

**AT THE SOUTH AFRICAN ROAD PASSENGER BARGAINING COUNCIL**

**IN THE DISPUTE**

**BETWEEN**

**Tawusa obo Diale and Others**

**APPLICANT**

**AND**

**Bojanala Bus Service**

**RESPONDENT**

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**RULING**

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CASE NUMBER:

RPNT 781

APPLICATION MADE IN THE ARBITRATION HEARING ON:

19 May 2011

DATE WRITTEN RULING SUBMITTED:

20 May 2011

DATE CLOSING ARGUMENTS RECEIVED:

19 May 2011

NAME OF COUNCIL COMMISSIONER:

Itumeleng Williams

South African Road Passenger Bargaining Council

Tel: 011 326 0473

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First Floor, Sonsono Building

344 Pretoria Avenue

Randburg

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## **1. DETAILS OF APPLICATION AND PROCESS**

This is an application to have the matter standing down indefinitely until the applicant's representative was in attendance at the proceedings. The respondent launched a counter-application to proceed with the matter without the applicant being represented. Mr. Mothlabane and Sibiya appeared on behalf of the applicant and respondent respectively.

## **2. ISSUE TO BE DECIDED**

The issue is whether the matter should stand down indefinitely until the applicant's representative was in attendance at the proceedings. If the ruling is adverse to the applicant, the question is whether this matter should be continued with without the applicant being represented herein.

## **3. BACKGROUND TO THE ISSUE**

This matter was scheduled for arbitration on the 19th March 2011 at 09h00 at the respondent's offices at Thlabane in Rustenburg. Mr. Sibiya appeared for the respondent. Mr. Mothlabane, a union official who has been subpoenaed to testify for the respondent in the arbitration, informed Mr. Sibiya and I that Mr. Mankge, the representative for the applicant, was running late and we agreed to commence with the proceedings at 09h30. However Mr. Mankge was still not in attendance at 10h45 and Mr. Mothlabane requested that the matter should stand down until Mr. Mankge was in attendance.

Mr. Sibiya submitted that the matter should continue without the applicant being represented. He was tenaciously opposed to the proposal that the matter should further stand down.

## **4. SURVEY OF EVIDENCE AND ARGUMENT**

Mr. Mothlabane averred that Mr. Mankge forgot the file at the office hence the failure to arrive timeously at the proceedings. He further stated that he could not represent the union members on whose behalf his union acted herein inasmuch he has been subpoenaed as a witness for the respondent. Mr. Mothlabane said that Mr. Mankge was held up in traffic.

Mr. Sibiya submitted that it was unknown precisely at what point Mr. Mankge would arrive. He indicated that it was earlier agreed that proceedings would commence at 09h30 when Mr. Mothlabane stated that Mr. Mankge was running late. It was then decided that we should reconvene at 10h15 to start with the arbitration process when the representative was still not in attendance at 09h30. Mr. Mankge called him, so stated Mr. Sibiya, and suggested that the proceedings commence at 10h30 and assured him that he would have arrived by then. However Mr. Mankge had still not arrived at 10h45 and Mr. Mothlabane indicated that he had just driven past a tollgate at N2 from Pretoria.



## 5. ANALYSIS OF EVIDENCE AND ARGUMENT

It is common cause that this matter was scheduled to commence at 09h00 on the 19th May 2011. Everybody but Mr. Mankge was in attendance at the scheduled time. It is an established practice to afford parties, as a matter of courtesy, at most, thirty (30) minutes period of grace when they are running late for the arbitration. Mr. Mankge was still not in attendance at 10h45. Worse still, he was said to be driving on N2 en route from Pretoria at 10h45.

Mr. Mankge was a quarter of an hour short of being two hours late when we reconvened for the second time. The request by Mr. Mothlabane that we should wait further for him was unreasonable in the circumstances and more so Mr. Mankge, according to him, was still driving on N2 and was not in Rustenburg yet. It is unsurprising that Mr. Sibiya objected to Mr. Mothlabane's proposal with such tenacity. However it is not the fault of those represented by the union in this matter that Mr. Mankge did not arrive on time at the proceedings. It is further noteworthy that they are entitled to representation by their union herein. However Mr. Mothlabane could not represent them as he is a witness for the respondent. Accordingly the matter cannot be continued with without these numerous individuals being represented by their union official especially given the technical nature of the preliminary issue raised by Mr. Sibiya.

The applicant's conduct occasioned a situation where costs were incurred unnecessarily today. Tawusa and not the individual members it represents, must make good on the wasted costs.

## 6. RULING

I hereby order that:

- 6.1 This matter is postponed indefinitely; and
- 6.2 TAWUSA must pay the costs of the arbitration for the 19th May 2011.



**COUNCIL COMMISSIONER: ITUMELENG WILLIAMS**

