

No. R. 446

28 May 2010

LABOUR RELATIONS ACT, 1995**BARGAINING COUNCIL FOR THE FISHING INDUSTRY****EXTENSION TO NON-PARTIES OF MAIN COLLECTIVE
AMENDING AGREEMENT**

I, **MEMBATHISI MPHUMZI SHEPHERD MDLADLANA**, Minister of Labour, hereby in terms of section 32(2) of the Labour Relations Act, 1995, declare that the Collective Agreement which appears in the Schedule hereto, which was concluded in the Bargaining Council for the Fishing Industry, and is binding in terms of section 31 of the Labour Relations Act, 1995, on the parties which concluded the Agreement, shall be binding on the other employers and employees in that Industry with effect from **7 June 2010**, and for the period ending 30 June 2010.


MINISTER OF LABOUR

BARGAINING COUNCIL FOR THE FISHING INDUSTRY**MAIN COLLECTIVE AGREEMENT****PART A: INTRODUCTION****1. CLAUSE 1: PARTIES TO THE AGREEMENT**

In accordance with the provisions of the Labour Relations Act, 1995, this Agreement is made and entered into between the

South African Fishing Industry Employers Organisation (SAFIEO)

(hereinafter referred to as "the employers" or "the employers' organisation") of the one part

And the

Trawler & Line Fishermen's Union (TALFU)**National Certificated Fishing and Allied Workers Union (NCFAWU)****Food and Allied Workers Union (FAWU)**

(Hereinafter referred to as "the employees" or "the trade unions"), of the other part,

being parties to the Bargaining Council for the Fishing Industry (hereinafter referred to as the "Council") to amend the Collective Agreement published under Government Notices No R.891 of 28 September 2007 as extended by Government Notice R. 356 of 4 April 2008 and R. 1209 of 14 November 2008.

2. CLAUSE 2: PURPOSE OF THE AGREEMENT

This agreement aims to advance economic development and social justice by fulfilling the primary objects by giving effect to, and regulate the right to fair labour practices conferred by section 23 of the Constitution of South Africa 108 of 1996, by establishing and enforcing basic conditions of employment in the scope of the Council for employees employed on the vessels at sea, excluded from the Basis Conditions of Employment Act.

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PART B: APPLICATION**3 CLAUSE 3: SCOPE OF APPLICATION OF AGREEMENT**

- 3.1 This Agreement shall apply to all employers and/or employees who are members of any of the parties to this Agreement and who are employed in the deep-sea bottom trawl and inshore bottom trawl sectors.
- 3.2 On extension of this agreement to non-parties by the Minister, any employer may apply to the Bargaining Councils Executive Committee for exemption from the collective agreement in terms of Clause 39A of this agreement.

4 CLAUSE 4: PERIOD OF OPERATION

The terms and conditions set out herein shall come into operation-

- 4.1 in respect of the parties as from 1 July 2009 and shall remain in force until 30 June 2010
- 4.2 in respect of non-parties to the agreement shall come into operation on a date determined by the Minister.

PART C: DEFINITIONS**5. CLAUSE 36: ANNEXURE A: DEEP-SEA BOTTOM TRAWL SECTOR]****36.1 MINIMUM DEEP SEA REMUNERATION**

- 36.1.1 Actual remuneration rates shall be increased by eight and one half percent (8.5%) from 01 July 2009.
- 36.1.2 Minimum rates for 2008/2009 period remain unchanged.
- 36.1.3 The following remuneration schedule sets out the minimum rates of pay per working day for each rank that shall be effective from the dates indicated in the schedule:

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EMPLOYEE RANK	Date of coming into operation of the agreement 01 December 2008
Able Seaman	R 118,24
Assistant Factory Manager	R 129,53
Assistant Marine Engineer	R 121,31
Bosun	R 130,71
Charge Hand	R109,78
Cook	R 157,13
Cook-1 st	R 185,16
Cook-2 nd	R 130,71
Deck Hand	R 109,78
Factory Manager	R 172,74
Fishmeal Operator	R 142,95
Galley Hand	R 99,61
Greaser	R 126,04
Greaser – M3	R 133,72
Greaser – M4	R 129,70
Lifeboat man	R 109,78
Spare Hand	R 99,61

7 CLAUSE 37.1 MINIMUM INSHORE RENUMRETION

37.1.1. Actual remuneration rates shall be increased by seven and one half percent (7, 5 %) as from 01 July 2009 as well as the minimum Remuneration rates, as is reflected in the new minimum rates schedule paragraph 37.1.2 below.

37.1.2 The following minimum remuneration schedule sets out the minimum rates of pay per working day for each rank that shall effective from the date of coming into operation of this agreement:

EMPLOYEE RANK	INSHORE BOTTOM TRAWL
Able Seaman	R 117,40
Assistant Marine Engineer	R 129,80
Bosun	R 114,50
Chief Engineer	R 198,50

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Cook	R 99,10
Deck Hand	R 114,50
Driver	R 114,50
Spare Hand	R 91,70

8. CLAUSE 39.A EXEMPTION AND APPEAL CRITERIA

39.A.1. Council hereby establishes an Independent Appeal Board consisting of no less than three persons appointed by the Council Executive to hear and decide any appeals brought against the decision of the Council's Executive in respect of the refusal by Council Executive to grant an exemption whether it be in respect of a party or non-party, or to consider any appeal against the decision by Council Executive to withdraw an exemption.

39.A.2. Any registered employer falling within the scope of the Council may apply to the Council's Executive for exemption from any of the provisions of this agreement.

39.A.3 All applications for exemption must be in writing, addressed to the Secretary of the Council Executive and be supported by any relevant documentation. The application must contain the following information:

- a) the correct full names of the business and registered owner;
- b) the number of employees affected and their names;
- c) period for which the exemption is sought;
- d) the clauses of this agreement from the exemption is requested;
- e) satisfactory proof that the exemption applied for has been discussed between the employer, the employees affected and/or their representative union, together with any response resulting from such discussions either in support of or in opposition to the application; and
- f) details of the specific alternate conditions which will apply should the exemption be granted.

39.A.4. The Secretary must place the application for exemption on the agenda of the next Council Executive meeting for consideration.

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39.A.5 The Council Executive must consider the application within thirty (30) days, or the next Executive Committee Meeting whichever happens first, and may grant an exemption to an employer if the applicant can show:-

- a) It is fair to both the employer, its employees;
- b) It does not undermine the Agreement;
- c) It will make a material difference to the viability of the establishment;
- d) It will assist with unexpected economic hardships occurring during the currency of the agreement and will save unnecessary job losses; or
- e) It has a limit quota.

39.A.6. Once the Council Executive has decided to grant an exemption, the secretary of the Council must issue a certificate of exemption to the applicant within fourteen (14) days of the date of the decision setting out:

- a) the name of the applicant;
- b) the clause/s from which exemption has been granted;
- c) any conditions relating to the exemption; and
- d) the period of exemption.

39.A.7. If the Council Executive decides to refuse an exemption the Secretary must-

- a) advise the applicant within seven (7) days of the date of its decision;
- b) provide the applicant with the reasons/s for not granting an exemption; and
- c) advise the applicant of the right to appeal against the decision of the Council Executive.

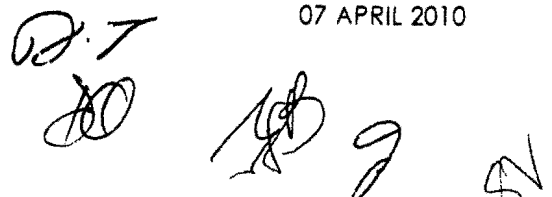
39.A.8. The Council Executive may if it deems fit withdraw any exemption granted to an applicant on one month's written notice, whether or not the time period of the exemption has expired. The Secretary shall advise the applicant of the right of appeal against the decision of the Council to withdraw the exemption.

39.A.9. Appeals must be addressed to the Secretary in writing within five (5) working days from the date of notification of the decision of the Council Executive on the applicant for exemption.

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- 39.A.10. The Secretary must within five (5) days from the date of appeal application convene a meeting of the Independent Appeal Board to consider the appeal.
- 39.A.11. The Independent Appeal Board must conduct its proceedings in a manner that it considers appropriate in order to determine the application fairly and quickly, but must deal with the substantial merits of the applicant with the minimum of legal formalities, read with Section 14(5) of the Council's Constitution.
- 39.A.12. Subject to the discretion of the Independent Appeal Board as to the appropriate form of the proceedings, the applicant, the Council Executive and the representative of the parties may give evidence, call witnesses, question witnesses of any other party and address arguments to the Independent Appeal Board, to deal with those aspects listed in Section 14(6) of the Council's Constitution.
- 39.A.13. Within fourteen (14) days of the conclusion of the proceedings, the Independent Appeal Board must issue a decision in line with Section 14(7) of the Council's Constitution and the reason, which will have the same effect as an arbitration award.
- 39.A.14. The decision of the Independent Appeals Board shall nonetheless still be subject to review by the Labour Court in terms of the Act.

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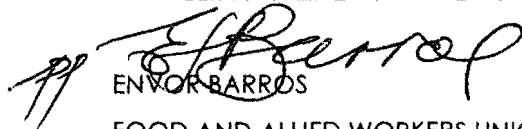
The block contains several handwritten signatures and initials. On the left, there is a signature that appears to be 'D. T.' with a large 'X' or '10' below it. To the right of this, there is a signature that looks like '14B' followed by a '9'. Further to the right, there is a single '9' and a final set of initials that look like 'AN'.

SIGNED AND AGREED IN CAPE TOWN ON THIS ⁰⁷ DAY OF ^{April} 2010.



DAVID OLIVIER

TRAWLER AND LINE FISHERMEN'S UNION (TALFU)



ENVOR BARROS

FOOD AND ALLIED WORKERS UNION (FAWU)



NDANELE TILELA

NATIONAL CERTIFICATED FISHING AND ALLIED WORKER'S UNION (NCFWU)



JON CATTO

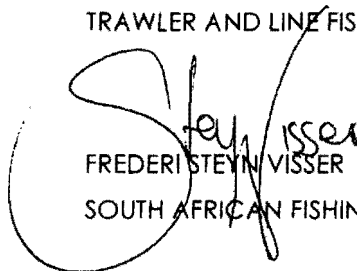
SOUTH AFRICAN FISHING INDUSTRY EMPLOYER'S ORGANISATION (SAFEO)

SIGNED AND AGREED TO IN CAPE TOWN ON THIS ^{07th} DAY OF ^{April} 2010



DAVID OLIVIER

TRAWLER AND LINE FISHERMEN'S UNION (TALFU)



FREDERIK STEYN VISSER

SOUTH AFRICAN FISHING INDUSTRY EMPLOYER'S ORGANISATION (SAFEO)

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