

**IN THE SOUTH AFRICAN ROAD PASSENGER BARGAINING COUNCIL  
HELD AT PORT ELIZABETH**

In the arbitration between

SOUTH AFRICAN BUS EMPLOYERS' ASSOCIATION  
obo MEMBERS

**APPLICANT**

and

TRANSPORT AND ALLIED WORKERS UNION

**RESPONDENT**

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**AWARD**

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Case number: RPNT 868

Date of hearing: 16 May 2011

Date of award: 21 May 2011

Head note: Interpretation/application of a collective agreement

Marion Fouché  
Commissioner

### **Details of hearing and representation**

1. This matter was enrolled for arbitration in the South African Road Passenger Bargaining Council (SARPBAC) and was heard on 16 May 2011 in Port Elizabeth.
2. The Applicant in this matter is the South African Bus Employers' Association (SABEA). Adv Wade SC, instructed by Chris Baker and Associates, appeared for the Applicant.
3. The Respondent in this matter is the Transport and Allied Workers Union (TAWU). The Respondent was not in attendance.

### **Absence of the Respondent**

4. Perusal of the file revealed that the notice of set down for these arbitration proceedings was duly served by SARPBAC on the Respondent on 20 April 2011.
5. Mr Wade, for the Applicant, pointed out that the instructing attorney, Mr Baker, had been involved in another matter with the Respondent a week prior to these proceedings, during which time the Respondent was reminded of the arbitration date in this matter.
6. Mr Wade further submitted that the non-attendance of the Respondent could probably be ascribed to its acknowledgment that it had not complied with the SARPBAC constitution.
7. In the circumstances I was satisfied that the Respondent had received due notice of these proceedings and was aware thereof. In terms of SARPBAC Rule 14.2.2 it was decided to continue with the arbitration in the absence of the Respondent.

### **Issue to be decided**

8. The purpose of this arbitration is to determine whether or not the Respondent had complied with the SARPBAC constitution, a collective agreement.

## **Survey of evidence**

9. Mr Heimes, employed by Algoa Bus Company in Port Elizabeth and President of SABEA, had the necessary mandate to represent SABEA at these proceedings and he testified for the Applicant.
10. Algoa Bus Company is a member of SABEA and SABEA is the employer party to SARPBAC. Three unions constitute the employee parties to SARPBAC: SATAWU, TAWU and TOWU. A constitution for SARPBAC had been concluded and signed by SABEA and the three unions.
11. In terms of paragraph 6.6 of the SARPBAC constitution a party may withdraw from the bargaining council on six months' written notice to the General Secretary of the council.
12. On 21 December 2010 the Respondent's General Secretary addressed correspondence to the General Secretary of SARPBAC to the effect that the Respondent was withdrawing as a party to the bargaining council with immediate effect.
13. According to Mr Heimes, the Respondent considered itself withdrawn with immediate effect. This was borne out by the fact that the Respondent had approached several members of the Applicant with the demand to negotiate at plant level, that is, outside the ambit of the bargaining council.
14. Considering the requirement in paragraph 6.6 of the constitution, Mr Heimes submitted that the Respondent's withdrawal from the bargaining council was unlawful as it did not give the required notice of six months.
15. After the Respondent's notice to the bargaining council the Applicant replied to the Respondent in writing to the effect that its resignation was invalid as it did not meet the requirements of the constitution.

16. Mr Heimes added that proceedings relating to the Respondent's withdrawal had been launched in the CCMA. The CCMA ruled<sup>1</sup> that it lacked jurisdiction to conciliate and arbitrate the dispute between the parties. It was held that SARPBAC was the appropriate forum to entertain the matter.
17. As the Respondent was not in attendance, its evidence was not available.

### **Survey of argument**

18. In closing Mr Wade, for the Applicant, submitted that the issue to be determined turned on the validity of the Respondent's purported resignation or withdrawal from the bargaining council, in light of paragraph 6.6 of the SARPBAC constitution.
19. The Respondent's withdrawal could be attributed, it was submitted, to its desire to negotiate with the Applicant's members at plant level, thereby attempting to avoid the collective bargaining regime that was established by the parties to SARPBAC and which the Respondent was party to.
20. Paragraph 6.6 of the constitution is unambiguous: it requires six months' written notice for a withdrawal and the Respondent is bound to comply with said requirement, so it was argued.
21. Apart from the fact that compelling reasons existed for a lengthy period of notice (for example, administrative responsibilities and requirements), the fact remained that the parties themselves agreed to the requirements for a withdrawal.
22. As the SARPBAC constitution meets the requirements of a collective agreement, as defined in section 213 of the Labour Relations Act 66 of 1995 (the Act), and as the Respondent was party to said collective agreement, it should be held to what it had bargained for. It was important to maintain the fabric of collective agreements concluded between the parties of the bargaining council.

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<sup>1</sup> CCMA ruling issued under case numbers GAJB5081-11, GAJB5082-11 and GAJB4876-11, dated 21 April 2011.

23. The Respondent was misleading its members by suggesting that it could bargain at plant level which, it was submitted, invariably led to a belief that strike action could be embarked upon.
24. The Applicant sought an order to the effect that the Respondent remained bound to the SARPBAC constitution pending a valid resignation, was in consequence bound to negotiate within the ambit of SARPBAC and was precluded from demanding plant level negotiations.

### **Analysis of evidence and argument**

25. A dispute concerning the interpretation and application of the SARPBAC constitution, a collective agreement, was referred by the Applicant. The Applicant's position in essence is that paragraph 6.6 of the constitution leaves no doubt as to its interpretation, i.e. that a notice period of six months is required to resign as a party from the bargaining council. As the Respondent did not give the prescribed notice, it should be held bound to the collective agreement and should not be allowed to demand negotiations at plant level.
26. Paragraph 6.6 of the SARPBAC constitution reads as follows:

“Any Party [*sic*] may withdraw from the Council on giving six calendar months' notice, in writing, to the General Secretary.”

The requirement in this provision is clear and unambiguous and is not possibly open to interpretation. There can be only one interpretation: if a party wants to withdraw or resign as a party, notice of six months is required.

27. On 21 December 2010 the Respondent addressed correspondence to the bargaining council as follows:

“Kindly take notice that Transport and Allied Workers Union of South Africa hereby withdraw [*sic*] as member of the bargaining council with immediate effect.

It follows that Transport and Allied Workers Union of South Africa will not participate in annual wage negotiations for 2011 and that Transport and Allied Workers Union of South Africa will therefore negotiate with employers . . .”

The notice given by the Respondent leaves no doubt that it wanted and intended to withdraw as a party with immediate effect – not on six months' notice. And, on the evidence, the Respondent had done exactly that; it had approached some employers with a demand to bargain at plant level.

28. The Respondent is clearly in breach of paragraph 6.6 of the SARPBAC constitution and, in consequence, guilty of non-compliance with the constitution. The Respondent, a union with knowledge of the labour laws of this country and its rights and obligations, displays in its persistence of its stance an arrogance which is not conducive to healthy industrial relations.
29. The Respondent is accordingly ordered to comply with the SARPBAC constitution in all respects and more specifically with the requirements contained in paragraph 6.6 thereof. For as long as the Respondent does not comply with said provisions, it remains a party to SARPBAC, it is subject to the SARPBAC constitution and it is precluded from negotiations at plant level.
30. In passing it is observed that I have absolutely no doubt that SARPBAC has jurisdiction to conciliate and arbitrate this matter in terms of section 24 of the Act. I accordingly agree with the CCMA ruling the Applicant referred me to.

#### **Award**

31. The Respondent, TAWU, is hereby ordered to observe the requirements contained in paragraph 6.6 of the SARPBAC constitution.
32. Before the requirements in paragraph 6.6 of the SARPBAC constitution have been observed and complied with, the Respondent (TAWU) remains a party to the bargaining council, is subject to its constitution, is accordingly bound to negotiate within the bargaining council and cannot demand to negotiate at plant level.

SIGNED AT PORT ELIZABETH ON THIS 21<sup>ST</sup> DAY OF MAY 2011.

  
**Marion Fouche**  
SARPBAC Commissioner