

**BUILDING INDUSTRY BARGAINING COUNCIL
(CAPE OF GOOD HOPE)**

Case Number: 20230825001

Date: 23 October 2023

In the matter between

Building Industry Bargaining Council

Applicant

And

Morne & Yolanda Paint (Pty) Ltd t/a My Painter

Respondent

ARBITRATION AWARD

DETAILS OF THE HEARING AND REPRESENTATION

1. The arbitration hearing was scheduled for 23 October 2023 at 08:30 at the Building Industry Bargaining Council's offices in Bellville. Mr. Allister Segrys, the designated agent represented the applicant, whilst the respondent, Morne & Yolanda Paint (Pty) Ltd t/a My Painter (Pty) Ltd was represented by Mr. Morne van Deventer.

ISSUE TO BE DECIDED

2. The alleged contraventions of the Building Industry Bargaining Council's Collective Main Agreement as set out in the Details of Contraventions are to be determined.

SUBMISSIONS OF THE PARTIES

3. Mr. Allister Segrys submitted that on 28 July 2023, he conducted a site inspection at AGS Church at 90 Retief Street & Quarry Road, Bellville, and established that the respondent was non-compliant in terms of clause eight failing to register

employees within the prescribed 10 days. The respondent was also found non-compliant concerning clauses 31 to 53 for failing to pay prescribed employee benefits. The following employees were found on site.

4. Maxwell Matinise (holiday fund number 450506) registered by the company on 12/2011- no benefits.
5. Thembinkosi Andries Xhalabile (holiday fund number 375643) registered by the company on 05/2003 - no benefits.
6. Isaac Chimene (holiday fund number 904621) registered by the company on 12/2017 - no benefits.
7. Conrady Mwanunura – employee not registered with BIBC and has no benefits.
8. Bruno Musenzi (holiday fund number 521003) registered by the company on 09/2018 - no benefits.
9. Fidelis Chimene (holiday fund number 904622) registered with the company on 12/2017 - no benefits.
10. Terence Matengambiri is not registered with the BIBC and has no benefits.
11. Enoch Matengambiri (holiday fund number 904623) was registered by the company in 12/2017 - no benefits.
12. Gilbert Chirimuuta - employee not registered with BIBC and has no benefits.
13. During the investigation, it was established that other employees were not present on the day. Mr T G Chirimuta and Mr. F N Karisa were also not registered and there were no benefits on the BIBC database.
14. During the discussion with the respondent, the business informed us that it only employs one permanent employee, the rest are casual employees. Mr Segrys submitted during the arbitration that the term casual does not find application under the collective agreement.
15. The respondent submitted that it has in the interim registered all the employees and has purchased the benefits. The applicant party pointed out that although benefits have been purchased the respondent had not done so retrospectively. The respondent submitted that its reference to casual employees is a reference to subcontractors. In conclusion of its submissions, the respondent submitted that it is not financially able to purchase benefits for all employees retrospectively.


ANALYSIS OF THE EVIDENCE AND ARGUMENT

16. The applicant's claim that the respondent had failed to comply with the Building Bargaining Council's Main Collective agreement is accepted on the evidence. The respondent argued that the workers are regarded as subcontractors, but this contention is unconvincing and not supported by the evidence. The respondent's further contention that it cannot afford to purchase the benefits cannot be accepted as this would undermine the operation of the collective agreement.

17. The claim as set out in the compliance order is supported in all material respects by the evidence. The respondent failed to comply with the compliance order.
18. I accordingly find that the applicant had discharged the onus to show that the respondent had contravened the provisions of the main collective agreement.

AWARD

19. Having considered the submissions, I order the following:
- a. The respondent must register all its employees with the Building Industry Bargaining Council.
 - b. The respondent is ordered to submit its wage records for all their employees for the period 01 November 2022 to 25 August 2023, within 14 days of receiving this award.
 - c. The respondent must purchase benefits for all employees as prescribed by the collective agreement.



30 October 2023

BARGAINING COUNCIL COMMISSIONER: