

## GOVERNMENT NOTICE

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### DEPARTMENT OF LABOUR

No. R. 272

5 April 2012

### LABOUR RELATIONS ACT, 1995

#### **SOUTH AFRICAN ROAD PASSENGER BARGAINING COUNCIL: EXTENSION TO NON-PARTIES OF THE MAIN COLLECTIVE AGREEMENT**

I, MILDRED NELISIWE OLIPHANT, 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 South African Road Passenger Bargaining Council 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 ..... 16 April 2012..... and for the period ending 31 March 2013.

**MN OLIPHANT**

**MINISTER OF LABOUR**

## **SCHEDULE**

**THE SOUTH AFRICAN ROAD PASSENGER BARGAINING COUNCIL (SARPBAC)**

### **MAIN COLLECTIVE AGREEMENT**

in accordance with the provisions of the Labour Relations Act, 1995, made and entered into by and between the

**SOUTH AFRICAN BUS EMPLOYERS' ASSOCIATION**

(hereinafter referred to as the "Employers" or the "Employers' Association"), of the one part, and the

**SOUTH AFRICAN TRANSPORT AND ALLIED WORKERS UNION**

And

**TRANSPORT AND OMNIBUS WORKERS UNION**

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

being the parties to the South African Road Passenger Bargaining Council (SARPBAC)

(hereinafter referred to as the "Bargaining Council")

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## **1. SCOPE OF APPLICATION AND PERIOD OF AGREEMENT**

### **1.1. SCOPE OF APPLICATION**

The terms of this agreement shall be observed in the Road Passenger Transport Trade:

- 1.1.1. by all Employers who are members of the Employers' Association and by all Eligible Employees who are members of the trade unions.
- 1.1.2. by all Employers and Eligible Employees within the Road Passenger Transport Trade in the Republic of South Africa, excluding the sector for which the existing Bargaining Council for the Passenger Transport Trade is registered, namely the magisterial district of Durban as that area was constituted on 22 August 1967.
- 1.1.3. the agreement shall also apply and be binding upon all Parties and/or Individuals to whom the operation of the collective agreement is extended in terms of Section 32 of the Labour Relations Act (LRA) of 1995.
- 1.1.4. Clauses 1.1.1., 1.2, and 36.1 of this Agreement shall not apply to Employers and Employees who are not members of the Employers' Association and trade unions respectively.

### **1.2. PERIOD OF AGREEMENT**

This Agreement shall come into operation for the parties to this Agreement on 1 April 2011 and for non parties on such date as may be decided upon by the Minister of Labour in terms of section 32 of the Labour Relations Act, 1995 and shall remain in force until 31 March 2013 and shall be applicable to all Eligible Employees.

## **2. DEFINITIONS**

Unless the context otherwise indicates, any expressions which are used in this Agreement and which are defined in the Labour Relations Act, 1995, shall have the same meaning as in that Act and for the purposes of this Agreement an Employee shall be deemed to be in the job title in which he is wholly or mainly engaged; further, unless inconsistent with the context:

**"Bargaining Council"** means the South African Road Passenger Bargaining Council (SARPBAC);

**“Basic Wage”** means the amount of money payable to an Employee in respect of his/her ordinary hours of work;

**“Bus”** means a power-driven vehicle intended to carry more than 16 persons, including the driver of the vehicle;

**“Day”** means the period of 24 hours from midnight to midnight. Provided that in the case of a member of the operating staff it shall mean a period of 24 consecutive hours calculated from the time the Employee commences work;

**“Daily wage”** means an Employee's hourly wage multiplied by the Employee's ordinary hours of work in a day;

**“Eligible Employee”** means an individual, other than an individual who is part of an Employer's Management, Supervisory or Management Support Staff, who works in the Road Passenger Transport Trade and who is in the permanent employ of an Employer.

**“Employee”** means an individual who is employed by an Employer in one of the jobs stipulated in Annexure A;

**“Employer”** means an individual, company or organisation that employs or provides work for any person in the Road Passenger Transport Trade;

**“Hourly Rate”** means an Employee's hourly rate of pay;

**“Job Title”** means the position occupied by an Employee within an Employer's organisation;

**“Management Staff”** means those individuals who are responsible for the management of the business or a division, department, depot, section or workshop within such a business. Business owners, directors and/or persons holding positions of assistant manager, or any more senior position within an Employer's staff structure, fall within the definition of this category of staff;

**“Management Support Staff”** means those individuals providing support services within a business. Individuals involved in the auditing, accounting, personnel administration, payroll, recruitment, welfare, public relations, secretarial and/or information technology functions as well as those with insurance claim processing, disciplinary activities or security services (other than individuals working as security guards) fall within the definition of this category of staff;

**“Minimum Hourly Rate”** means the minimum basic hourly rate of pay applicable to a specific job as reflected in “Annexure A”;

**“Monthly wage”** means an Employee's Weekly Wage multiplied by 52 and divided by 12;

**“Operating Staff”** means a bus driver, bus driver-conductor, checker/regulator, conductor, dispatcher/transport officer, inspector, point controller, clip card seller, ticket office Employee, senior inspector, senior dispatcher/transport officer, senior checker/regulator;

**“Ordinary Hours of Work”** means the hours of work prescribed in clause 6 or if by agreement between Employer and his Employee the latter works a lesser number of hours, such shorter hours, and includes:

- (a) all periods during which an Employee is obliged to remain at his post in readiness to commence or proceed with his work; and
- (b) all time spent by a bus driver or bus driver-conductor on work connected with the bus or the passengers and all time spent by a driver of a motor vehicle on work connected with the vehicle or its load,

but does not include any meal interval, sleep-over period or any time for which a subsistence allowance is payable to an Employee, if during such period, the Employee does no work other than remaining in charge of the vehicle;

**“Overtime”** means that portion of any period worked by an Employee during any week or on any day which is longer than his weekly or daily ordinary hours of work, as the case may be, but does not include any period during which an Employee works for his Employer on a paid holiday, on his weekly day off as referred to in Clause 6.5 of this Agreement, or on a Sunday;

**“Paid Holiday”** means New Year's Day, Human Rights Day, Good Friday, Family Day, Freedom Day, Workers' Day, Youth Day, National Women's Day, Heritage Day, Day of Reconciliation, Christmas Day, Day of Goodwill and any other day declared to be a paid public holiday in terms of the Public Holidays Act No. 36 of 1994;

**“Retrenchment Fund”** shall mean a fund established in terms of the Pension Funds Act no 24 of 1956;

**“Road Passenger Transport Trade”** or **“Trade”** means the trade in which Employers and their Employees are associated for the purpose of conveying for reward on any public road any persons by means of a power-driven vehicle (other than a vehicle in the possession and under the control of Transnet or a local authority) intended to carry more than 16 persons simultaneously including the driver of the vehicle, and includes all operations incidental thereto or consequent thereto;

**“Short-time”** means a temporary reduction in the number of ordinary hours of work owing to slackness in trade, inability to operate normal services, a breakdown of plant, machinery, a bus or buses or a breakdown or threatened breakdown of buildings;

**“Spreadover”** means the period in any day from the time an Employee commences work until he ceases work for that day;

**“Subsidised Contract”** means a contract between an Employer and government in terms of which the Employer receives a subsidy in return for rendering prescribed services and is liable for the payment of penalties for non-performance.

**“Supervisory Staff”** means those individuals exercising supervisory control and who are responsible for the activities and/or work performance of Employees falling within the ambit of such control. Individuals occupying a position such as assistant manager or higher in the administration function, charge hand or higher in the engineering function, chief inspector or higher in the traffic function, chief operator or higher in the traffic control function or assistant chief ticket office clerk or higher in the revenue receiving function fall within the definition of this category of staff;

**“Terminally Ill Employee”** means a permanent employee who has been diagnosed by a company appointed and/or approved certified specialist physician as suffering from a terminal disease;

**“Week”** in relation to an Employee, means the period of seven days within which the working week of the Employee ordinarily falls.

**“Weekly wage”** means an Employee’s hourly rate multiplied by the ordinary hours worked in a week.

### **3. ACROSS THE BOARD INCREASE**

An across-the-board increase on the hourly rate of all Employees, for the period of this Agreement, will apply as follows:

- 3.1. The base rate of pay for the purpose of this clause will be the hourly rate payable to Employees immediately preceding the commencement date of this Agreement.
- 3.2. An across-the-board increase of 9% on the base rate of pay will become due from the commencement date of this Agreement.



#### 4. **MINIMUM BASIC WAGE**

The minimum hourly wage for Employees will not be less than R18.56 per hour.

#### 5. **JOB TITLES, GRADES, MINIMUM HOURLY RATES**

5.1. The provisions of this Agreement shall apply to the job titles set out in Annexure A, which Annexure specifies:

5.1.1. The definition applicable to each job title.

5.1.2. The various occupations within the trade which are encompassed within the job title.

5.1.3. The peromnes grade range applicable to such job title.

5.1.4. The minimum hourly rate applicable to such job title.

5.2. Where an Employer's entry level hourly rate in respect of new Employees is greater than the minimum hourly rate specified in Annexure A, the Employer shall be entitled to maintain such entry level hourly rate without increase.

#### 6. **ORDINARY HOURS OF WORK AND OVERTIME**

6.1. **Ordinary hours of work** – Ordinary hours of work shall not exceed 45 hours in any week.

6.2. **Averaging of hours** – Notwithstanding the provisions of this Agreement, an Employer may conclude a collective agreement which permits the Employer to average the ordinary hours of work and overtime of Employees over a period of up to 4 months, provided:

6.2.1. That the Employer may not require or permit an Employee who is bound by the collective agreement to work more than:

a) An average of 45 ordinary hours of work in a week over the agreed period.

b) An average of 5 hours overtime in a week over the agreed period.

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- 6.2.2. That the collective agreement lapses after 12 months.
- 6.2.3. That the proviso referred to in sub-paragraph 6.2.2 above only applies to the first two collective agreements concluded in terms of this clause.
- 6.3. **Meal interval** – An Employer shall not require or permit an Employee to work continuously for more than five hours without a meal interval of not less than 30 minutes during which interval such Employee shall not be required or permitted to perform any work and such interval shall not form part of the ordinary hours of work or overtime.
- 6.4. **Rest intervals** – An Employer shall grant to his Employee, other than a member of the operating staff, a rest interval of not less than 10 minutes as nearly practicable in the middle of each first work period and second work period of the day, and during such interval the Employee shall not be required or permitted to perform any work and such interval shall be deemed to be part of the ordinary hours of work of the Employee.
- 6.5. **Weekly day off** – An Employer shall grant to every Employee at least one full day off during every seven consecutive days.
- 6.6. **Spreadover** – In the case of a member of the operating staff the ordinary hours of work, including the meal interval where applicable, and all overtime, shall on any day be completed within a spreadover of 14 hours.
- 6.7. **Limitation of overtime:**
- 6.7.1. An Employer shall not require or permit an Employee to work overtime, otherwise than in terms of a collective agreement or an agreement concluded with the Employee.
- 6.7.2. The maximum permitted overtime may not exceed 15 hours per week.
- 6.8. **Set-off** – Where in any one week an Employee absents himself/herself from work during any or all of the ordinary hours of a shift or shifts, without authority, any overtime worked by the Employee shall be paid at the Employee's ordinary rate of pay for a period equivalent to the period of such absence.
- 6.9. **Rest period** – An Employer shall grant the Employee, other than a member of the operating staff, a daily rest period of at least 12 consecutive hours between the Employee ending and recommencing work.

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- 6.10. **Short-time** – An Employer shall be entitled to implement short-time upon notice to Employees in which event the provisions of clause 35.4.4 will apply.

## 7. SCHEDULING OF WORK


- 7.1. Employers have the right to schedule Employees for all ordinary hours of work in any day and/or week at ordinary rates of pay.
- 7.2. Schedules may make provision for waiting/standby periods, to the extent decided by the Employer, which periods may, amongst other duties, include driving, special hires, attendance at training courses or meetings.
- 7.3. Employers may amend schedules provided that 7 days notice is given prior to the implementation of such new schedules.

## 8. TRAINING

Where training is provided outside of the Employee's normal working hours, Employees required to attend such training will not be remunerated for the 24 hours of such training in any given calendar year.

## 9. SUBSISTENCE & TRAVEL ALLOWANCE

- 9.1. An Employee, who is away from his Employer's establishment on special hire/charter duties or on instructions from his Employer and is, as a consequence thereof and at the instruction of the Employer, required to sleep out, will be paid an allowance of R350.00 for each night that he is required to sleep out to cover the costs of meals and accommodation.
- 9.2. An Employee, who is away from his Employer's establishment, for more than 12 hours, on special hire/charter duties or on the instruction of the Employer, but is not required/instructed by the Employer to sleep out, will be paid a meal allowance of R5.00 per hour for each completed hour of such special hire/charter or absence.
- 9.3. The above allowances will not be paid where, in terms of the Employer procedures, the Employer or a third party provides accommodation and/or food, pays for such

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expenses directly or where accommodation and/or food are made available at no cost to the Employee.

**10. NIGHT-SHIFT ALLOWANCE**

A night-shift allowance of R5.00 per hour will be payable to Employees for work performed between 20:00 and 03:00 (including meal breaks). It is agreed that the night-shift allowance will not be tabled for negotiation in respect of the 2012/2013 Main Agreement.

**11. TOOL ALLOWANCE**

An allowance of R27.00 per week will apply to Employees who, as a requirement of the Employer, are in possession of the applicable tool-kit complying with the Employer's specifications.

**12. CROSS BORDER EXPENSES**

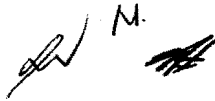
Where an Employee is required by the Employer to cross a national border, the Employer will reimburse the Employee the required expenses - i.e. the cost of obtaining a passport or visa, the cost of obtaining medical certificates and medication.

**13. PART TIME ADULT BASIC EDUCATION AND TRAINING INSTRUCTORS**

All Employees who, on a part time basis, perform the work of Adult Basic Education and Training (ABET) instructors will receive an allowance R12.00 for each hour of ABET instruction.

**14. PROFESSIONAL DRIVING PERMIT/LICENSE**

14.1. Employees who are required by the Employer to have a Professional Driving Permit will receive a 100% refund in respect of the cost of the successful renewal of the Professional Driving Permit and the cost of the card that is replaced at the same time as the Professional Driving Permit renewal. Where a medical examination is required

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for the renewal of the Professional Driver Permit, such medical examination shall, for those individuals employed after 31 March 2004, be performed by a medical doctor of the Employer's choice.

- 14.2. Individuals employed before 1 April 2004 may use a medical doctor of the Employee's choice for the medical examination referred to above, in which event the Employee will be responsible for the cost thereof.
- 14.3. Should an Employee contest the medical finding of the company appointed doctor, such Employee will have the right to undergo, at the Employee's cost, a further medical examination by a doctor of the Employee's choice.
- 14.4. Should the medical opinion of the doctor appointed by the Employee differ from that of the doctor appointed by the company, the Employee shall be entitled to seek a third medical examination. If the Employee does not exercise such right within 14 days, the medical finding of the company appointed doctor will stand. For the purpose of conducting the third medical examination, the parties will establish an agreed panel of doctors. In the event that such third medical examination is sought, the medical opinion obtained from a panel doctor for this purpose will be final and binding.
- 14.5. Should the panel doctor's opinion confirm the company appointed doctor's opinion, the cost of the third medical examination will be for the account of the Employee.
- Should the panel doctor's opinion confirm the Employee appointed doctor's opinion, the cost of the third medical examination will be for the account of the Employer.
- 14.6. All Employees who are required by their Employer to be in possession of a valid driver's license of the appropriate code and/or professional driving permit (PrDP) are required to obtain from the relevant authorities documented proof of the validity of such licenses and/or PrDP, if requested to do by the Employer and to present such documents to the Employer.

## 15. LEGAL ASSISTANCE

- 15.1. When an Employee, acting in the course and scope of his employment, is involved in a motor vehicle accident in a company vehicle, and is subsequently charged with commission of a criminal offence arising out of the accident, the Employer will provide legal assistance by granting an interest free loan up to a maximum of R 6 000.00.

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15.2. The Employer will appoint a lawyer in such cases. Such loans will be repaid in instalments by the Employee immediately. If eventually found not guilty, the Employer will refund the amount already deducted from the Employee's pay.

15.3. The provision of legal assistance is extended to a security guard with a company-issued firearm who is charged with commission of a criminal offence arising from the use of the firearm whilst on duty.

## 16. ANNUAL LEAVE

16.1. Annual leave cycle means the period of 12 months employed with the same Employer, immediately following:

16.1.1. an Employee's commencement of employment; or

16.1.2. the completion of that Employee's prior leave cycle.

16.2. An Employer must grant an Employee at least 21 consecutive days of annual leave, on full remuneration, in respect of each annual leave cycle. This means:

16.2.1. 15 working days for Employees working a 5 day week.

16.2.2. 18 working days for Employees working a 6 day week.

16.3. An Employer may reduce an Employee's entitlement to annual leave by the number of days of occasional leave on full remuneration granted to the Employee at the Employee's request in that leave cycle.

## 17. SICK LEAVE

17.1. Sick leave cycle means the period of 36 months' employment with the same Employer immediately following:

17.1.1. an Employee's commencement of employment; or

17.1.2. the completion of the Employee's prior sick leave cycle.

17.2. During every sick leave cycle, an Employee is entitled to an amount of paid sick leave equal to the number of days the Employee would normally work during a period of six weeks.

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- 17.3. Despite sub-clause 17.2, during the first six months of employment, an Employee is entitled to one day's paid sick leave for every 26 days worked.
- 17.4. During an Employee's first sick leave cycle, an Employer may reduce the Employee's entitlement to sick leave in terms of sub-clause 17.2 by the number of days' sick leave taken in terms of sub-clause 17.3.
- 17.5. An Employer must pay an Employee for a day's sick leave:
- 17.5.1. the basic wage the Employee would ordinarily have received for the ordinary hours of work on that day; and
- 17.5.2. on the Employee's usual payday.
- 17.6. An agreement may reduce the pay to which an Employee is entitled in respect of any day's absence in terms of this clause if:
- 17.6.1. the number of days of paid sick leave is increased at least commensurately with any reduction in the daily amount of sick pay; and
- 17.6.2. the Employee's entitlement to pay:
- a) for any day's sick leave is at least 75 percent of the basic wage payable to the Employee for the ordinary hours the Employee would have worked on that day; and
- b) for sick leave over the sick leave cycle is at least equivalent to the Employee's entitlement in terms of sub-clause 17.2 .

**18. INFORMING EMPLOYER OF ABSENCE AND PROOF OF INCAPACITY**

- 18.1. Where an Employee is unable to attend work as a result of ill health, the Employee shall be obliged to inform the Employer of this fact within 24 hours of taking ill.
- 18.2. The Employee shall submit a sick certificate, signed by a medical practitioner who is registered with a professional council established by an Act of Parliament to his Employer, stating the nature of the illness and the duration of Employee's absence.
- 18.3. This sick certificate shall be submitted within 48 hours of the Employee going absent due to illness.

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**19. LEAVE FOR TERMINALLY ILL EMPLOYEES**

A terminally ill Employee who requires treatment designed to counter the effects of the defined condition will be provided with terminally ill leave subject to the following conditions:

- 19.1. The leave will be made available solely for the purpose of hospitalisation or treatment that will require more than 2 days of absence as prescribed by a company appointed and/or approved certified specialist physician.
- 19.2. The Employee will be allowed a maximum of 15 working days leave in any one year at normal basic rates of pay.
- 19.3. The Employee must, prior to any leave being granted in terms of this clause, first have exhausted all his/her sick leave.
- 19.4. An Employee will be required to provide the Employer with prior notice of every treatment session as well as written proof, from the institution providing the prescribed treatment, of having undergone such treatment.
- 19.5. Where companies provide sick leave in excess of the combined benefits that would accrue from clause 17 of this agreement and this clause, Employees working for such companies will not be entitled to the terminally ill benefit as provided for herein.
- 19.6. Leave provided in terms of this clause is not cumulative.
- 19.7. It is agreed that no further demands will be made for a period of 5 years, from 22 November 2007, in relation to the number of days leave to be provided in terms of this clause when negotiating substantive conditions of employment.

**20. MATERNITY LEAVE**

Female Employees will be entitled to 16 weeks paid maternity leave at a rate of 32.9% of the Employee's basic wage, commencing 1 month prior to the expected date of confinement. Such Employee is also, at the time of her confinement and at her option, entitled to a further period of 10 weeks unpaid leave.

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**21. FAMILY RESPONSIBILITY LEAVE**

Employees will be entitled to a maximum of 8 days paid family responsibility leave per annum, for which documentary proof may be required by an Employer. Family responsibility leave may be applied for in respect of the following:

- 21.1. A maximum of 5 days compassionate leave may be granted in respect of the death of a spouse, life partner, parent, parent in law, direct or adopted child or direct sibling.
- 21.2. A maximum of 3 days leave may be granted for the birth of a child (male employees) or sickness of a child (all employees).

**22. STUDY LEAVE**

Employees shall be entitled to paid study leave as follows:

- 22.1. 2 days prior to and 1 day on the day of the examination per approved course, subject to a maximum of 10 days per annum for approved courses.
- 22.2. approved course for purposes of this clause, means a course approved by the Employer.

**23. RETIREMENT FUND CONTRIBUTION RATE**

- 23.1. Membership of a retirement fund is compulsory in respect of all Employees.
- 23.2. The Employer's contribution to such fund shall not be less than 10% of the Employee's basic wage.

**24. BONUS**

- 24.1. Employees who are in the service of their Employer on the first day of December in any calendar year, shall be paid a bonus equivalent to one month's basic wages, provided that such bonus will be calculated pro rata to an Employee's service where the Employee is engaged for a period of less than 12 months immediately preceding the first day of December.

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24.2. Employees who leave the service of the Employer prior to the 1st of December in any one year, will be paid a pro rate portion of the bonus referred to above provided that the termination of their service is as a result of any one of the following:

24.2.1. the Employee being declared medically unfit to continue employment; or

24.2.2. the Employee attaining normal retirement age; or

24.2.3. the employment relationship being terminated for operational reasons; or

24.2.4. the death of the Employee.

24.3. Any Employer seeking exemption from the provisions of this clause as a consequence of financial reasons shall be obliged to follow the exemption procedure detailed in Annexure C.

## 25. CONTRACT PENALTIES

Where an Employee is found to be directly responsible for a penalty being imposed on the Employer because of the non-compliance with the terms and conditions of a subsidised contract, the Employee will be required to reimburse the Employer to the extent of the penalty incurred, up to a maximum of R170.00 per incident. Such reimbursement shall be deducted from the basic wage of the Employee.

## 26. RETRENCHMENT/SEVERANCE PACKAGE

26.1. Where an Employee is eligible for severance pay following dismissal for operational requirements, this shall be calculated as follows:

26.1.1. 1,5 weeks per completed year of continuous service for Employees with 1 to 3 years service;

26.1.2. an amount equal to 4,5 week's pay for Employees with 4 completed years of continuous service;

26.1.3. an amount equal to 5,5 weeks' pay for Employees with 5 completed years of continuous service;

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26.1.4. an amount equal to 6,5 weeks' pay for Employees with 6 completed years of continuous service;

26.1.5. one week per completed year of continuous service for Employees with 7 or more years of service.

26.2. Provided that the provisions of this Agreement shall not supersede the provisions of any other common law agreement which may be binding upon employers and/or employees in relation to the payment of a severance pay following upon dismissal for operational requirements.

## 27. **CONTRACT EMPLOYEES**

In companies where the employment of contract staff for periods longer than 12 months is an issue, the matter will be handled at company level.

## 28. **FARE INCREASES**

Employees will not obstruct, act against or undermine fare increases in any manner. Only Employees who, as part of their normal duties, are required to promote fare increases will be required by the Employer to do so. Employees will not be disciplined for refusing to promote fare increases where this is not part of their normal duties.

## 29. **TRADE UNION NATIONAL RETIREMENT FUNDS**

It is agreed that labour's demand that Employees be allowed to move to national union retirement funds, be referred in its entirety to company level. Plant level meetings with labour representatives and other relevant parties and stakeholders will be held for this purpose.

## 30. **STATUS QUO**

All conditions of employment, or parts thereof, that were in force as at 31 March 2011 and not specifically dealt with in this agreement, shall remain in force and shall continue to be regulated by the custom and practice existing at that time, contracts of employment, collective agreements and/or relevant legislation.

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**31. PROHIBITION OF EMPLOYMENT**

An Employer shall not:

- 31.1. employ any person under the age of 15 years.
- 31.2. require or permit any female Employee to work during the period commencing 1 month prior to the expected date of her confinement and ending 2 months after the date of her confinement, unless a medical practitioner who is registered with a professional council established by an Act of Parliament certifies that the Employee is fit to resume work earlier.

**32. NOTICE OF TERMINATION OF CONTRACT**

Other than where individual contracts of employment provide for a longer notice period, the Employer or the Employee, other than a casual Employee, who desires to terminate the contract of employment, shall give:

- 32.1. during the first four weeks of employment, not less than one workday's notice of termination of contract;
- 32.2. after the first four weeks of employment, not less than one week's notice of termination of contract.

**33. CERTIFICATE OF SERVICE**

On termination of employment an Employee is entitled to a certificate of service stating:

- 33.1. the Employee's full name;
- 33.2. the name and address of the Employer;
- 33.3. a description of the Bargaining Council by which the Employer's business is covered;
- 33.4. the date of the commencement and the date of termination of employment
- 33.5. the title of the job or a brief description of the work for which the Employee was employed at the date of termination;
- 33.6. the Employee's remuneration at date of termination; and

33.7. if the Employee so requests, the reason for termination of employment.

#### 34. KEEPING OF RECORDS

34.1. Every Employer must keep a record containing at least the following information:

34.1.1. the Employee's name and occupation;

34.1.2. the time worked by each Employee;

34.1.3. the remuneration paid to each Employee;

34.1.4. the date of birth of any Employee under 18 years of age; and

34.1.5. any other prescribed information.

34.2. A record in terms of sub-clause 34.1 must be kept by the Employer for a period of three years from the date of the last entry in the record.

34.3. No person may make a false entry in a record maintained in terms of sub clause 34.1 above.

34.4. An Employer who keeps a record in terms of this clause is not required to keep any other record of time worked and remuneration paid as required by any other employment law.

#### 35. PAYMENT OF REMUNERATION

35.1. Any amount due to an Employee shall, in accordance with company policy, be paid weekly, fortnightly or monthly in cash, by cheque or by direct deposit into an account designated by the Employee.

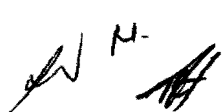
35.2. Any remuneration paid in cash or by cheque must be given to each Employee:

35.2.1. at the workplace or at a place agreed to by the Employee;

35.2.2. on the designated pay day; and

35.2.3. in a sealed envelope.

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Handwritten signatures and initials, including 'A-K.' and 'M.'.

35.3. An Employer must give an Employee the following information in writing on each day that an Employee is paid:

35.3.1. the Employer's name;

35.3.2. the Employee's name and occupation;

35.3.3. the period for which the payment is made;

35.3.4. the Employee's gross remuneration;

35.3.5. the amount and description of any deduction made from the remuneration;

35.3.6. details of overtime and other earnings; and

35.3.7. the actual nett pay.

35.4. Save as provided for in terms of this Agreement, no Employer shall levy any fines against the Employee nor may he make any deductions from the Employee's remuneration other than:

35.4.1. with the written consent of the Employee;

35.4.2. whenever an Employee is absent from work, other than at the direction of his Employer, a deduction proportionate to the period of his absence and calculated on the basis of the basic wage of the Employee in respect of his ordinary hours of work at the time of such absence, subject to any set-off which may be applicable in terms of clause 6.8 above;

35.4.3. a deduction of any amount which an Employer by law or order of any competent court or by collective agreement is required or permitted to make;

35.4.4. whenever the ordinary hours of work are reduced because of short-time as defined, a deduction not exceeding the amount of the Employee's hourly basic wage in respect of each hour of such reduction. Provided that:

a) such deduction shall not exceed one third of the Employee's weekly/monthly wage, as the case may be, irrespective of the number of hours by which the ordinary hours of work are thus reduced;

b) no deduction shall be made in the case of short-time arising out of slackness of trade or inability to operate normal services unless the

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Employer has given his Employee notice on the previous workday of his intention to reduce the ordinary hours of work;

- c) no deduction shall be made in the case of short-time owing to a breakdown of plant, machinery, a bus or buses or a breakdown or threatened breakdown of buildings, in respect of the first hour not worked, unless the Employer has given his Employee notice on the previous day that no work will be available;

35.4.5. with written consent of an Employee, a deduction of any amount which an Employer has paid or has undertaken to pay to:

- a) a registered financial institution, local authority or the State in respect of a payment on a loan granted to such Employee to acquire a dwelling;
- b) any organisation or entity in respect of the rent of a dwelling occupied by such Employee;

35.4.6. with the written consent of an Employee, a deduction towards the repayment of any amount loaned or advanced to the Employee by the Employer. Provided that any such deduction shall not exceed one third of the total remuneration due to the Employee on the pay-day concerned and provided further that no such deduction shall be made in respect of any period during which the Employee's basic wage is reduced in terms of paragraph 35.4.4.

35.4.7. with the written consent of an Employee, a deduction towards the repayment of any amount loaned or advanced to the Employee by a third party whom the Employer has approved for the purposes of advancing loans.

## 36. DESIGNATED AGENTS

36.1. One or more persons shall be appointed by the Council as agent(s) to assist in enforcing the terms of this Agreement.

36.2. The Council may, in terms of Section 33 of the Act, request the Minister of Labour to appoint any person as a designated agent of the Council.

36.3. A designated agent shall have the powers conferred on a commissioner by Section 142 of the Act, except the powers conferred by Section 142(1)(c) and (d).

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**37. APPLICATIONS FOR EXEMPTION AND APPEALS AGAINST DECISIONS OF THE EXEMPTION PANEL**

The procedures to be adopted in applying for exemption, and appealing against a decision of the exemption panel, are set out in Annexure C to this Agreement.

**38. DISPUTE PROCEDURE**

Dispute procedures are detailed in Annexure B to this Agreement.

**39. LEVIES**

39.1 Employees for whom minimum basic wages are prescribed an amount of R 2.40 per week or R 10.40 per month of an Employee's normal basic wage shall be deducted by an Employer from the basic wage of every Employee.

39.2 Other employees in the bargaining unit for which minimum basic wages are not prescribed, but who qualify for the across the board increases as per clause 3.2, an amount of R 2.40 per week or R 10.40 per month of an Employee's normal basic wage shall be deducted from the basic wage of every Employee, in his or its employ who works one or more days a week.

39.3 To the amounts deducted in terms of clause 39.1 and 39.2, the Employer shall add a like amount and pay the total by no later than the 7<sup>th</sup> of each month over to the council at First floor, Stonefountain House, 95 Klipfontein Road, Rondebosch, 7700, or into the councils bank account: SARPAC, First National Bank, Account no. 62289781752, Branch Bode 202409.


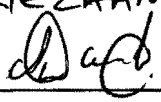


**40. ADMINISTRATION OF AGREEMENT**

The Council shall be the body responsible for the administration of this Agreement, and may issue expressions of opinion and rulings not inconsistent with the provisions thereof for the guidance of Employers and Employees.

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We the undersigned, as the official representatives of our respective organisations, do hereby, on behalf of the organisations, its members and all Employees, agree to the terms of this agreement and bind our organisations, members and all Employees thereto.

SIGNED BY	ON BEHALF OF	SIGNED AT	DATE
KLAUS HEIMES 	South African Bus Employers Association	<u>Johannesburg</u>	<u>10/11/2011</u>
NEZHAAM DAVIDS 	Transport & Omnibus Workers Union	<u>Cape Town</u>	<u>09/11/2011</u>
ASSARIA MATABOGE 	<del>A.K. Mataboge</del> South African Transport & Allied Workers Union	<u>Cape Town</u>	<u>09/11/2011</u>
GARY WILSON 	South African Road Passenger Bargaining Council	<u>Cape Town</u>	<u>09/11/2011</u>

**ANNEXURE A****JOB TITLES, GRADES, MINIMUM HOURLY RATES**

<b>Job Title</b>	<b>Purpose Statement</b>	<b>Occupations Included</b>	<b>Range of Grades</b>	<b>Minimum Rate Per Hour</b>
Artisan	Qualified artisan who holds the relevant trade papers. Artisan could include Diesel Mechanic, Auto Electrician, Body Builder, Painter, Welder and Spray Painter. Typical work would include the service, repair, maintenance, upgrade of vehicles/components, inspections. Conducts road tests, recovers breakdowns, and identifies / diagnoses faults/defects. Artisans may supervise and assist in training unqualified staff.	Artisan, Artisan Auto Electrician, Artisan Body Builder, Auto Electrician, Body Builder, Mechanic, Diesel Mechanic, Painter, Spray Painter, Welder.	P13-P10	R 37.25
Bus Driver	Drives a bus to transport passengers on scheduled services over established routes. Controls lighting, heating and ventilation for the passengers. Observes prescribed speeds, traffic, travelling conditions and signals to ensure the safe arrival of passengers. Ensures passengers arrive at destinations on time. Holds the appropriate licence and a PrDP. This category is restricted to commercial contracts which are not subsidized by government.	Bus Driver	P15-P14	R 21.75
Cabin Attendant	Provides assistance to passengers on a Luxury Coach. Tasks include serving of refreshments and ensuring passengers experience a comfortable journey.	Cabin Attendant	P14	R 32.87
Canteen Attendant	Maintains the cleanliness of the canteen and assists in the preparation and serving of food and beverages. Keeps the canteen clean and tidy.	Canteen Assistant Meals, Canteen Assistant Tea, Canteen Attendant	P18-P17	R 18.56
Cashier	Receives cash from drivers and/or ticket sellers and banks all cash received.	Cashier, Cashier - Ex DC.	P14-P12	R 25.19
Cleaner	Cleans and maintains office / yard / workshop / buses / vehicle parts / bellows, utilising the appropriate cleaning agents and cleaning tools.	Bellow Cleaner, Bus Cleaner, Bus Washer, Office Cleaner, Steam Cleaner, Steam Jenny Cleaner, Workshop Cleaner, Yard Cleaner.	P19-P18	R 18.56

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Clerk	Performs administrative / clerical / stores / technical duties. Tasks may include filing, recording of data, copying, typing, handling petty cash, ordering of stationery/groceries, reporting, receiving and issuing of stock/parts or stock-taking. Additional duties may include attending to client queries/complaints, supervising and/or coordinating the workload of subordinates and/or operating on a senior administrative level.	Clerk, Assistant Contract Clerk, Receiving and Recon Clerk, Tyre Clerk, Taco Clerk, Operations Clerk, Planning Clerk, Terminal Clerk, Private Hire Clerk, Reservations Clerk, Scheduling Clerk, Technical Clerk, Waybill Clerk, Contract Clerk, Revenue Office Assistant, Special Hire Clerk, Stores Clerk, Engineering Clerk, Senior Clerk, Senior Store Clerk, Systems Clerk, Data Capturer.	P15 - P11	R 23.01
Cook	Prepares and serves meals to staff members. Compiles a weekly menu and assists in canteen administration. Supervises Canteen Attendants.	Chef	P15	R 26.29
Despatcher	Books and despatches drivers on allocated routes to ensure buses depart on schedule and executes administrative-related functions. Duties may include signing on/off shifts for Bus Drivers, reporting of any incidents and analysing the AM and PM operation.	Depot Despatcher, Despatcher, Sub Depot Despatcher.	P13 - P12	R 28.48
Driver/ Conductor	Drives a bus or luxury coach to transport passengers on the scheduled services over established routes. May issue tickets and collect fares. Controls lighting, heating and ventilation for the passengers. Observes prescribed speeds, traffic, travelling conditions and signals to ensure safe arrival of passengers. Ensures that passengers arrive at destinations on time. Holds the appropriate licence and a PrDP. Includes all BRT operations.	Driver / Conductor, Duty Bus Driver, Luxury Coach Driver, Coach Driver, OMO.	P14-P12	R 28.48
Driver Instructor	Provides training to drivers and conducts evaluations on drivers.	Driver Instructor, Driver Training Instructor.	P12 - P11	R 32.87
ETM Technician	Services, repairs and maintains Electronic Ticket Machines.	ETM Repairer, ETM Technician, Wayfarer Mechanic, Setright Mechanic, Senior Setright Mechanic.	P14 - P10	R 24.11
Forklift Driver	Operates a forklift to move equipment within the premises.	Forklift Driver	P18	R 24.11
Fuel Attendant	Refuels buses /company vehicles.	Fuel Attendant, Diesel/Fuel Attendant.	P17-P16	R 18.56
Gardener	Maintains gardens, lawns, shrubs and trees. Loads and unloads goods and materials. May provide assistance in the washing of company cars and cleaning of windows.	Gardener, Garden Labourer, General Worker.	P18	R 18.56

Handyman	Performs general building maintenance and repair work for plumbing, electrical, building and paving activities.	Handyman, Handyman Building Maintenance, Handyman Electrical	P16-P11	R 25.19
Help Desk Administrator	Handles passenger complaints, issues refund-vouchers to passengers, issues trip vouchers, assists passengers with dead tags, records customer complaints, visits head office and provides feedback.	Help Desk Administrator	P14	R 31.88
Hospitality Representative	Meets and greets clients at airports and ensures that the correct vehicles are boarded.	Hospitality Representative	P13	R 22.91
Inspector	Executes and carries out inspection duties to investigate irregularities and ensure compliance to company policy - performs physical vehicle checks, evaluates driver compliance, monitors scheduled trips and audits the issuing of tickets and the collection of revenue.	Inspector	P13 - P11	R 28.48
Maintenance Assistant	Assists a qualified Artisan and has sufficient relevant experience to perform the work required.	Semi-skilled Body Builder, Semi-skilled Electrician, Semi-skilled Mechanic, Semi-skilled Shift Mechanic; Junior Body Builder, Junior Electrician, Junior Glazier, Junior Mechanic, Junior Body Builder, Junior Spray Painter, Operative B.	P14-P13	R 26.29
Maintenance Technician	Unqualified Artisan who is able to perform all technical duties not performed by an Artisan (auto electrician/body builder/diesel mechanic), but does not have the qualification (i.e. trade certificate).	B Artisan ( Auto Electrician, Body Builder, Diesel Mechanic), Workshop Operative, Honorary Artisan, Auto Elec Operative, Body Shop Operative, Operative A.	P13-P12	R 28.48
Messenger	Delivers and collects mail / documents and runs errands as required by the operation. May be required to drive a motorcycle or vehicle and hold the applicable license.	Messenger	P18-P15	R 18.62
Mobile Driver	Drives a light motor vehicle to transport personnel to and from the required location. Holds a code 08 (EB) license.	Mobile Driver	P18-P15	R 18.62
Porter	Loads and off loads luggage at major centres in an intercity environment.	Porter	P19	R 18.56
Receptionist	Performs front desk duties, operates the switchboard to attend to incoming calls, receives visitors to the organisation and responds to general enquiries. Performs clerical duties when required e.g. photocopying, handling mail, handling faxes.	Receptionist, Receptionist/Switchboard Operator, Switchboard Operator.	P14	R 24.11

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Regulator	Records arrival and departure times of buses at terminal points to ensure buses keep to routes and schedules. Liaises with passengers on the service provided.	Regulator, Point Controller.	P14-P12	R 20.81
Route Controller	Ensures that specific routes are covered for passengers to arrive on time at destinations.	Route Controller	P12 - P11	R 52.57
Security Guard	Patrols and guards company assets and personnel and provides secure access control to the property.	Security Guard, Gatekeeper.	P17 - P16	R 19.73
Senior Cashier	Supervises Cashiers in the receipt and banking of cash received. Tasks include reconciling cash to ticket sales, liaising with customers, controlling safes, ensuring the smooth running of equipment at depots and conducting periodic depot spot checks.	Senior Cashier, Chief Cashier, Senior Cashier T/Seller	P13-P12	R 28.48
Senior Inspector	Supervisors a team of inspectors, works according to a pre-determined schedule and performs adhoc investigations. Liaises with passengers and driver conductors. Carries out a census.	Senior Inspector	P12-P11	R 32.87
Senior Regulator	Supervises operational duties of Regulators, maintains an effective passenger information system and monitors passengers at platforms.	Senior Regulator, Senior Point Controller.	P12-P13	R 28.48
Shunter Driver	Moves buses on company premises and between sections for maintenance activities. Road test buses as and when required by Artisans and workshop supervisors. Parks buses in stipulated areas. Drives buses through bus wash machines. Drives vehicles onto and off pits. Requires the applicable license.	Shunter Driver, Shunter Driver- Maintenance.	P16-P15	R 19.73
Stores Driver	Performs driving duties for stores e.g. collection of parts and other store items. Requires the applicable license.	Stores Driver	P15	R 18.62
Storeman	Establishes and maintains minimum and maximum stock levels, controls and checks the delivery of stock, issuing of parts and spares, keeps stock cards up to date, receives and books out spares, performs stock take, conducts spot checks on stocks, etc.	Storeman, Storeman Buyer, Storeman / Counterhand.	P15 - P12	R 23.03
Stores Assistant	Assists the Storeman with the issuing and receiving of parts in the store, physically moves stock (packing, unpacking) and drives a forklift to load and unload spares from delivery vehicles. Requires the applicable licence.	Stores Assistant	P16-P14	R 24.11
Tea Person	Make tea and coffee and wash dishes	Tea Person	P18	R 18.56

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Technical Driver	Performs driving duties for the Technical Department inclusive of shunting vehicles from the wash bay to check pits and to the workshop, fuelling of vehicles, taking vehicles for COF and towing busses in for repairs. Requires the applicable licence.	Technical Driver	P15	R 18.62
Terrain Controller	Supervises the dispensing of diesel, oil and water. Supervises, shunting, parking and despatching of buses. Supervises the cleaning and washing of the exterior and interior of buses. Supervises the cleaning of the yard, offices, buildings, equipment and premises.	Terrain Controller, Yard Supervisor.	P13 - P12	R 36.86
Ticket Clerk Admin	Performs cashier and ticket selling duties, inclusive of selling trips and tags to passengers and the maintenance of stock. Handles cash, cashes up drivers' modules, drivers' tickets and standby waybills, pays in at a Cashier, cashes up daily sales. Is responsible for the banking of money, assisting customers with complaints, checking that ETM's are working and reporting defaults, requesting stock, stationery and float, and rotating between depots.	Ticket Admin Clerk, Ticket Office Clerk, Admin Clerks (Tickets).	P14-P13	R 25.19
Ticket Seller	Sells tickets to passengers from a mobile vehicle or at a point identified by the company. May require the applicable license.	Ticket Seller, Pre Seller, Season Ticket Seller.	P14-P12	R 25.19
Transport Officer	Signs Bus Drivers/ Driver Conductors On & Off. Reports any incidents that have a negative effect on the smooth running of the operation in the occurrence book. Analyses the AM and PM Operation.	Transport Officer	P11	R 28.48
Typist	Types documents and performs clerical duties for a department, e.g. Operations.	Typist, Typist Clerk.	P15-P13	R 25.19
Tyre Attendant	Removes and replaces tyres on vehicles. Checks tyres for defects, damage and pressures. Removes and inspects rims for damage and replaces rims.	Tyre Attendant, Tyre Operator.	P17-P14	R 18.56
Tyre Controller	Supervises tyre attendants and ensures optimal work output.	Tyre Supervisor	P13	R 36.86

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Workshop Assistant	Assists a qualified artisan in the trade (Body Builder, Auto Electrician, Vehicle Checker, Greaser, Diesel Mechanic and Spray Painter) through supplying the correct tools, cleaning of components, and assisting with the service, repair, maintenance and upgrade of vehicles/components. Performs general housekeeping in keeping the work area safe and clean. Not an apprentice. Reports into an Artisan.	Trade Worker P15 & P16. Trade Assistant: Auto Electrician, Trade Assistant Diesel Mechanic, Handyman Assistant, Mechanical Shop Assistant, Assistant Electrician, Assistant Glazier, Workshop Assistant, Workshop Operator Assistant, Builder Assistant, Assistant Mechanic, Assistant Spray Painter, Auto Electrical Assistant, Grade C and D Operatives, Electrical Shop Assistant, Body Shop Assistant, Artisan Assistant, Greaser, General Worker, Labourer, Tyre Shop Assistant, Upholstery Assistant, Vehicle Checker.	P19-P15	R 18.56
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## **ANNEXURE B**

### **DISPUTE RESOLUTION**

#### **1. DISPUTE**

A dispute is any disagreement relating to matters of interest or right between:-

- 1.1 Two or more parties to this Agreement;
- 1.2 One or more employer and any eligible employee/s; or
- 1.3 Two or more parties bound in law by this Agreement

in connection with the interpretation and/or application of this Agreement, and/or any disputes relating to any other matter required, in law, to be conciliated and/or resolved by the Council, including but not limited to disputes of interest, disputes relating to unfair dismissals, and disputes relating to unfair labour practises.

#### **2. DISPUTE RESOLUTION AGENCY**

SARPBAC may appoint a dispute resolution agency or agencies to assist with the management of the dispute resolution function of SARPBAC and reference in this annexure to SARPBAC shall, where such agency or agencies have been appointed, be read as reference to such appointed agency or agencies.

#### **3. DISPUTE RESOLUTION PANELS**

- 3.1 SARPBAC shall establish and maintain regional panels of commissioners, who are accredited conciliators and/or arbitrators, to carry out the conciliation and/or arbitration functions of SARPBAC.
- 3.2 The panels shall have a sufficient number of properly qualified commissioners to handle disputes without undue delay and in an effective and efficient manner.
- 3.3 SARPBAC may, at any stage and after a thorough investigation as to the reasons submitted for the removal of a commissioner by any party, decide to remove an individual from a panel.

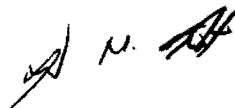
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#### 4. REFERRAL OF DISPUTES

- 4.1. Parties to SARPBAC, as also parties who fall within the registered scope SARPBAC, may refer a dispute to SARPBAC should the dispute not be resolved at plant level and a party to the dispute wishes to take the matter further.
- 4.2. Disputes shall only be referred to SARPBAC after parties to the dispute have complied with and exhausted all plant level dispute resolution procedures and failed to resolve the dispute.
- 4.3. A Party may refer a dispute to SARPBAC if:-
- 4.3.1 there is no plant level collective agreement or if the plant level collective agreement does not provide dispute procedures;
  - 4.3.2 the procedure provided for in the plant level agreement is inoperative;
  - 4.3.3 a party to the dispute has frustrated the resolution of the dispute in terms of the plant level procedures.
- 4.4. A party wishing to refer a dispute to SARPBAC for conciliation, conciliation/arbitration or arbitration must do so in writing, by completing SARPBAC's referral form setting out the details of the dispute and lodging the referral form, duly signed, together with all other required documentation with SARPBAC within the allowed time frame.
- 4.5. The referring party must, when lodging a dispute with SARPBAC, attach documented proof that a copy of the referral form has been served on all other parties to the dispute.
- 4.6. SARPBAC shall, on receipt of a referral and having satisfied itself as to the compliance of the referral with agreed procedures and time frames, appoint a commissioner from the panel to conciliate, conciliate/arbitrate or arbitrate the dispute, as the case may be, and arrange the venue, date and time for the matter to be heard.
- 4.7. Disputes, including dismissal disputes, must be lodged with SARPBAC within 30 days of the date on which the act giving rise to the dispute occurred or, if at a later date, within 30 days of all internal dispute resolution procedures having been complied with and exhausted.
- 4.8. Unfair labour practice disputes must be lodged with SARPBAC within 90 days of the date that the alleged unfair labour practice occurred.

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- 4.9. SARPAC shall refuse to accept a late referral unless, an application for condonation has been lodged with SARPAC in terms of Clause 6 of this annexure.

## 5. TIME PERIODS

For the purpose of calculating any period of time in terms of these dispute resolution procedures:-

- 5.1 a day means any day of the week including Saturdays, Sundays and Public Holidays but excludes the period from the 16<sup>th</sup> December of any year to the 7<sup>th</sup> January of the following year, both days inclusive; and
- 5.2 the first day is excluded and the last day is included, subject to Clause 5.1 above.

## 6. CONDONATION FOR LATE REFERRAL

- 6.1 Late referral applies to any document, including a referral or an application document, lodged with SARPAC outside of the time period prescribed in the Act or this annexure.
- 6.2 A party lodging a late referral and/or document must apply for condonation at the same time as lodging such late referral and/or document.
- 6.3 An application for condonation must set out the grounds for seeking condonation and must include details of the following:-
- 6.3.1 the degree of lateness;
  - 6.3.2 the reasons for the lateness and degree of fault;
  - 6.3.3 the referring party's prospects of succeeding with the dispute and obtaining the relief sought against the other party or parties;
  - 6.3.4 any prejudice to the other parties; and
  - 6.3.5 all other relevant factors.

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- 6.4. SARPBAC shall not accept any late referral without a condonation application being attached to such late referral together with documented proof that all other parties to the dispute have been notified about the late referral and application for condonation.
- 6.5. Once a condonation application has been submitted the responding party or parties must, should they wish to oppose such application, lodge written objections thereto within 15 days of receipt of the notice of such condonation application.
- 6.6. A commissioner will be appointed and will consider the late application and any objections lodged against the application within 15 days after the closing date for objections.

## 7. SERVING OF DOCUMENTS ON PARTIES

The party referring a dispute to SARPBAC must serve copies of such referral on each and every other party to the dispute by:-

- 7.1. handing a copy of the referral documents to the person(s) that is party to the dispute or
- 7.2. handing a copy of the referral document to the person(s) authorised in writing to accept service on behalf of each of the parties to the dispute or
- 7.3. faxing a copy of the referral document to all other parties to the dispute or
- 7.4. sending a copy of the referral document by registered post to each of the other parties to the dispute or
- 7.5. sending a copy of the referral document by courier to each of the other parties to the dispute or
- 7.6. sending a copy of the referral document by e-mail to each of the other parties to the dispute.

## 8. LODGING DOCUMENTS WITH SARPBAC

- 8.1 The party declaring the dispute must lodge the required dispute referral document and all supporting documentation with SARPBAC by:-

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handing the documents to an official of SARPBAC or  
faxing the documents to SARPBAC or  
sending the documents by registered post to SARPBAC or  
sending the documents by courier to SARPBAC or  
sending a copy of the documents by e-mail to SARPBAC.

- 8.2 Documents will only be considered lodged with SARPBAC on the date on which SARPBAC actually receives such referral documents.
- 8.3 It is the sole responsibility of the referring party to ensure the timely delivery of the documents to SARPBAC and to verify receipt of the documents by SARPBAC.

## 9. REPRESENTATION AT DISPUTE PROCEEDINGS

- 9.1. A party to a dispute must appear in person at the dispute proceedings before SARPBAC 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:-

- 9.2.1. the commissioner and the other parties consent to such an arrangement; or

- 9.2.2. the commissioner concludes that it is unreasonable to expect the party to deal with the dispute without legal representation, after considering the nature of the questions 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.

## 10. JOINING OF PARTIES TO PROCEEDINGS

- 10.1. SARPBAC or a commissioner may join any number of persons as parties in proceedings, if the right to relief depends on substantially the same question of law or fact.
- 10.2. A commissioner may make an order joining any person as a party in the proceedings if the party to be joined has a substantial interest in the subject matter of the proceedings.
- 10.3. A commissioner may make an order in terms of Clause 10(2) above
- 10.3.1 on the commissioner's own accord or
- 10.3.2 on application by a party or
- 10.3.3 if a person entitled to join the proceedings applies at any time during the proceedings to intervene as a party.
- 10.4. An application to join any person as a party to proceedings must be accompanied by copies of all documents previously delivered unless the person concerned or that person's representative is already in possession of the documents.
- 10.5. Subject to any order made in terms of clause 10.2 above, a joiner in terms of this clause does not affect any steps already taken in the proceedings.

## 11. CORRECTING THE CITATION OF A PARTY

If a party to any dispute proceedings has been incorrectly or defectively cited, SARPBAC may, on application by the parties and on notice to the parties concerned, correct the error or defect.

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**12. CONSOLIDATION OF DISPUTES**

- 12.1. SARPBAC or a commissioner, of their own accord or on application, may consolidate more than one dispute so that the disputes may be dealt with at the same dispute proceedings.
- 12.2. Disputes will be consolidated if they are of a similar nature and/or originating from the same incident.

**13. DISCLOSURE OF DOCUMENTS**

Any party may request a commissioner at a dispute hearing to make an order requiring any other party to the dispute to disclose all relevant documents.

**14. FAILURE TO ATTEND PROCEEDINGS**

- 14.1. The parties to a dispute must attend the conciliation, conciliation/arbitration or arbitration in person, irrespective of whether or not they are represented by third parties.
- 14.2. If a party to a dispute fails to attend the dispute proceedings before SARPBAC, and that party
- 14.2.1. has referred the dispute to SARPBAC, a commissioner may dismiss the matter by issuing a written ruling or
- 14.2.2. has not referred the matter to SARPBAC, the commissioner may:-
- 14.2.2.1. continue with the proceedings in the absence of that party or
- 14.2.2.2. adjourn the proceedings to a later date not more than 60 days from such adjourned proceedings.
- 14.3. A commissioner must be satisfied that all parties have been properly notified of the date, time and venue of the proceedings, before making any decision in terms of clause 14(2).

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- 14.4. If a party or parties fail to appear at the time scheduled for commencement of proceedings, the commissioner will postpone the proceedings for 30 minutes. If a party or parties, after expiry of 30 minutes, still fail to appear, the commissioner will make a decision in terms of clause 14(2).
- 14.5. If a matter is dismissed, SARPBAC must send a copy of the ruling to the parties.
- 14.6. The commissioner may make a cost award against a party if he/she deems the reasons for that party not attending the arbitration to be frivolous.

**15. UNREPRESENTED APPLICANTS WITHOUT CONTACT DETAILS**

- 15.1 An unrepresented applicant who intends to refer a dispute to SARPBAC and does not have a postal address or fax number, must hand deliver the referral form to SARPBAC.
- 15.2 If a referral form as contemplated in clause 15.1 above is received SARPBAC must provide the applicant with a case number and written instructions to contact SARPBAC by telephone or in person, within 7 days of the date of referral, in order for SARPBAC to notify the applicant of the details of the hearing.
- 15.3 The administrator who notifies the applicant of the hearing in terms of clause 15(2) above must record on the case file and on the case management system that the applicant has been notified of the details of the hearing.
- 15.4 The record made in terms of clause 15.3 above will constitute proof that the applicant was notified of the hearing.

**16. RECORDINGS OF DISPUTE PROCEEDINGS**

- 16.1 The commissioner must keep a record of:-
  - 16.1.1 evidence given in an arbitration hearing;
  - 16.1.2 sworn testimony given in any proceedings before the commissioner; and
  - 16.2.3 any arbitration award or ruling made by the commissioner.

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- 16.2 The record may be kept by legible hand-written notes or by means of an electronic recording.
- 16.3 A party may request a copy of the transcript of a record or a portion of a record kept in terms of clause 16(1) above, on payment of the costs of the transcription.
- 16.4 After the person who makes the transcript of the record has certified that it is correct, the record must be returned to SARPBAC.
- 16.5 The transcript of a record certified as correct in terms of clause 16(4) above is presumed to be correct, unless the Labour Court decides otherwise.

## 17. ISSUING OF A SUBPOENA

- 17.1 Any party, who requires SARPBAC or a commissioner to subpoena a person in terms of section 142(1) of the Act, must file a completed subpoena form, requesting a subpoena together with a written motivation setting out why the evidence of the person to be subpoenaed is necessary.
- 17.2 An application in terms of clause 17(1) above must be lodged with SARPBAC at least 10 days before the arbitration hearing, or as directed by the commissioner hearing the arbitration.
- 17.3 SARPBAC or a commissioner may refuse to issue a subpoena if:-
  - 17.3.1. the party does not establish why the evidence of the person is necessary or
  - 17.3.2. the party subpoenaed does not have a reasonable period in which to comply with the subpoena or
  - 17.3.3. SARPBAC or a commissioner is not satisfied that the party has made arrangements to pay the reasonable travel costs of the person subpoenaed.
- 17.4. A subpoena must be served on the witness that is subpoenaed:-
  - 17.4.1 by the person who has requested the subpoena or by the sheriff at least 7 days before the scheduled date of the arbitration; and
  - 17.4.2 if so directed by SARPBAC, accompanied by payment of the prescribed witness fees for one day in accordance with the tariff of allowances published



by notice in the Gazette in terms of section 142(7) of the Act and the witnesses' reasonable travel costs.

- 17.5 Clauses 17.3.3 and 17.4.2 above do not apply if SARPBAC in terms of section 142(7)(c) of the Act has waived the requirement for the party to pay witness fees.

## 18. CONCILIATION OF DISPUTES OF INTEREST

This section applies to disputes of interest referred to SARPBAC. SARBAC's jurisdiction in disputes of interest is limited to conciliation. In regard to conciliation of such disputes the following shall apply:

### 18.1 Notice by SARPBAC of a conciliation meeting.

- 18.1.1 After receiving a referral in terms of clause 4, SARPBAC must give the parties at least 21 days notice in writing of a conciliation hearing, unless the parties agree to a shorter period of notice.

- 18.1.2 SARPBAC will give notice by fax, registered post or email, depending on the information provided by the parties.

### 18.2 Failure to attend conciliation by a party.


- 18.2.1 The parties to a dispute must attend the conciliation.

- 18.2.2 If a party to a dispute fails to attend conciliation, the commissioner may deal with it in terms of clause 14.

### 18.3 If conciliation fails to resolve a dispute of interest that has been referred to SARPBAC in terms of clause 4 of this annexure and a certificate has been issued by the commissioner stating that the dispute has not been resolved then:-

- 18.3.1. after of a cooling-off period of 30 days from the date of such certificate, or any extension of this period agreed to between the parties to the dispute;

- 18.3.2. every employee involved in the dispute who has the right to strike in terms of Section 64 of the Act, may embark on such strike action subject to at least 48 hours' written notice of the commencement of such strike action being given to

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the employer that is party to the dispute or, where more than one employer is party to the same dispute, to SARPBAC and to the employers' organisation to which such employers are members;

18.3.3. every employer involved in the dispute who has the right to lock-out in terms of Section 64 of the Act, may commence with such lock-out action subject to at least 48 hours' written notice of the commencement of such lock-out action being given to the trade union (s) that is party to the dispute or, if there is no such trade union, to the employees concerned, unless the issue in dispute relates to a collective agreement to be concluded in SARPBAC, in which case notice must also be given to SARPBAC; and

18.3.4 if the issue in dispute concerns a refusal to bargain, as contemplated in Section 64(2) of the Act, an advisory award must have been made in terms of Section 135(3) (c ) of the Act before the notice as provided for in clauses 18.3.2 and/or 18.3.3 above may be given.

## 19. CONCILIATION/ARBITRATION OF DISPUTES OF RIGHT

All unresolved disputes of right, including disputes about the fairness of a dismissal or a dispute about an unfair labour practice, may be referred to SARPBAC. In regard to such referrals, the following shall apply:

19.1 All unresolved disputes of right that are referred to SARPBAC in terms of clause 4 of this annexure will be scheduled for conciliation/arbitration subject to clause 19.2 below;

19.2 Where a party objects to the conciliation/arbitration process, the matter will proceed directly to arbitration on the day that it is scheduled for the conciliation/arbitration proceedings;

19.3 SARPBAC must give the parties at least 21 days notice in writing that a matter has been scheduled for conciliation/arbitration, unless the parties agree to a shorter period of notice;

19.4 The provisions of the Act and the provisions set out in this annexure that are applicable to conciliation and arbitration respectively apply, with the changes required by the context, to conciliation/arbitration proceedings; and

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- 19.5 If the arbitration does not commence on the dates specified in terms of the notice in clause 19(3) above, SARPBAC must, subject to clause 14 above, reschedule the matter.

## 20. PRE-ARBITRATION CONFERENCE

- 20.1 The parties to an arbitration shall hold a pre-arbitration conference dealing with the relevant matters prior to the conciliation/arbitration or arbitration proceedings taking place.
- 20.2 The parties should endeavour to hold a pre-arbitration conference at 7 days before the scheduled date for the commencement of the conciliation/arbitration or arbitration proceedings.

## 21. POSTPONEMENT OF PROCEEDINGS

- 21.1 Any party may apply for a postponement of conciliation, conciliation/arbitration or arbitration proceedings by serving an application for postponement on the other parties to the dispute and lodging a copy with SARPBAC at least 7 days before the scheduled date of such proceedings.
- 21.2 SARPBAC must postpone proceedings without the parties appearing if:
- 21.2.1 all the parties to the dispute agree in writing to the postponement and the written agreement for the postponement is received by SARPBAC at least 7 days prior to the scheduled date of the such proceedings; or
- 21.2.2 there are compelling reasons to postpone.
- 21.3 Upon postponement of any proceedings, the commissioner must reschedule such proceedings to a later date not more than 60 days from such postponement.

## 22. ARBITRATION OF DISPUTES

- 22.1 SARPBAC must give the parties at least 21 days notice in writing of an arbitration hearing, unless the parties agree to a shorter period of notice.

- 22.2 The commissioner shall conduct the arbitration proceedings as stipulated in Section 138 of the Act.
- 22.3 In arbitrating disputes referred to SARPAC, a commissioner will have the powers provided for in Section 142 of the Act read with the charges required by the context.
- 22.4 An commissioner conducting an arbitration may make an appropriate award, including, but not limited to, an award:-
- 22.4.1 ordering any person to pay any amount owing in terms of a collective agreement;
- 22.4.2 confirming, varying or setting aside a compliance order issued by SARPAC;  
or
- 22.4.3 any award as contemplated in section 138(9) of the Act.
- 22.5 The commissioner may make an order for the payment of costs against a party or parties if requested to do so and if the commissioner deems the actions of the party or parties, against whom such costs award has been requested, to have unduly delayed or frustrated the resolution of the dispute or that such party or parties have acted in a frivolous or vexatious manner regarding the dispute.
- 22.6 An arbitration award made by a commissioner is final and binding and may be enforced as if it were an order of the Labour Court, unless it is an advisory arbitration award.
- 22.7 Arbitration awards are subject to Sections 143(2) and 143(4) of the Act.
- 22.8 Arbitration awards may be varied or rescinded as contemplated in Section 144 of the Act.
- 22.9 Any party to a dispute who alleges a defect in any arbitration proceedings may, in terms of Section 145 of the Act, apply to the Labour Court for an order setting aside the arbitration award.
- 22.10 The commissioner must, within 14 days of the conclusion of the arbitration proceedings, issue a signed arbitration award with brief reasons for the award.
- 22.11 The commissioner must provide a copy of the award to SARPAC and each party to the dispute.

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**23. PEACE OBLIGATION**

The parties to a main agreement, and those to whom the provisions of a main agreement are extended, undertake not to strike, lockout or engage in any other form of industrial action that is in conflict with the dispute resolution procedures set out in this annexure and will, should such action take place, do everything within their power to normalize the situation and ensure continuation of services throughout the processing of the dispute.

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## **ANNEXURE C**

### **EXEMPTION PROCEDURE**

1. Employers to whom the terms of a main agreement are applicable may apply to SARPAC for exemption from any term(s) of the main agreement, provided that exemption applications shall comply with the following requirements:
  - 1.1. The application for exemption must be forwarded, in writing, to the General Secretary within thirty (30) days of the provisions of the collective agreement becoming applicable to the employer. Where the exemption sought pertains to the payment of bonus in terms of clause 24 of the main agreement, the application for exemption must be made by no later than 30 calendar days prior to the date on which the bonus is payable.
  - 1.2. The application must specify the clause(s) from which exemption is being sought.
  - 1.3. The application must clearly indicate the nature and extent of the relief being sought.
  - 1.4. The application must be fully motivated.
  - 1.5. The application must be accompanied by relevant supporting documentation and financial information.
  - 1.6. Applications that affect employees' conditions of service shall not be considered unless the employer submits proof that it has notified the affected employees and/or their representative trade union(s) of the fact that an application for exemption is being made and informing such employees and/or their representative trade union(s) that they are entitled to make written submissions, within 14 days of receipt of the notification, to the exemption panel through the General Secretary.
  - 1.7. The application shall, if the nature of the relief sought so dictates, be accompanied by a plan reflecting the strategies to be adopted to rectify the situation giving rise to the application and indicating a time frame for the plan.
  - 1.8. Indicate the period for which exemption is required.
2. Implementation of the clause(s) from which exemption is being sought will be suspended by the specific employer pending the outcome of the exemption application.
3. On receipt of an application for exemption, the General Secretary must provide written acknowledgement of the receipt of the exemption application to the applicant employer.

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4. Applications for exemption will be heard by an independent panel appointed for this purpose by SARPBAC.
5. The above panel shall be known as the exemption panel and shall consist of three persons.
6. The person(s) appointed to consider an application for exemption shall be independent person(s) having experience deemed by SARPBAC to be relevant which may include, but not be limited to, experience of financial matters, the Road Passenger Transportation Trade, labour relations and/or labour law.
7. All arrangements pertaining to exemption proceedings will be made by the General Secretary.
8. The application shall be considered by the exemption panel as soon as practically possible after the application is made.
9. The exemption panel shall consider the exemption application together with any submissions received from interested parties.
10. The exemption panel may, if it deems it expedient, request the parties to the specific exemption application to attend the meeting at which the application is to be considered.
11. The exemption panel shall have the right to call any other party, such as an interested third party, that it feels might be able to assist it in arriving at a decision.
12. The exemption panel must consider the exemption application, grant or reject the application and inform the parties of its decision, within a time period of no more than 60 days from the date of receipt of the application by the General Secretary.
13. In considering an application, the exemption panel shall take into consideration all relevant factors which may include, but shall not be limited to, the following criteria:
  - 13.1 The applicant's past record (if applicable) of compliance with the provisions of the main agreement and/or exemption certificates.
  - 13.2 Any special circumstances that exist or any precedent that might be set.
  - 13.3 The interests of the industry in relation to unfair competition, centralized collective bargaining as well as the economic stability of the industry.
  - 13.4 The interests of employees as regards exploitation, job preservation, sound conditions of employment, possible financial benefits, health and safety as well as the infringement of basic rights.

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- 13.5 The interests of the employer as regards its financial stability, the impact on productivity, its future relationship with employees and recognized trade union(s), operational requirements and the viability of the employer's business.
14. If the application is granted, the exemption panel shall, within the time period stipulated in clause 12 above, provide each of the parties and the General Secretary with written advice of its decision, the nature and extent of relief granted and any special conditions that might be applicable to such relief.
15. If the application is refused, the exemption panel shall, within the time period stipulated in clause 12 above, submit a written report to each of the parties and the General Secretary, setting out its reasons for not granting the application in whole or part.
16. The General Secretary shall, within 15 days of receiving the advice referred to in clause 15 above, issue an exemption certificate, signed by the Chairperson, Vice-Chairperson and General Secretary, containing the following particulars:
- (a) The full name of the employer
  - (b) The trade name of the employer
  - (c) The provisions of the collective agreement from which exemption has been granted
  - (d) The period for which the exemption shall operate
  - (e) The condition(s) of the exemption granted
  - (f) The date of issue of the exemption certificate
17. Conditions, to which reference is made in clause 16(e) above, may include a condition requiring the employer to provide written reports at stated intervals to the General Secretary on the progress being made with the plan, referred to in clause 1.7 above.
18. SARPAC shall:
- 18.1 Retain a copy of all exemption certificates issued and number each certificate consecutively;
  - 18.2 forward a copy of the certificate to the parties.
19. An employer to whom an exemption certificate has been issued shall at all times have the certificate available for inspection at his establishment.

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20. Pending the outcome of an exemption application, and any appeal in terms of clause 22 below, the employer shall be exempt from implementing the clause(s) which are the subject of the exemption application or appeal until such time as a decision has been made by the exemption panel or the exemption appeal panel, as the case may be.
21. The following procedure pertains to appeals against the decisions of the exemption panel:
- 21.1 An appeal shall be in writing and be lodged with the General Secretary within a period of not more than 15 days after receipt by the applicant employer of the decision of the exemption panel against which the appeal is being lodged.
- 21.2 SARPBAC shall establish an independent body of three persons to hear and decide any appeal brought against a decision to refuse an application for exemption from the provisions of a collective agreement or the withdrawal of such an exemption by SARPBAC.
- 21.3 The above independent body, shall be known as the exemption appeal panel.
- 21.4 The persons so appointed shall be independent persons having experience deemed by SARPBAC to be relevant which may include, but not be limited to, experience of financial matters, the Road Passenger Transportation Trade, labour relations and/or labour law.
- 21.6 The General Secretary shall acknowledge each appeal application in writing.
- 21.7 The procedure to be followed by the exemption appeal panel shall be determined by the panel but shall be fair and reasonable and shall allow representations to be made by interested parties which shall include the:
- (a) Employer lodging the appeal
  - (b) Affected trade union(s) or its members/eligible employees who are unrepresented by a trade union
  - (c) Employers' organisations or any of their members
  - (d) SARPBAC
- 21.8 The criteria that must be applied by the exemption appeal panel when it considers such appeal will be those criteria referred to in clause 13 above.

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- 21.9 The exemption appeal panel must consider the appeal application, grant or reject the application and inform all interested parties of its decision, within a time period of no more than 60 days from the date of receipt of the appeal application by the General Secretary.
- 21.10 The exemption appeal panel shall provide each of the parties and the General Secretary with written advice of its decision and, if applicable, the nature and extent of relief granted and any special conditions that might be applicable to such relief.
- 21.11 The decision of the exemption appeal panel shall be final.
22. The cost of exemption proceedings will be borne by SARPBAC.

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