



EXTENSION OF THE BARGAINING COUNCIL MAIN AGREEMENT TO ALL NON-PARTIES

“TRYING TO MAKE SENSE OUT OF IT”

FROM AN OPERATOR’S VIEWPOINT

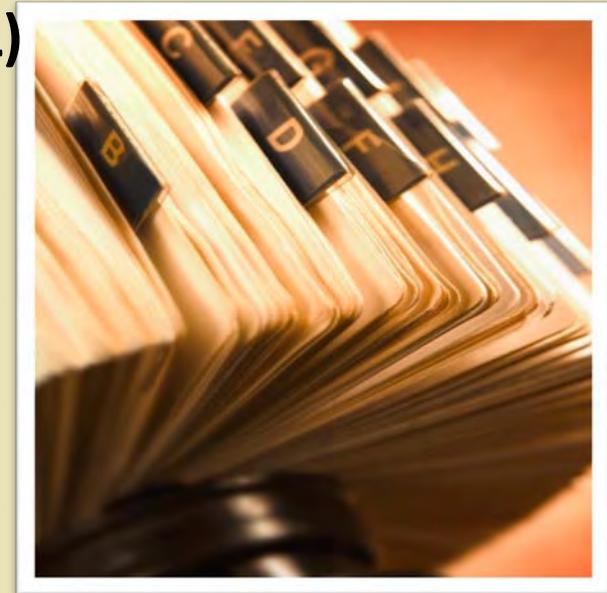
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1. INTRODUCTION

- This presentation is purely an attempt to indicate to you the argument and views from an Operator's side. It is an attempt to try and understand what made the Minister to decide on extending the Main Agreement to non-parties.
- This is by no way a legal argument and is not meant to be. It is a layman's attempt to understand the dynamics of this legislation and how to deal with it.



2. HISTORY OF THIS PIECE OF LEGISLATION

GOVERNMENT NOTICE NR	DATE	AIM OF NOTICE	WITH EFFECT OF	PERIOD END
R 272	5 APRIL 2012	Extend Main Agreement to all Non-Parties	16 APRIL 2012	31 MARCH 2013
R 481	29 JUNE 012	Cancel abovementioned Notice R 272	9 JULY 2012	-
R 481	29 JUNE 2012	Extend Main Agreement	9 JULY 2012	31 MARCH 2013
R 883	2 NOVEMBER 2012	Extend Main Agreement	12 NOVEMBER 2012	31 MARCH 2013
R 247	5 APRIL 2012	Extend period in Notice 482 and R883 to 31 ST JULY 2013	9 JULY 2012	31 JULY 2013
R 515	26 JULY 2013	Extend periods in Notice 482, 883 and 247 to 30 TH JUNE 2014		30 JUNE 2014
R 604	16 AUGUST 2013	Cancel Notice 482, 883, 247 and 515	26 AUGUST 2013	-
R 605	16 AUGUST 2013	Extend Main Agreement	26 AUGUST 2013	30 JUNE 2014



3. ROAD PASSENGER TRANSPORT TRADE DEFINITION

- A. The scope of registration of the abovementioned council has in terms of Section 58 of the Labour Relations Act, been varied. With effect from 1 March 2012, the Council is registered in respect of the Road Passengers Transport Trade, (as defined hereunder) in the Republic of South Africa.

“Road Passenger Transport Trade” or “trade” means the trade in which employers (other than employers exclusively conveying schoolchildren between their places of residence and the schools they attend) and their employees are associated for the purpose of conveying for reward on any public road any person by means of a power-driven vehicle (other than a vehicle in possession and under the control of Transnet or a local authority) intended to carry more than 16 persons simultaneously including the driver of the vehicle and includes all operations incidental or consequential thereto.

SIGNED BY REGISTRAR OF LABOUR RELATIONS DATED 1 MARCH 2012



4. EVALUATION OF PREVIOUS DEFINITION

- ❑ Includes all modes of transport 17 seated and more.
- ❑ Must be like that to ensure competitiveness, sure it was the intention of Minister/Council taking into consideration the competition on long distance routes between buses and Taxi's (obviously not known to...) where 17/22 seated vehicles are utilized more and more.
- ❑ Includes most school bus operators as they are doing Special Hires over weekends.
- ❑ Appears that the definition or impact is not understood/or ignored by Taxi Associations (17 + seated vehicles)



5. OUR “ASSUMED” RIGHTS PART 1

- ❑ We are ALL supposed to be treated fairly under the constitution and we all assume, as private entrepreneurial businesses, that Government will endeavor to create a scenario of growth and to foster entrepreneurial spirit in order to create jobs. “Everyone is equal before the law and has the right to equal protection and benefit of the law”.
- ❑ However the extension of the Main Agreement to non-parties appears to be in conflict with the Constitution and is the least to say, oppressive in nature.
- ❑ The arguments to the above can be found in various pending Court Cases of which the most important cases are:
 - FREE MARKET FOUNDATION
 - Case No 13762/2013 in the Gauteng North High Court.
 - COASA OPERATORS
 - Case No JR 1692-13 in the Labour Court of South Africa - Johannesburg



5. OUR “ASSUMED” RIGHTS

PART 2

- ❑ **As workers – FREEDOM to decide:**
 - ✓ **What job to consider than no job at all,**
 - ✓ **What kind of jobs I want,**
 - ✓ **What amount of pay they are prepared to work for,**
 - ✓ **What conditions they are prepared to work for.**

- ❑ **Employers – Especially Small and Medium Enterprises – mostly entrepreneurial and not Government subsidized:**
 - ✓ **To apply entrepreneurial ideas and so to grow and to create jobs,**
 - ✓ **Not to be dominated or hijacked by large firms who use the power of the law to hold everyone at ransom,**
 - ✓ **Not to receive “punishment” when they do not adhere to the extended Main Agreement**
 - ✓ **To increase the rate of growth of SMME’s. In SA we are far behind the rest of the world in that regard.**





6. BUDGET SPEECH OF HONOURBLE MINISTER OF LABOUR

- In her Budget Speech in Parliament on 22 May 2013 the Minister said whilst urged all stakeholders to work together to achieve a peaceful environment in Labour relations and collective bargaining:
- “This is not a task for Government alone. It is one that requires all employers, employees and their organizations to renew our common loyalty to our Country and our commitment to its future ... we need to take our destiny into our own hands and find long term solutions to the challenges that face the future of labour relations and collective bargaining.”
- The Minister accepts the “adversial nature” of the Countries industrial relations and wish to explore ways to arrest the “potential threat” to the system of collective bargaining.
- Thank you Minister. Our smaller, non Governmental subsidized entrepreneurial businesses is committed as you requested.



7. WHAT HAPPENED THEN???

- The Minister is aware of Coming Court Cases, the majority of bus operators resisting the extension to non-parties, various discussions and meetings with the General Secretary of SARPBAC and SABEA, the mayor role players to the Bargaining Council to voice out the uneasiness of the “rest” of the Transport Industry (as per the definition) – but her reaction???
- She extends the period of the extension of the Main Agreement to Non-Parties from 31 July 2013 to 30 June 2014 as per Government Notice 515 dated 26 July 2013. (Two (2) months after the Budget Speech)
- So the Honorable Minister accepts the “potential threat” to the system of collective bargaining from various spheres in the Industry.
- She is aware of the strong opposition in this regard and
- The Minister, although under immense pressure from different sectors of the Industry, again extended the Main Agreement to non-parties.
- How Minister do you need us, outside the Bargaining Council, to invest, create jobs, be loyal if we feel you :
 - Ignore us – no consultation
 - Impose burdens on our business that we could not afford
 - Ignore the unemployment rate of 24 % or 4,83 million South African’s unemployed.

8. RESULTS EXPECTED IF EXTENSION IS SUCCESSFUL??

- By settling wage levels (and broader labour costs) above what some companies would pay and some employees would accept, makes it unprofitable for certain types of firms to operate.
- These Firms are forced to exit and new firms will be reluctant to invest.
- It is mostly smaller and more labour intensive firms, where labour are generally lower where these extensions bite.
- Businesses can not afford to take on more workers or go out of business thus destroying jobs.
- Mostly low skilled employees, females or the youth is firstly retrenched – remain unemployed.
- Lack of competition results to higher prices as it would be in a more competitive market.



9. WHAT IS THE VIEW FROM COLUMNISTS/OPINION LEADERS ?

- Employers (read unsubsidized, small entrepreneurial concerns) had this system imposed on them without their consent.
- As David Gleason in the article in BD Life of 11 February 2014 state:
 - “The centralized bargaining system has been hijacked by selected parties, who use the power of the law to hold everyone to ransom. Too often the bargaining councils are dominated by the industry unions and by the major employers”

He further continues:

- “One of the least favorable aspects is that large employers sitting on the various councils are able, with the connivance of union representatives, to set benchmarks that make it difficult for other to compete.”

Gleason then closed the article as follows:

- “It will even be a lot better for a government that claims it is on the side of workers and then be bullied into legislation what instead enforces a labour aristocracy.”



9. WHAT IS THE VIEW FROM COLUMNISTS/OPINION LEADERS ?

- Addressed by Herman Mashaba, Chairman of the FMF on 5 March 2013.
 - “In the past 20 years we have not seen growth of small and medium sized black owned businesses that comes anywhere in other countries. South Africa fails dismally in business and job creation and the labour laws play a significant role in that failure”.

Mashaba refers to the Newcastle example in the Textile Industry:

- “It does not matter if the workers are happy with their wages and working conditions. If the employers are not meeting the requirements of the labour laws they get punished and even closed down and their employees lose their jobs.”

He closed his speech by saying regarding the decision of the FMF to challenge the extension of Bargaining Councils:

- “We took this decision to demonstrate our commitment and loyalty to our country.”



10. WHAT IS OUR PLEA?

- That the Minister must apply her mind by:
 - ❑ Challenging the Bargaining Council – Trade Unions and Employers Organizations – to prove that they indeed represent the majority of the Industry (as per definition)
 - ❑ Acknowledging that the Transport Industry is not an homogenic group of firms, but to accept that the Industry include various groupings, various type of operations, not subsidized operator groupings, long distance operators, charter etc. etc.
 - ❑ Setting up measures whereby everybody in the Industry (as per definition) can be involved and where proper consultation can take place with all relevant role-players.



11. REFERENCES

1. FREE MARKET FOUNDATION

- Addressed by Herman Mashaba 5 March 2013
- Fact Sheet by Jonathan Goldberg

2. BD LIFE

- Article by David Gleason 11 February 2014

2. STATISTICS SOUTH AFRICA

