

Press Statement

For Immediate Release

7 February 2024

NBCRFLI RESPONSE TO ISS PRESS STATEMENT OF 25 JANUARY 2024

On the 25th of January 2024 Innovative Staffing Solutions (ISS) published an article in the press headed *“Innovative Staffing Solutions Legal Victories and Updates”*. The article was fraught with factual inaccuracies and certain allegations are defamatory in nature. The purpose of this article is to correct the facts alluded to by Mare, the Managing Director of ISS.

In the article Mare refers to a matter in which it alleges that it brought an urgent application in terms of Section 33A of the LRA. ISS launched an application in which it sought relief based on the application of section 33A(4). The statement by Maree that *“Judge Snyman found that a non-party should object to the proceedings. The National Bargaining Council for the Road Freight and Logistics Industry must request the CCMA to appoint a CCMA Commissioner.”* is factually incorrect. Judge Snyman in his analysis of the arguments put forward by ISS in his judgment set out the application of Section 33A and confirmed that Section 33A(b) states that *“if a party to an arbitration in terms of this section is not a party to the Council objects to the appointment of an arbitrator in terms of paragraph (a), the Commission on request by the Council must appoint a Commissioner.”*

Mare in the article makes reference to a ruling granted by Senior Commissioner Myhill on the 13th of December 2023, under case numbers GAUREG 514/22, FAU121/17661 and GAU097/2803/22 in which he alleges that *“before the ruling was made, the*

NBCRFLI exploited the position of referring enforcements disputes excessively late.”

This statement is devoid of fact, has no legal basis and is defamatory in nature.

In this matter the Council sought to enforce its Main Collective Agreement against two of its members and ISS. ISS and the two members brought an application in which they alleged that the Commissioner had no jurisdiction to arbitrate the disputes on various grounds one being that Council cannot rely on ISS being a TES in the absence of evidence and the other being that the Commissioner has no jurisdiction to enforce any of the provisions relied upon by the Council to compel compliance with the collective agreement as the enforcement proceedings have been instituted outside a reasonable time period.

CCMA Commissioner Myhill agreed with the Bargaining Council that the demarcation award which declared ISS a temporary employment service is valid and binding on ISS and allof its clients, in his ruling held that *“The Award is applicable to ISS’s services/operations and binds all of ISS’s clients who utilize ISS’s services in terms of the SLA.”* [76]

Commissioner Myhill in his ruling found that the Bargaining Council has 90 days to institute a claim. The Councils’ position is that Commissioner Myhill’s finding that the reasonableness of the 90-day period for issuing of a claim is wrong and has reserved its right to take the matter on review to the Labour Court at the appropriate time. Unlike the demarcation award which is distinguishable from ordinary arbitration awards, the 90-day ruling of Commissioner Myhill is not binding on other commissioners. ISS misleadingly claims that the 90-day period for issuing compliance orders is a ground-breaking victory but fails to mention that the Bargaining Council is entitled to apply for condonation which is pending before the CCMA and in any event all future compliance orders issued by the Council that fall within a 90-day period may be enforced directly against ISS members. Commissioner Myhill relying on section 198(4) of the LRA confirmed that ISS (TES) and its clients are jointly and severally liable.

The Bargaining Council has explained in its condonation application that it has faced ongoing litigation instituted by ISS and its clients which included litigation to suspend the operation of the demarcation award which caused delays and uncertainty in the industry.

The bald allegation by Mare that *“the NBCRFLI and various bargaining councils often filed enforcement proceedings late as an exploitation tactic and the allegation that “This ruling will prevent them from doing this moving forward are devoid of any truth, has no factual or legal basis and is defamatory against the Council and all other bargaining councils. The ruling is only binding on the parties to the dispute, other commissioners are not bound by the finding of Myhill and it is not law.*

Mare alludes to a stakeholder newsletter published by the Council in which he alleges that it is riddled with defamatory accusations towards ISS. This is factually incorrect. The Council highlighted areas of concern in the newsletter namely the truck attack which resurfaced in July last year placing the sustainability of the Council at stake and a legal smear campaign by ISS. This paragraph was misinterpreted by ISS who believed that Council was accusing it of posing a challenge to the sustainability of the trucking and road freight industry by grouping it with truck attacks and torching.

The council acknowledged that the use of the word smear campaign was poor choice of words and published the following retraction: *“In the stakeholder newsletter sent out on the 19th of December 2023, the Council referred to one of the challenges being faced by it in 2023 was a “legal smear campaign” by ISS. The Council retracts this statement. The challenge being referred is the ongoing litigation between ISS and council and the continued refusal by ISS to comply with the Councils Collective Agreements.”*

END

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