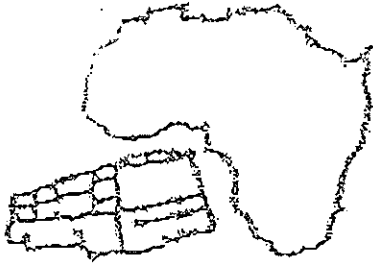


# SARPBAC



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Room 14-15 2nd Floor  
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Contact: Siyolo Williams

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Email:

To: Algoa Bus Company  
PO Box 225  
Port Elizabeth  
6014

Tel: 041-404 1200  
Fax: 041-451-2557  
Email:

Contact: Ms B Mkosi

20-Jul-2011

Dear Parties,

Case Reference *RPNT857*  
Matter Between *JAMAFO obo Mngeni, T*  
and *Algoa Bus Company*

Please find the attached.

Yours sincerely

Petunia Bhengani  
South African Road Passenger Bargaining Council  
[petuniab@meibc.co.za](mailto:petuniab@meibc.co.za)

## THE SOUTH AFRICAN ROAD TRANSPORT BARGAINING COUNCIL

## IN THE MATTER BETWEEN

JAMAFO obo Mngeni T

APPLICANT

and

Algoa Bus Company

RESPONDENT

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**RULING**

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Case Number: RPNT 857

Date/s of Arbitration: 30 June 2011

Date of Award: 18 July 2011

Head Note: Unfair Dismissal

Daniel C Oosthuizen

## 1. DETAILS OF HEARING AND REPRESENTATION

This matter was set down for arbitration on 30 June 2011 in Port Elizabeth at the Road Passenger Transport Bargaining Council.

The Applicant, Mr T Mngeni, was present and represented himself. Ms A Nockfal, Senior Human Resources Officer appeared for the Respondent, Algoa Bus Company.

This award constitutes a brief summary of evidence, arguments and my reasons for the award issued in terms of Section 138 (7) (a) of the Labour Relations Act relevant to the dispute at hand and do not reflect all the evidence and arguments heard and considered in deciding this matter

## 2. ISSUE TO BE DECIDED

Whether or not the dismissal of the Applicant was procedurally and substantively fair?

My terms of reference are that I have the same powers as that of a CCMA Commissioner to determine the dispute as contained in the Labour Relations Act 66 of 1995 ("the Act").

## 3. PRELIMINARY ISSUES

At the onset of the hearing the Applicant, Mr T Mngeni, requested a ruling that the Union JAMAFO who is not a member of the Bargaining Council be allowed to represent him and secondly that a ruling be made that the company provide the Applicant with various documents relating to his disciplinary hearing. The following is an extract of the Applicant's application.

- (a) "Provide the Applicant and his Representative with the full records and comprehensive typed or recorded minutes of both the disciplinary proceedings and the appeal hearing convened against the Applicant at the Respondent's workplace, that are the subject of this Arbitration.
- (b) Issue a directive compelling the Respondent to provide to the Applicant copies of documents evidencing the policy, rules, code of conduct, disciplinary procedure and any document or provision imposing obligations on the Applicant that it is alleged he had breached.

- (2) That this Bargaining Council and or the Arbitrator determine a time period within which the Respondent is required to comply with the directive referred to in paragraph (a) and (b).
- (3) That this Bargaining Council and or the Arbitrator make/s a ruling in terms of its constitution or rules, as to the constitutionality and legality of the Respondent's refusal that the employee's union cannot be provided with such documents, and further be represented by a union (JAMAFO) of his choice. State the extent of and reasons as to why Applicant should be allowed to be represented by union/s that he is not a member of and particularly where one of those union/s have misrepresented the employee at the workplace, leading the employee to join a union that will represent his best interest.
- (4) That this determination be made within (7) days before the Arbitration, take place.
- (5) In the event that this Bargaining Council determine or rule in favour of the Respondent, a request is made that this Arbitration be postponed, to allow the employee ample time to apply to the Legal Aid Board, for legal representation, since he will have no choice under the circumstances."

Ms Alisa Nockfar argued for the Respondent that the Applicant's Union, JAMAFO was not a registered Union of the Bargaining Council and cannot represent the Applicant. The Applicant was informed in writing of the provisions of the Constitution of the Bargaining Council. The Applicant was also provided with the minutes of the disciplinary hearing. The Applicant did not appeal against his dismissal; therefore, there is a not record of an appeal hearing. Copies of the company's policy, rules, code of conduct and disciplinary procedure were made available to the Applicant on 17 June 2011. The Applicant was a member of TAWUSA at the time the dispute arose.

Both parties requested that a ruling be made on the preliminary issues before the matter continue to arbitration.

#### 4. ANALYSIS OF ARGUMENTS

In terms of clause 9 Appendix "B" of the Constitution of the South African Road Passenger Bargaining Council representation at dispute proceedings are as follows:

## MEIBC

" 9.1 A Party to a dispute must appear in person at the dispute proceedings before the Council but may, in addition, be represented by:-

9.1.1 a legal practitioner or labour law consultant subject to agreement between the parties or

9.1.2 a member, official or office bearer of a registered trade union, that the party was a member of at the time the dispute arose or

9.1.3 an official or office bearer of a registered employer's association that the party was a member of at the time the dispute arose or

9.1.4 a director, employee, trustee or partner of the employer party or

9.1.5 if proceedings are brought, or opposed, by more than one party by another party to the dispute.

9.2 Despite Clause 9.1.1 above, if the dispute is about the fairness of a dismissal and a party has alleged that the reason for the dismissal relates to the employee's conduct or incapacity, the parties are not entitled to be represented by a legal practitioner in the proceedings unless the:-

9.2.1 Commissioner and the other parties consent to such an arrangement;

9.2.2 Commissioner concludes that it is unreasonable to expect the party deal with the dispute without legal representation, after considering the nature of the question of law raised by the dispute, complexity of the dispute, public interest and/or the comparative ability of the opposing parties or their representatives to deal with the dispute.

In terms of clause 3 of the Constitution the "Definitions" a "Trade Union" means a registered Trade Union as defined in the Act which has members employed in the Road Passenger Transport Industry. In terms of the definition a member must be employed when he joined the Union and secondly the Union must have more than one member that is employed.

It is common cause that the Applicant was a member of the Union TAWUSA who also represented him at the disciplinary hearing. Therefore, it is my view that that the Applicant can only be represented by TAWUSA in terms of clause 9.1.2 of the Bargaining Council Constitution as captured above. If the Applicant was a member of JAMAFO when he was still employed and the Union, JAMAFO had more than one member who was employed he would have been entitled to be represented by the Union, JAMAFO, in terms of the definition of a Trade Union and clause 9.1.2. This does not leave the Applicant without any remedy on representation. He may still apply for legal representation in terms of clause 9.2 captured above or approached TAWASU to represent him. The parties are bound by the provisions of the Constitution of the Bargaining Council.