employees will be consulted on all relevant matters relating to this application.

FINANCIAL STABILITY:

The company will have a reduced / manageable staff cost. Together with other cost saving measures and fiscal discipline, the company can be turned around. This is a process that takes time and understanding from all stakeholders but if the effort is a committed one, it will succeed.

IMPACT ON PRODUCTIVITY:

"Non approval" of this application might lead to staff reductions. The

applicant though views this as a last resort as reduced staff will impact productivity levels negatively and so obligations to clients might suffer with disastrous consequences.

FUTURE RELATIONSHIP WITH EMPLOYEES' TRADE UNION:

The relationship has always been cordial and accommodative. Approval of this application will just go to enhancing that relationship as it shows common interest.

OPERATIONAL REQUIREMENTS:

Operational requirements will not be affected if staff numbers remain fixed.”

6. **COUNCIL'S SUBMISSIONS**

The Council submitted, inter alia, as follows:

- 6.1 The Council's Agent indicated that the employees were not in support of the application as they are prejudiced.

7. **FURTHER INFORMATION**

The information provided to Council was not clear and the Applicant was required to clarify the following:

- 7.1 Has it implemented a 6% increase for the 2014 year and is it seeking to pay 2% less?
- 7.2 Has it implemented 8% and wishes to be exempt from paying the minima?
- 7.3 Mr Wessels is to report on the financial information provided by Applicant.

8. **ANALYSIS**

- 8.1 The Exemptions Body requested further information from the Applicant and also requested financial information upto April 2014.
- 8.2 The Applicant clarified its position by pointing out that it implemented a 8% increase and sought to reduce this to 6% but not to backdate. Further should the exemption be granted the Applicant will ensure that all employees receive the minima.
- 8.3 The Applicant's financials are showing a net liability where the liabilities exceed the assets. The Applicant requires some assistance to overcome its difficulties. The Exemptions Body is mindful of the fact that an 8% increase has been implemented and cannot grant a retrospective exemption as this would be unfair to employees.
- 8.4 The Applicant has demonstrated that special circumstances exist and is granted an exemption to pay 2% less on the wages for the period June 2014 to 28th February 2015.

8.5 The exemption does not apply to the 0,25% increase which is due in September 2014. Should the Applicant's financial situation not improve in the next 3 months, the Applicant may approach the Exemption Body for a further exemption in respect of this increase.


9. **DECISION**

9.1 The Applicant is granted an exemption to implement a 6% increase as opposed to 8% from 1st June 2014 to 28th February 2015.

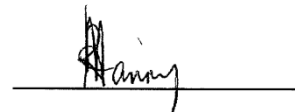
9.2 The Applicant is to ensure that all employees are on the current minima.

9.3 The Applicant is to ensure that Pension Fund contributions are up to date.

DATED THE 30 DAY OF MAY 2014 AT BRAAMFONTEIN, JOHANNESBURG.



MR. Y. NAGDEE
Chairperson of the
Exemption Body



MS R. MANNING
Member of the
Exemption Body
I agree