

SCHEDULE**NATIONAL BARGAINING COUNCIL FOR THE ROAD FREIGHT INDUSTRY
EXEMPTIONS AND DISPUTE RESOLUTION COLLECTIVE AGREEMENT**

In accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

Road Freight Employers' Association

(hereinafter referred to as the "employers" or the 'employers' organisation"), of the one part,
and the

Motor Transport Workers' Union (South Africa)

Professional Transport Workers' Union of South Africa

South African Transport and Allied Workers' Union (SATAWU)

South African Allied Commercial Workers' Union (SAACOWU)

and

Transport and Allied Workers' Union (TAWU)

(hereinafter referred to as the "employees" or the "trade unions", of the other part, being the parties to the National Bargaining Council for the Road Freight Industry.

1. SCOPE OF APPLICATION

- (1) The whole of the Republic of South Africa.
- (2) Notwithstanding the provisions of sub-clause (1), the terms of this Agreement shall apply:
 - (a) to employees for whom minimum wages are prescribed in the Main Agreement, as renewed and amended from time to time and to the employers of such employees in respect of clauses 4 and 5(1) of the Main Agreement; and
 - (b) to employees as provided for in Council's Certificate of Registration.

- (3) The terms of this Agreement shall be observed in the Road Freight Industry –
- (a) by all employers who are members of the employers' association/s and their employees; and
 - (b) by all employees who are members of the party trade unions and their employers; and
 - (c) all non-party employers and employees, subject to this Agreement being extended to non-parties by the Minister of Labour.
- (4) Notwithstanding the provisions of sub clause 6(1) and (2), the terms of this Agreement shall not apply to non-parties in respect of clauses 1(1) and 2.

2. PERIOD OF OPERATION OF AGREEMENT

This Agreement shall come into operation on such date as may be fixed by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995, and shall remain in force until 28 February 2012.

3. DEFINITIONS

Unless the contrary intention appears, any expressions used in this Agreement which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act, and any reference to an Act shall include any amendment to such Act; any reference to the singular shall include the plural and visa versa; any reference to any gender shall include the other gender, and further unless inconsistent with the context:

“**Act**” means the Labour Relations Act, 1995;

“**Council**” means the National Bargaining Council for the Road Freight Industry (NBCRFI); and any functions to be performed by the Council in terms of this Agreement may be

performed by the Council's National Secretary or any other employee of the Council to which the Council or National Secretary has delegated such function in writing;

"Law" includes the common law.

4. EXEMPTIONS

- (1) The Council hereby establishes an exemptions body, constituted of persons independent of the Council, to consider all applications for exemption from the provisions of the Council's Collective Agreements. In terms of section 32(3)(e) of the Act, the Council establishes an Independent Body to hear and decide as soon as possible any appeal brought against the Exemptions Body's refusal of a non-party's application for exemption from the provisions of a collective agreement or the withdrawal of a non-party exemption by the Exemptions Body or the Council.
- (2) Applications for Exemption shall be in writing on the appropriate application form(s) obtainable from any NBCRFI office. Application forms must be submitted to the applicable NBCRFI Regional Office and served on all interested parties.
- (3) Applications shall comply with the following requirements:
 - (a) Be fully motivated.
 - (b) Be accompanied by relevant supporting data and financial information.
 - (c) Applications that affect employees' conditions of service shall not be considered unless the employees or their representatives have been properly consulted and their views fully recorded in an accompanying document.
 - (d) If the nature of the relief sought dictates, the application shall be accompanied by a plan reflecting the objectives and strategies to be adopted to rectify the situation giving rise to the application and indicating a time frame for the plan.

- (e) Indicate the period for which exemption is required.
- (4) Upon receipt of a valid application Council shall refer it to the Exemptions Body which may, if deemed expedient, request the applicant to attend the meeting at which the application is considered, to facilitate the deliberations.
- (5) In the event of the Exemptions Body refusing to grant an application, the applicant shall have the right to appeal in writing against the decision to the Independent Body. An appeal to the Independent Body must be noted in writing within 1 month of the applicant becoming aware of the Exemptions Body's decision, or such further time as the Independent Body may allow. The notice of appeal must set out the grounds on which the applicant's appeal is based.
- (6) In the event of the Exemptions Body granting an application, the Council or any other interested party shall have the right to appeal against the decision to the Independent Body and the provisions of clause 4(5) with the necessary changes to its context will apply.
- (7) The Exemptions Committee of Council shall appoint not more than four persons who shall be entitled to attend all meetings of the Exemptions Body and Independent Body at which applications for exemptions, or appeals against refusals to grant exemptions, or the withdrawal of such an exemption by the Exemptions Body or the Council, are considered, to make representations to the Bodies on any of the applications.
- (8) In considering the application, the Exemptions Body and Independent Body shall take into consideration all relevant factors, which may include, but shall not be limited to, the following criteria:
- (a) The applicant's past record (if applicable) of compliance with the provisions of Council's Collective Agreements and Exemption Certificates;

- (b) any special circumstances that exist;
 - (c) any precedent that might be set;
 - (d) the interests of the Industry as regards-
 - (i) unfair competition;
 - (ii) collective bargaining;
 - (iii) potential for labour unrest;
 - (iv) increased employment;
 - (e) the interests of employees' as regards-
 - (i) exploitation;
 - (ii) job preservation;
 - (iii) sound conditions of employment;
 - (iv) possible financial benefits;
 - (v) health and safety;
 - (vi) infringement of basic rights;
 - (f) the interests of the employer as regards--
 - (i) financial stability;
 - (ii) impact on productivity;
 - (iii) future relationship with employees' trade union;
 - (iv) operational requirements.
- (9) The Exemptions Body or Independent Body must decide the exemption or appeal as the case may be within 14 days of the last date of the hearing and notify the parties of the decision and the reasons therefore, which reasons may be given at a later time but not later than 30 days after the decision.

- (10) If the application is granted, the Exemptions Body or Independent Body shall issue an exemption certificate, signed by its Chairman and Secretary, containing the following particulars:
- (a) The full name of the applicant(s);
 - (b) the trade name;
 - (c) the provisions of the Agreement from which exemption is granted;
 - (d) the period for which the exemption shall operate;
 - (e) the date of issue;
 - (f) the condition(s) of the exemption granted.
- (11) The Exemptions Body or Independent Body shall -
- (a) retain a copy of the certificate and number each certificate consecutively;
 - (b) forward a copy of the certificate to the Secretary of the Council; and
 - (c) forward to the employer a copy of a certificate issued to an employee.
- (12) An employer to whom a certificate has been issued shall at all times have the certificate available for inspection at his establishment.

5. RESOLUTION OF DISPUTES

(1) Disputes about the interpretation or application of Council's Collective Agreements (Enforcement):

- (a) In this clause a dispute is any dispute arising out of the interpretation or application of the Council's Collective Agreements and includes a breach or breaches or alleged breach or breaches of those agreements.

- (b) Any person may refer a dispute about the interpretation, application or enforcement of the Council's Collective Agreements to the Council who may require an agent/designated agent to investigate the dispute.
- (c) Any designated agent of the Council must investigate a dispute that comes to his attention in the course of performing his duties.
- (d) A dispute may be conciliated by:
 - (i) a designated agent in the course of or after an investigation; or
 - (ii) a duly appointed conciliator.
- (e) Any designated agent of the Council is authorized to issue a Compliance Order requiring any person bound by the Council's Collective Agreements to comply with the Collective Agreements within 14 days.
- (f) Any dispute envisaged in this clause may be dealt with in accordance with the provisions of Section 33A of the Act.
- (g) Any arbitrator who has issued an arbitration award or ruling, or any other arbitrator appointed by the Secretary for that purpose may at his own initiative or as a result of an application by an affected party, vary or rescind an award or ruling –
 - (i) erroneously sought or made in the absence of any party affected by the award;
 - (ii) in which there is ambiguity, or an obvious error or omission, but only to the extent of that ambiguity, error or omission; or
 - (iii) granted as a result of a mistake common to the parties to the proceedings.

- (h) If the arbitrator makes an award and a party to the arbitration must pay an arbitration fee, such fee will be determined by the Council from time to time.

(2) Other disputes referred to Council in terms of the Act:

- (a) All disputes in terms of this sub clause shall, if required by the Act, be referred to the Council for conciliation and arbitration, in terms of the Council's rules.
- (b) The Council shall be entitled but not required to investigate any matter referred to it by whatever means it considers appropriate for the purposes of assisting in the determination of the nature, date or complexity of the dispute in order to assist with its administrative functions.
- (c) When a dispute has been referred to the Council, the Council must appoint a conciliator to attempt to resolve through conciliation.
- (d) The appointed conciliator must attempt to resolve the dispute through conciliation within 30 days of the date the Council received the referral: however the parties may agree to extend the 30 day period.
- (e) The conciliator(s) must determine a process to attempt to resolve the dispute, which may include –
- (i) mediating the dispute;
 - (ii) conducting a fact finding exercise;
 - (iii) making a recommendation to the parties, which may be in the form of an advisory award; and
 - (iv) conducting the conciliation hearing telephonically.
- (f) When conciliation has failed, or at the end of the 30 day period, or any further period agreed between the parties –

- (i) the conciliator shall issue a certificate as envisaged in Section 135(5) of the Act stating whether or not the dispute has been resolved: provided that no certificate shall be issued to any applicant who fails to attend the conciliation proceedings without prior notification and good cause;
 - (ii) the conciliator shall serve a copy of that certificate on each party to the dispute or the person who represented a party in the conciliation proceedings; and
 - (iii) the conciliator shall file the original of that certificate with the Council.
- (g) If a dispute remains unresolved after conciliation in terms of this sub-clause the Council shall arrange for arbitration of the dispute if –
- (i) the Act requires arbitration and any party to the dispute has requested in writing that it be resolved through arbitration;
 - (ii) the written request to Council for arbitration is accompanied by proof that a copy of the request has been served on the other party;
 - (iii) a conciliator has issued a certificate stating that the dispute remains unresolved; and
 - (iv) the written request referred to in (i) above is made within 90 days after the date on which the certificate referred to in (iii) above was issued: however, the Council, on good cause shown, may condone a party's non-observance of this time frame and allow a request for arbitration filed by the party after the expiry of the 90 day period.
- (h) The categories of disputes that the Council is required to resolve through arbitration, are those set out in the Act.
- (i) The Secretary or a designated official of the Council, shall-

- (i) appoint an arbitrator from the Council's accredited panel in respect of the dispute;
 - (ii) schedule the time and place for the hearing and notify the parties;
 - (iii) if necessary, arrange for witnesses to be subpoenaed to attend the hearing.
- (j) If any party to a dispute objects to the arbitration of the dispute by an arbitrator appointed by the Secretary of the Council, the objecting party may request arbitration by an arbitrator selected from an independent panel providing arbitration services which, where required, complies with the provisions of the Act.
- (k) The arbitrator shall conduct the arbitration in a manner that he considers appropriate in order to determine the dispute fairly and quickly, but shall deal with the substantial merits of the dispute with the minimum of legal formalities.
- (l) Subject to the discretion of the arbitrator as to the appropriate form of the proceedings, a party to the dispute may give evidence, call witnesses, question the witnesses of any other party, and address concluding arguments to the arbitrator.
- (m) An arbitrator appointed in terms of this clause has the powers set out in Section 142(1) of the Act.
- (n) The arbitrator shall take into account any code of good practice that has been issued by NEDLAC, in accordance with the provisions of the Act, relevant to the matter being considered in the arbitration proceedings.


- (o) The arbitrator may make any appropriate arbitration award, in terms of the Act, including, but not limited to, an award-
 - (i) that gives effect to the provisions and primary objects of the Act;
 - (ii) that gives effect to the applicable Collective Agreements;
 - (iii) that includes, or is in the form of, a declaratory order.
- (p) If the arbitrator finds that a dismissal or unfair labour practice is procedurally unfair, the arbitrator may charge the employer an arbitration fee to be determined by the Council from time to time.
- (q) Within 14 days of the conclusion of the arbitration proceedings-
 - (i) the arbitrator shall issue an arbitration award, signed by that arbitrator;
 - (ii) the arbitrator shall serve a copy of that award on each party to the dispute or the person who represented a party in the arbitration proceedings; and
 - (iii) the arbitrator shall file the original of that award with the Secretary of the Council.
- (r) Within 30 days of the conclusion of the arbitration proceedings, the arbitrator shall, at the written request of either party, furnish reasons for the award if such reasons were not given in the award itself.
- (s) On good cause shown, the Secretary may extend the period within which the arbitration award and the reasons are to be served and filed.

(3) General


- (a) The Secretary may apply to the Labour Court to make any arbitration award issued in terms of this agreement an order of the Labour Court in terms of Section 158(1) of the Act.

- (b) The Council may issue rules not inconsistent with the provisions of this agreement further regulating the practice and procedures for the conduct of exemption or dispute proceedings. Once issued a copy of such rules must be kept by and may be obtained from the offices of the Council.
- (c) The provisions of this agreement stand in addition to any other legal remedy through which the Council may enforce its Collective Agreements.
- (d) This agreement recognizes the applicability of Sections 33A, 51 and 191 of the Act and the Sections of the Act referred to in those Sections to proceedings conducted in terms of this clause.


Signed at Johannesburg, for and on behalf of the parties to the Council, this 14th day of
August 2007.



MR. J.J. DUBE
Chairperson of the Council



MR. T.C. SHORT
Vice-Chairperson of the Council



MR. J. LETSWALO
National Secretary of the Council