

**IN THE PUBLIC SECTOR CO-ORDINATING BARGAINING COUNCIL  
HELD AT CENTURION**

**CASE NUMBER:**

In the matter between:

**SADTU, POPCRU, DENOSA &  
NEHAWU**

**Applicants/Trade Unions**

And

**The Department of Public Service and  
Administration**

**First Respondent**

**National Treasury**

**Second Respondent**

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**INQUIRIES DIRECTED TO THE RESPONDENTS**

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At the pre-arbitration meeting held at the PSCBC on 22 June 2020 at 10h00, the parties agreed under paragraph 36 of the pre-arbitration minute that they may direct inquiries to each other in order to shorten the proceedings. SADTU, POPCRU and DENOSA (**the applicants**) direct the following enquiries to the respondents to enable them to properly prepare for the arbitration and to attempt to limit the areas of dispute in order to shorten the arbitration proceedings:

2. Ad paragraph 26.1 of the arbitration minute

- 2.1. Upon what facts do the respondents rely for the contention that the application or implementation of clause 3.3 of Resolution 1 of 2008 (**the Collective Agreement**), as sought by the applicants in their referral to the Bargaining Council, is against public policy?
- 2.2. The respondents are requested to indicate when each fact upon which they rely in this regard came into existence and to provide the relevant documentary proof or support.
- 2.3. Do the respondents contend that the breach of public policy applies to the immediate implementation of clause 3.3 – i.e. with retrospective effect from 1 April 2020 and immediately upon the rendering of an arbitration award (**first scenario**) – or applies even if the arbitration award provided for the implementation of clause 3.3 retrospective from 1 April 2020 but staggered over a period of time in the future (**second scenario**)?
- 2.4. If the contention relates to the first scenario only, would the respondents consent to an award that requires them to implement clause 3.3 of the Collective Agreement with retrospective effect from 1 April 2020 but to discharge the obligation in a phased manner over a period of time in the future?

3. Ad paragraph 26.2 of the arbitration minute

- 3.1. Upon what facts do the respondents rely for the contention that the application or implementation of clause 3.3 of the Collective Agreement, as sought by the applicants in their referral to the Bargaining Council, is objectively impossible?
- 3.2. The respondents are requested to indicate when each fact upon which they rely in this regard came into existence and to provide the relevant documentary proof or support.
- 3.3. Do the respondents contend that the objective impossibility relates to the immediate implementation of clause 3.3 – i.e. with retrospective effect from 1 April 2020 and immediately upon the rendering of an arbitration award (**first scenario**) – or the objective impossibility exists even if the arbitration award provided for the implementation of clause 3.3 retrospective from 1 April 2020 but staggered over a period of time in the future (**second scenario**)?
- 3.4. If the contention relates to the first scenario only, would the respondents consent to an award that requires them to implement clause 3.3 of the Collective Agreement with retrospective effect to 1 April 2020 but to discharge the obligation in a phased manner over a period of time in the future?

4. Ad paragraph 26 of the pre-arbitration minute

4.1. What is the legal basis upon which the respondents contend that the implementation or application of clause 3.3 of the Collective Agreement may be excused for the reasons set out in paragraphs 26.1 and 26.2 of the pre-arbitration minute when it is the result of bona fide collective bargaining, and taking into account the provisions of sections 2, 7(2), 23 and 39 of the Constitution of the Republic of South Africa, 1996 read with *inter alia* sections 1, 3, 31 and 33A of the Labour Relations Act, 66 of 1995?

5. Ad paragraph 28 of the pre-arbitration minute

5.1. Do the respondents intend to raise any objection to the jurisdiction of the Labour Court to determine the dispute referred to the Labour Court in the application proceedings launched by Public Servants Association and others v The Minister of Public Service and Administration and others (Case No: J500/20) (**the PSA proceedings**)?

5.2. If the respondents intend to raise any *in limine* objections, including an objection to the jurisdiction of the Labour Court, in the PSA proceedings, they are requested to identify those *in limine* objections in their intended application to postpone the present arbitration proceedings. The respondents have indicated that if such a postponement application is to be brought, it will be brought on 26 June 2020.

5.3. The respondents are also requested to indicate, in their application for the postponement of the arbitration proceedings, when they will be filing their answering affidavits in the PSA proceedings.

6. Ad paragraph 29 of the pre-arbitration minute

6.1. Do the respondents intend to object to the jurisdiction of the Bargaining Council to determine the dispute that the applicants have referred, or to raise any other *in limine* objections or points?

6.2. If the respondents intend to raise such a jurisdictional objection, or to raise any other *in limine* objections or points, they are requested to raise them together with their application for the postponement of the arbitration proceedings, i.e. on 26 June 2020.

7. Ad paragraph 34 of the pre-arbitration minute

7.1. In light of the common cause facts recorded in *inter alia* paragraphs 8, 9, 14, 21, 22, 23 and 24 of the pre-arbitration minute read with clause 11 of the Collective Agreement and the defenses raised in paragraphs 26.1 and 26.2 of the pre-arbitration minute, do the respondents accept the duty to begin irrespective of the agreement recorded in paragraph 34 of the pre-arbitration minute? Or do the respondents insist that the applicants bear the duty to begin?

8. Conclusion and timing

8.1. In light of the spirit in which the pre-arbitration meeting was conducted, and the objective to attempt to shorten the proceedings and to resolve the dispute between the parties expeditiously, the applicants request the respondents to provide written responses to the inquiries directed above on or before 26 June 2020.

**Dated at Braamfontein on this 23<sup>RD</sup> day of June 2020.**

*(sent electronically without signature)*

**Cheadle Thompson & Haysom Inc**

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**And to:**       **The Arbitrator**

**And to:**       **The State Attorney**

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