

IN THE EXEMPTION APPLICATION OF:-

QINISEKA SECURITY

Applicant

and

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

Respondent

DECISION

1. The Applicant applied for exemption from contributing to the Leave Pay Fund, Holiday Pay Bonus and Sick Leave Fund. The Applicant also requested that they be allowed to pay all staff that does CIT the hourly rate as determined by the main agreement of Respondent for hours they spent on CIT operations and PSIRA regulated rates for hours they spend on guarding services.
2. The application initially appeared on the agenda of the Exemptions Body meeting held on the 17th February 2014 and was postponed for the Council's Agent to obtain information from the Applicant.
3. The matter appeared on the Agenda of the Exemptions Body meeting held on the 17th March 2014.

3. The following were present:-

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|-----|--------------------|---|------------------------------------|
| 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 | Mr F. Matsepe | - | Senior Agent – NBCRFLI |
| 3.6 | Mr S. Raubenheimer | - | Employer Organisation of SA |

4. Apologies were received from Ms R. Manning – Member of the Exemptions Body.

5. **APPLICANT'S SUBMISSIONS**

The Applicant submitted, inter alia, as follows:

"NATURE OF APPLICATION:

The Applicant seeks to be exempted from compliance with the current agreement of the National Bargaining Council for the Road Freight Industry as follows:

1. ***The Applicant requests that he be allowed to pay all staff that does CIT the hourly rate as determined by the main agreement of the National Bargaining Council for the Road Freight Industry for the hours they spent on CIT operations and PSIRA regulated rates for the hours they spend on guarding services.***

2. ***The Applicant further seeks to be exempted from the payment of the Leave Pay Fund, Holiday Pay Bonus Fund and Sick Leave Fund.***

3. ***It should be noted, that the Applicant had exemption regarding the above in terms of Exemption License No: EB 18/2012. This exemption however expired on the 28th February 2013. The reason this application is only brought now is due to the fact that after numerous requests the Council failed to forward us the exemption certificate.***

4. ***The Applicant does have a provident fund for all its employees and this provident fund was established in 1996.***

STATEMENT OF MATERIAL FACTS IN CHRONOLOGICAL ORDER:

1. ***The Applicant provides security services to its clients.***

2. ***The nature and scope of these services are as follows:***
 - 2.1 ***An Agreement is entered into with the client whereby the Applicant will provide security guards for certain premises, business properties, etc;***

 - 2.2 ***The type of security service differs from client to client;***

- 2.3** *The Applicant currently provides security services to 36 (thirty-six) clients – 119 guards and CIT services to 65 (sixty-five) clients 56 staff members, also utilised for guarding services;*
- 2.4** *These clients are all situated in a number of small towns across the Western and Northern Cape area;*
- 2.5** *As an added service, the Applicant sub – contracts to G4S and Protea Coin by providing a cash in transit service, these two clients are included in the sixty-five clients mentioned above;*
- 2.6** *G4S and Protea Coin utilise these services for their own clients and as such these clients do not belong to the Applicant;*
- 2.7** *The work done for G4S and Protea Coin form the bulk of the CIT services the Applicant provides;*
- 2.8** *The Applicant has service agreements with these two companies that are re-negotiated on an annual basis. These service agreements can be terminated by either party by giving 2 (two) months notice in the case of Protea Coin and 3 (three) months notice in the case of G4S.*

3. ***The total staff compliment of the Applicant currently, is 175 employees. They are accordingly divided in the following groups:***
 - 3.1 ***Management – 17 employees***
 - 3.2 ***Administration – 5 employees***
 - 3.3 ***Guards – 153 employees***

4. ***Of these 153 employees, not more than 56 are utilised for the cash in transit service. It should be noted that the amount of staff utilized for CIT operations varies from month to month depending on the demand from Protea Coin and G4S;***

5. ***Cash in transit duties only entails a part of their duties as they were appointed to provide normal guarding services, i.e. guarding of premises and business property.***

6. ***The time these employees spent on cash in transit duties are based on an average compiled during a three month period and can be divided as follows:***
 - 6.1 ***Clanwilliam – 2 employees spending an average of 3 hours per day Monday to Friday and 30 minutes on a Saturday.***

 - 6.2 ***Citrusdal - 2 employees spending an average of 1hour per day Monday to Friday and 30 minutes on a Saturday.***

- 6.3** *Piketberg - 2 employees spending an average of 3 hours per day Monday to Friday and 2 hours on a Saturday.*
- 6.4** *Lambert's Bay - 2 employees spending an average of 1 hour per day Monday to Friday and 30 minutes on a Saturday.*
- 6.5** *Springbok – 9 employees spending an average of 7 hours per day Monday to Friday and 3 hours on a Saturday.*
- 6.6** *Vredendal - 9 employees spending an average of 5 hours per day Monday to Friday and 3 hours on a Saturday.*
- 6.7** *Caledon – 8 employees spending an average of 7 hours per day Monday to Friday and 3 hours on a Saturday.*
- 6.8** *Vredenburg - 10 employees spending an average of 7 hours per day Monday to Friday and 3 hours on a Saturday.*
- 6.9** *Malmesbury - 10 employees spending an average of 7 hours per day Monday to Friday and 3 hours on a Saturday.*

No CIT services are rendered on a Sunday.

7. ***As a whole the Applicant spends 38 000 hours per month in rendering guarding and CIT services. Of this total 5405 hours are spent on CIT operations in Caledon, Malmesbury and Vredenburg. On the remaining 6 areas 3595 hours are spent on CIT.***
8. ***Once these “cash in transit” duties are completed, the employees are re-deployed to resume their normal duties as guards, if and where they have to make up their normal hours of work. It should again be noted that the above figures from month to month.***
9. ***The Company falls under the ambit of the Private Security Industry Regulatory Authority and as such is registered there under.***
10. ***All guards employed by the Applicant are registered as security guards at the above – mentioned authority.***
11. ***The Applicant complies fully with all requirements and conditions of employment as set out in the Private Security Industry Regulations Act.***
12. ***The Applicant’s core business is supplying guards to safeguard company premises and property.***

13. *It is thus obvious that the Applicant's business is not that which is envisaged by the main agreement of the National Bargaining Council for the Road Freight Industry. A portion thereof does however fall under the scope of the Council.*

14. *The cash in transit service the Applicant provides for G4S and Protea Coin, is only ancillary to the Applicant's main business. Should the contract terminate between the Applicant and G4S and Protea Coin, said "cash in transit" service will cease to operate.*

15. *Furthermore, the time spent and the employees allocated to the service of "cash in transit" amounts to 23.68% of the total guarding service the Applicant provides, making it impractical to register the whole business of the Applicant under the Bargaining Council for the Road Freight Industry when the core business clearly falls under the Security Industry.*

16. *Taking the abovementioned facts into consideration it is clear that the Applicant operates in the Security Industry and this core activity is not to be subject to the jurisdiction of the aforementioned Bargaining Council.*

**GROUNDINGS IN TERMS OF CLAUSE 4(6)(a) OF THE EXEMPTIONS
AND DISPUTES RESOLUTION AGREEMENT**

- (a) *The Applicant did in the past successfully apply for exemption.*

It should further be noted that the Applicant at present pay Bargaining Council rates to its employees for the hours spent doing “cash in transit” duties and PSIRA regulated rates for the time spent doing guarding services.

- (b) The employees of the firm are guards and as such the Applicant derives income from selling these guarding services to clients. Should the Applicant be made to pay Bargaining Council rates to these employees, and taking into consideration that some of these employees spent less than an hour per day of “cash in transit” duties, The Applicant will price itself out of the market. It should further be noted that the Applicant in the past on various occasions invited inspectors of the Bargaining Council to its premises to seek advise on how the operations might be structured to accommodate the Bargaining Council. It is clear at present that a continuation of the exemption is the best way to structure the business.*
- (c) It is submitted that no precedent will be set as it is clear that the core business of the Applicant falls outside the ambit of the main agreement of the Bargaining Council for the Road Freight Industry.*

UNFAIR COMPETITION:

It is submitted that it will have no effect on unfair competition. The very reason why G4S and Protea Coin subcontract to the Applicant is because it is simply not economically viable to operate “cash in

transit” businesses in these small towns. In Clanwilliam for example they will have to employ two people that will literally work one hour per day each. There is not enough work in these towns to start a “cash in transit” business.

COLLECTIVE BARGAINING:

Again there would be no impact whatsoever. The scope of work the Applicant does that falls within the ambit of the main agreement of the Bargaining Council for the Road Freight Industry, is a small percentage.

POTENTIAL FOR LABOUR UNREST:

It is submitted that exempting the Applicant would have no effect on the above whatsoever.

INCREASED EMPLOYMENT:

Due to the fact that it is not economically viable to start a business in these towns that only does “cash in transit” it is submitted that exempting the Applicant would have no effect on the Industry. As a matter of fact should the Applicant cease its “cash in transit” operations, these towns will in all probability be left without such a service.

EXPLOITATION:

The Applicant's business is registered and operate under the jurisdiction of the Private Security Industry Regulatory Authority and as such are bound by their terms and conditions of employment as outlined by said authority. As such no exploitation can take place. Those employees who do cash in transit work are remunerated according to the Council's rates for the hours spent doing it.

JOB PRESERVATION:

It is submitted that the portion of "cash in transit" the Applicant does is so minimal that exempting the Applicant will have no effect on job preservation. Should the Applicant however not be exempted, those employees that do assist with "cash in transit" would not be able to be utilized as guards due to the fact that the Applicant will then price himself out of the market. This could very well have a detrimental effect on job preservation.

SOUND CONDITIONS OF EMPLOYMENT:

As per the reasons given in clause (i) above it is submitted that exempting the Applicant does not create a situation where conditions of employment might be affected. The Applicant already complies with all the regulations pertaining to conditions of employment as stipulated by the Private Security Industry Regulatory Authority including the payment of bonuses.

POSSIBLE BENEFITS:

As per the above clause, all benefits prescribed by the Private Security Industry Regulatory Authority are in place at the Applicant's business. It should further be noted that all the employees of the Applicant does belong to a provident fund.

HEALTH & SAFETY:

The Applicant party adheres to all legislation pertaining to health and safety and exempting the Applicant will have no affect whatsoever on the health and safety of the employees employed by the Applicant.

FINANCIAL STABILITY:

As was outlined in clause 5 above the Applicant is in the business of providing security services. The provisions of "cash in transit" services are merely ancillary to its core business. The security industry is a highly competitive industry. Should the Applicant be compelled to pay Bargaining Council rates to employees who are spending the majority of their time fulfilling guarding duties it would simply not be able to compete with its competitors. It is further not an option to employ people who only does "cash in transit" as there simply is not enough work to justify the costs.

FUTURE RELATIONSHIP WITH EMPLOYEES' TRADE UNION:

This application does not affect such relationships at all. The Applicant in the past always had excellent relationships with those

unions its employees decided to join.

OPERATIONAL REQUIREMENTS:

Should the Applicant not be exempted it would have a major impact on its operational requirements. Apart from the effect on the operational requirements it would further create a situation whereby towns such as Clanwilliam, Lamberts Bay, Springbok, Citrusdal and Piketberg would be left without an essential service that is crucial for the safekeeping of certain business assets.”

6. **COUNCIL’S SUBMISSIONS**

The Council submitted as follows:

- “1. The Applicant is non-compliant with the Council Agreements at this stage due to that December 2013 and January 2014. Applicant had an exemption that expired on 28/02/2014 – EB29/2013.*

- 2. Applicant is registered with Council since 10/03/2006 and is situated in Cape Town. The Designated Agent assigned to this company is situated in Clan William.*

- 3. Applicant is applying for exemption from contributing to Leave Pay Fund, Holiday Pay Bonus and Sick Leave Fund. Applicant also request to be allowed to pay all staff that does CIT the hourly rate as determined by the Respondent’s Main Collective*

Agreement for hours they spent on CIT operations and PSIRA regulated rates for hours spent on guarding services.

- 4. According to the Applicant out of the 153 Guards, 53 are utilised for CIT services and that CIT duty only entails a part of their duties as they were appointed to provide normal guarding services, i.e., guarding of premises and business property.***

- 5. Invoices against the name of the application were resolved and therefore there are not invoices against the name of the Applicant.***

- 6. The Exemptions Body is guided by the Schedule 5 and Clause 19, 29 and 30 of the Main Collective Agreement and Clause 4(8) of the Disputes Resolution Agreement. We therefore trust that the panel will make their decision accordingly.”***

7. In further submissions made at the meeting the Exemptions Body advised that the Applicant attended to the payment of outstanding invoices. The Council confirmed that the Applicant is fully compliant.

8. **ANALYSIS**

8.1 The submissions made were considered.

8.2 The bulk of the work carried out by the employees of the Applicant falls within the perimeters of the Sectorial Determination.

8.3 The Exemptions Body is satisfied that the Applicant met the criteria for granting an exemption.

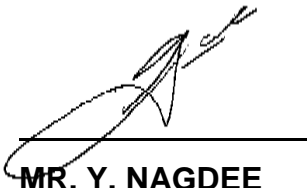
9. **DECISION**

9.1 The Applicant is granted an exemption from the 1st March 2014 to 28th February 2015.

9.2 The Applicant is granted an exemption from contributing to the Leave Pay Fund, Holiday Pay Bonus Fund and Sick Leave Fund. The exemption is subject to verification by Council that the Employees mainly carry out duties that fall within the Sectorial Determination. Should the position change, the exemption may be revoked.

9.3 The Exemption does not apply to levies, the Wellness Fund and Agency Shop. These should continue and calculations done on the actual hours worked by employees in the cash in transit sector.

DATED THE 31 DAY OF MARCH 2014 AT BRAAMFONTEIN, JOHANNESBURG.



MR. Y. NAGDEE

Chairperson of the
Exemption Body



MR G. WESSELS

Member of the
Exemption Body

I agree