

NATIONAL BARGAINING COUNCIL FOR THE WOOD AND PAPER SECTOR

Procedures for Appeals to the National Exemptions Appeal Committee

Issued by the National Exemptions Appeal Committee on _____

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1. Definitions

Any expression in these Procedures that is defined in the Constitution of the Bargaining Council for the Wood and Paper Sector has the same meaning as in that Act or as defined in that Constitution and -

‘Act’ means the Labour Relations Act, 1995 (Act No 66 of 1995);

‘Bargaining Council’ means the Bargaining Council for the Wood and Paper Sector;

‘Constitution’ means the Constitution of the Bargaining Council;

‘day’ means any day other than a Saturday, Sunday or public holiday, and when any particular number of days is prescribed for the doing of any act, the number of days must be calculated by excluding the first day and including the last day;

‘Exemption Committee’ means the National Exemptions Committee;

‘General Secretary’ means the General Secretary of the Bargaining Council;

‘Appeal Committee’ means the National Exemptions Appeal Committee;

‘deliver’ means serve on other parties and the General Secretary of the Bargaining Council;

‘party’ means any member of a Chamber within the Bargaining Council;

'public holiday' means a public holiday referred to in s1 of the Public Holidays Act 1994 (Act No 36 of 1994), or a day proclaimed as a public holiday under s 2 of that Act; and

'serve' means to send by registered post, telegram, telex or fax, or to deliver by hand.

2. Procedure on appeal

2.1 Every appellant wishing to appeal a determination of the Exemption Committee must deliver a notice of appeal within 15 days from the date of the determination or any longer period that may be allowed by the Appeal Committee.

2.2 Every notice of appeal must be in writing and must set out all relevant information including:

2.2.1 The views of the employees of the appellant and:

2.2.1.1 Where they did not support the appellant's application for exemption the grounds on which they opposed the application for exemption

2.2.1.2 If they supported the application for exemption, written confirmation of such support

2.2.2 Any record or information about consultations held prior to the application to the Exemptions Committee between an equal number of employers and employees within the relevant council chamber at which

2.2.2.1 The merits and terms of the exemptions have been considered; and

2.2.2.2 There had been full disclosure to all the parties on all information relevant to the consideration of the exemption;

2.2.3 A copy of the application to the Exemption Committee

2.2.4 Any record of proceedings before the Exemptions Committee

2.2.5 The determination by the Exemptions Committee and what part or parts of the determination is taken on appeal

2.2.6 The provisions of the agreement in respect of which exemption is sought;

2.2.7 The persons in respect of whom the exemption is sought; and

2.2.8 The reasons why the exemption is sought

2.2.9 The period for which exemption is sought

2.2.10 Any actual or potential undue financial hardship to the appellant;

2.2.11 The nature and size of the business in respect of which the application is made;

2.2.12 The circumstances prevailing in the sector as a whole or the industries likely to be affected by the application; and

2.2.13 Whether or not the granting of the exemption will prejudice the objectives of the Council.

2.2.14 an address or fax no where the party will accept notices and other documents in the appeal.

2.3 Every notice of appeal must have attached to it written proof that the application has been served on all parties to the collective agreement reached within the relevant Chamber of the Bargaining Council.

3. Notice of opposition

3.1 Any party wishing to oppose an appeal served in accordance with Rule 2 must do so by way of a written notice of opposition setting out the grounds on which the appeal is opposed and responding to all the statements made by the appellant in accordance with Rule 2.

3.2 Provide an address or fax no where the party will receive notices and other documents.

3.2 The notice of opposition must be delivered within 15 days from the date that the appeal had been served on the opposing party.

4. Reply

The appellant may deliver a written reply within 5 days of receipt of the notice of opposition in accordance with Rule 3.

5. Steps to be taken by the General Secretary

5.1 The General Secretary must

5.1.1 upon service of the notice of appeal allocate a case number and thereafter cause a proper record to be kept of all notices of appeal, opposition and replies;

5.1.2 provide each member of the Appeal Committee with a copy of the notice of appeal together with any notices of opposition and replies served by parties;

5.1.2 within a reasonable period from the date of service of the notice of appeal and with the agreement of the Appeal Committee set a date, time and venue for a hearing of the appeal;

5.1.3 notify the parties to the appeal of the date time and venue of the appeal hearing.

5.2 The notice required by sub rule 5.1.3 must be given by fax or registered letter and a registered letter or fax that has been forwarded to a party's last-known address or the address of that party's last-known representative will be deemed to be sufficient notice of the date, time and place of the hearing for the purposes of this rule.

6. Failure to appear at an appeal hearing

If the appellant fails to appear in person or through a representative at a hearing, the Appeal Committee may dismiss the appeal.

7. Condonation

7.1 The Appeal Committee may, on good grounds shown, excuse the parties from compliance with any of these rules.

7.1.1 The Application must be supported by an affidavit.

7.1.2 The affidavit must clearly and concisely set out

- (a) the names , description and addresses of the parties;
- (b) a statement of the material facts, in chronological order, on which the application is based, in sufficient detail to enable any person opposing the application to reply to the facts;
- (c) a statement of legal issues that arise from the material facts, in sufficient detail to enable any party to reply to the document;
- (d) if the application is filed outside the relevant time period, the applicant must set out the following grounds for condonation:
 - (i) the degree of lateness;
 - (ii) the reasons for the lateness;
 - (iii) the prospects of success in the appeal;
 - (iv) the prejudice to the other party;
 - (v) any other relevant factors

7.2 Any party opposing the application may serve a notice of opposition and an answering affidavit within 5 days from the day on which the application was served on that party.

7.3 The party initiating the proceedings may deliver a replying affidavit within 5 days from the day of which the notice of opposition and answering affidavit are served on it.

8 . Postponements

8.1 An appeal hearing may be postponed-

8.1.1 by written agreement between the parties to a date determined by the General Secretary in accordance with rule 5.1.2;or

8.1.2 by written application and notice to the other parties. After considering the application the Appeal Committee may-

- (i) without convening a hearing, postpone the matter to a date to be advised by the General Secretary; or
- (ii) convene a hearing to determine whether to postpone a matter

9. Representation

A party to the appeal may appear in person or be represented by a legal practitioner, or by a member, office bearer or official of that party's trade union or employers organisation

14. Commencement of rules

These rules will come into operation on _