


24 January 2025

Circular to all Employers in the Road Freight & Logistics Industry

Re: Innovative Staffing Solutions Letter Dated 15 January 2025


1. It has come to the Council's attention that the Innovative Staffing Solutions (ISS) has issued a letter to its members which is fraught with factual inaccuracies.
2. In the letter ISS states that *"the purpose of the application was to ensure that its clients are protected against Section 33A enforcement applications brought by the BC."*
3. ISS further states that:

"After hearing the arguments, the Judge found that the enforcement arbitration awards related to the enforcement of the BC's Main Collective Agreement be stayed with immediate effect and that the BC is restrained from progressing any ongoing section 33A enforcement proceedings. Consequently, the BC would similarly be interdicted and restrained if it were to either enforce any enforcement arbitration awards or launch/progress (set down) any section 33A enforcement proceedings against our clients for the foreseeable future."
4. ISS further states that



“With this Judgement and Court Order, ISS can eliminate risk of our clients associated with Section 33A enforcement proceedings. If the BC attempts to enforce against our client, we will renew the interdict and seek punitive costs and/or institute contempt proceedings.”

5. On 25 September 2024, various members of ISS submitted an urgent application in the Labour Court seeking to stay the enforcement proceedings outlined in an Annexure A and B pending the determination of declaratory application to be heard by the court.
6. The core issue of the declaratory application revolves around a dispute as to the reasonable time periods for referral of enforcement disputes to Arbitration in terms of section 33A of the Labour Relations Act no. 66 of 1995 (LRA) as amended.
7. Section 33A of the LRA does not prescribe a period for referral of enforcement disputes to Arbitration. ISS and its members contend and want the Court to rule that a reasonable time for referral to arbitration should be made between 30 to 90 days of the claims arising in terms of Council's Main Collective Agreement.
8. Council disputes the 30-90-day period for a referral for arbitration relied upon by ISS. Council asserts that, with regards to its enforcement process, compliance orders are issued prior to arbitration in terms of Section 33A of the LRA giving employers 14 days to comply and then followed by Arbitration. Accordingly, an agent has three years to issue a compliance order, which aligns with the three-year period granted to labour inspectors under the BCEA and the three-year period stipulated in the Prescription Act no. 68 of 1969, as amended.
9. On 10 January 2025, a Labour Court judgment was issued by a judge who upheld members of ISS's urgent application to stay the enforcement



proceedings specifically for cases listed in annexure A & B of ISS application until the Court finalises the declaratory application.

10. The order reads as follows:


“1. That the forms and services provided for in the rules of this Court are dispensed with, and this matter is disposed of in accordance with rule 8 and dealt with as an urgent application

2. Pending finalisation of the declarator proceedings instituted under case number JR1586/24 the enforcement proceedings listed in Annexure A and the enforcement awards listed in Annexure B are forthwith and immediately stayed.

3. Pending finalisation of the declarator proceedings instituted under case number JR1586/24, the respondent is interdicted and restrained from setting down the enforcement awards listed in Annexure A against the applicants.

4. There is no order for costs.”

11. The consequence of this ruling has compelled Council to suspend the enforcement proceedings specifically for cases listed in the annexure A & B, until the declaratory application is dealt with which is anticipated to occur within the next few months. In this regard, the judge has directed the parties to approach the Judge President for an expedited date.

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12. It is clear from the order that the Judge did not grant ISS or its members a blanket stay of all enforcement matters. Council is only precluded from enforcing the claims specifically listed in annexure A and B.
 13. Further the relief granted by the Judge is interim relief and if the members of ISS are unsuccessful in the declaratory application, Council will be entitled to enforce the claims listed in the Annexure A and B as referred to in the Court order.
 14. Lastly, Council still maintains that it operates within the scope and ambit of the LRA and our enforcement proceedings, including compliance order and all referrals to Arbitration are done in accordance with the prescripts of section 33A of the LRA. All employers are still required to comply with the Main Collective Agreement and Council is still empowered to enforce any non-compliance the provisions of the Main Collective Agreement and refer enforcement disputes to Arbitration.

Yours Faithfully

Musa Ndlovu

National Secretary

(This document has been sent electronically, and is therefore not signed)