

**IN THE SOUTH AFRICAN LOCAL GOVERNMENT BARGAINING COUNCIL
HELD AT BLOEMFONTEIN**

CASE NO: RPNT932

In the matter between:

M S NYAPHULI

APPLICANT

And

INTERSTATE BUS LINES

RESPONDENT

POSTPONEMENT RULING

Commissioner: CM DELL

Date of ruling: 6 June 2012

Applicant's Representative:

Ms. A Heine / Mr. J Nortje

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Respondent's Representative:

Ms. C Vos

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1. **DETAILS OF HEARING AND REPRESENTATION**

1.1. This is the postponement ruling in the dispute between **M S NYAPHULI**, the applicant and **INTERSTATE BUS LINES**, the respondent, which postponement ruling was handed down on 1 June 2012 and at the employer's premises, Interstate Bus Lines.

1.2. The Applicant was present and was represented by his attorney, Mr. A Heine of Kramer, Weihmann Joubert Attorneys whilst the respondent was represented by Ms. C Vos of its Industrial Relations Department.

2. **REASONS FOR POSTPONEMENT**

2.1. At the outset the Applicant, Mr. Nyaphuli was initially represented by a candidate attorney of the firm Kramer, Weihmann, Joubert. Regrettably a candidate attorney has no locus standi before Bargaining Councils and/or CCMA proceedings. As a result thereof she was not allowed to appear and requested a postponement on behalf of the Applicant.

2.2. The matter however stood down for a considerable period of time in order for the Applicant and the candidate attorney to secure an admitted attorney to request the postponement.

2.3. Ms. Heine on behalf of the Applicant indicated that, and it is common cause, that the Applicant was initially represented by his trade union but that the trade union withdrew from the matter on or about 8 May 2012.

2.4. Subsequently the Applicant has approached Mr. Jacques Nortje, the labour attorney of Kramer, Weihmann Joubert Attorneys to act on his behalf. However, Mr. Nortje was not available on the said date and therewith furthermore it was also common cause that the new representative of the Applicant had not yet had insight into any form of record and/or documentation that was used at the proceedings earlier.

3. **CONSIDERATIONS REGARDING REQUEST FOR POSTPONEMENT**

3.1. In considering the request for postponement, the following factors were considered:

3.1.1. Firstly and foremostly, it is indeed so that the attorneys were new to the proceedings and it would not be possible for them to properly and fairly represent the Applicant without having perused all the documentation and studied the record of the proceedings to date.

3.1.2. What is also of importance is the fact that the Applicant is not in a position to duly and properly represent himself in the matter, especially considering the comparative ability between the Applicant and the representative of the Respondent. The Respondent's representative is a well seasoned representative, knowledgeable and competent in proceedings of this nature. It will thus not be in the interest of social justice to immediately disallow legal representation and thereby force the Applicant to represent himself.

3.1.3. However, fairness must also prevail in the matter and it is indeed so, as argued by the representative of the Respondent when opposing the application that the Respondent is being prejudiced by the continuous postponement of the matter in that on each instance it is the Respondent who has to pay the costs of the Bargaining Council and on each instance employees must be taken out of their jobs to be available to testify.

3.1.4. Therewith, should the Applicant be reinstated the employer faces the possibility of being prejudiced in that the amount payable for the period which the Applicant was unemployed could be excessive.

3.1.5. It is also furthermore so that the Applicant was aware that his trade union had withdrawn on 8 May 2012 and subsequent to the withdrawal of the trade union the Applicant has taken no positive steps to secure the record and/or the documentation for his attorney of record nor has the attorney of record taken any such positive steps in the interim.

3.1.6. There was also no formal application for postponement to the Bargaining Council prior to the commencement of the arbitration proceedings.

3.2. However, taking into consideration all of the above and in endeavouring to balance to scales and act in fairness to both parties the following ruling is made.

4. **RULING**

4.1. The matter is postponed sine die to a date to be allocated by the Bargaining Council.

4.2. The Applicant, Mr. Nyaphuli must pay the costs of the Bargaining Council of the day in the amount of R4000.00 (Four thousand rand) and on or before 2 July 2012, failing which it will be deemed that the Applicant has abandoned his case and same will be dismissed.

4.3. In the event of the arbitration award going in favour of the Applicant and reinstatement and/or compensation is ordered then and in that event the period of unnecessary delay caused by the postponements will not be held against the Respondent and will not be brought into consideration when calculating compensation and/or arrear salary monies payable.

Thus dated and signed at Bloemfontein on this 6th day of June 2012.

Blue

CM DELL