



# DEMARCATIION RULING

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Case Number: GATW 13928-25  
Commissioner: Richard Byrne  
Date of Award: 15 February 2026

In the ARBITRATION between

GDPEOSA obo EXPELOG (PTY) LTD t/a FRESH AND FROZEN  
(Applicant)

And

BARGAINING COUNCIL FOR THE MEAT TRADE – GAUTENG  
(Respondent)

Employee's representative: MR. VAN DER MERWE (EMPLOYER ORGANISATION OFFICIAL)

Employee's address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Telefax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Respondent's representative: MR. SHORT (ATTORNEY)

Respondent's address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Telefax: \_\_\_\_\_

E-mail: \_\_\_\_\_

## **DETAILS OF HEARING AND REPRESENTATION**

[1] This matter was first heard on 7 November 2025 and thereafter set down for 5 February 2026. Mr. van der Merwe, an Employers' Organisation Official, represented the Applicant party. Mr. Short, an Attorney, represented the Respondent party. The parties produced a bundle of documents, including a Pre-Arb Minute.

## **BACKGROUND TO THE DISPUTE**

[2] The Respondent Bargaining Council maintained its view that this matter is not properly a demarcation matter, but rather should be regarded as an exemption matter. The Applicant Company decided to withdraw certain of its challenges, but still maintained that some of its shops fell outside the geographical area covered in the scope of the Council. It agreed that this should really be an exemption matter, but needed a ruling on this matter. The Applicant stated that the only argument it had before this Commission is that four of its shops fall outside the geographical area as defined in the Council's scope.

[3] The parties then requested that I make a ruling on whether geographical areas should be part of a demarcation dispute, or whether it should be treated rather as an enforcement issue.

[4] The Respondent's argument is essentially that demarcations have to do with determining the sector into which a particular business of an employer falls. The geographical area as recorded in the Council's scope do not require the intervention of the Commission, but are more administrative in nature, which can be resolved through the exemption process or the Labour Court.

[5] The Applicant's argument was that since the geographical area is stated in the scope/definition of the Council, it, as well as the sector are subject to determination by a Commissioner in a demarcation process.

## **ISSUE TO BE DECIDED**

[6] I must decide the issue as described in paragraphs 3 to 5 above.

## **ANALYSIS OF EVIDENCE AND ARGUMENT**

[7] From my search of demarcation awards related to the above issue, I could not find an award that demarcates an industry just on the basis of a geographical area as contained in a Bargaining Council's scope.

[8] Section 62(1)(a) states: "... may apply to the Commission in the prescribed form and manner for a determination as to – (a) whether any employee, employer, class of employees or class of employers, is or was employed or engaged in a **sector or area**" {my emphasis}. The question that arises is whether the wording of this legislative provision allows for an interpretation that a demarcation can be decided upon on the basis of the area as contained in its scope alone. The answer, in my view, should be arrived at following a "purposive" approach. Support for this approach should be found in explanations from our Labour Court, the *sui generis* nature of the demarcation process and the ultimate fallback position – common sense.

[9] In **Coin Security (Pty) Ltd v CCMA and others [2005] 7 BLLR 672 (LC)** the relevant considerations in determining whether employees and their employers are engaged in a particular industry were summarised as follows: (a) The character of an industry; (b) Is it

possible for the same employer to be engaged in two or more industries at the same time; (c) Where one industry may be ancillary to another, it is a question of degree; (d) Ancillary business operations are business operations rendering services to existing customers or clients of the main business; (e) Whether an employer is engaged in a particular trade or industry is one of fact. To be noted in this set of considerations is that there is no mention of the geographical area of jurisdiction as a separate issue to be considered in this process by a Commissioner.

[10] In **Workforce Group (Pty) Ltd v Van Zyl NO and others (2015) 36 ILJ 2182 (LC)** the Court held the view that legality challenges concerning the Main Agreement was not an issue contemplated in section 62, and was not an issue to be determined by the CCMA. Further, that the purpose of section 62 was to determine whether employers and employees resorted under the registered scope of a particular Bargaining Council.

[11] In **SAMWU v Syntell (Pty) Ltd and others [2013] 2 BLLR 207 (LC)** the Court described the character of an industry as follows: "It is trite that in demarcation disputes the character of an industry (or "sector" and "area") is determined by the nature of the enterprise in which both employer and employees are associated for a common purpose. The precise work that each employee is involved in is not significant." This legal principle goes back at least as far as **R v Sidersky 1928 TPD** and is supported by **Coin Security (supra)**. Of interest here is that the Court introduces the notion that "industry" is "sector" and "area" combined. In other words, that sector and area are to be considered together and not independent issues.

[12] The *sui generis* (unique) nature of the demarcation process was recognised by the Labour Appeal Court in **NUMSA v CCMA and others (2020) 41 ILJ 1629 (LAC)** where it explained that the word "arbitration" is not used in section 62. The process contemplates more than a conventional adversarial contest between interested parties. It presupposes a broader investigative role. The demarcation process is one entrusted to a specialist tribunal in terms of the provisions of the LRA. The demarcation decision is one involving facts, law and policy considerations. Further, it extends beyond a comparative exercise in the form of a determination of the extent to which a particular business' activities match up against a definition of a sector or industry.

[13] The purposive approach to demarcations was established by **Greatex Knitwear (Pty) Ltd v Viljoen 1960 (3) SA 338 (T)** where it was held that the tribunal is called upon to determine whether a class of employers is engaged in a particular industry where the employer is one of those not party to an agreement, which industry the Minister has declared an agreement to be binding.

[14] Therefore, the Commissioner's primary task is to identify the activity or industry that a particular employer is engaged in, and then in applying the principles relating to demarcation matters, decide whether the activities of the employer falls within the definition of the Bargaining Council.

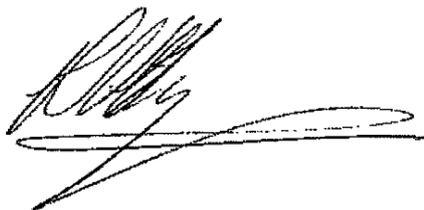
[15] Due to the objective of a demarcation process, the word "area" in section 62(1)(a) should not be seen as being part of the investigative role of the Commissioner, but rather part of the factual framework, or put another way, the territorial limitations of that sector. It is not an issue that still needs to be determined – it already exists as an irrefutable fact. Having said that, the word "area" is also inextricably linked to the "sector", as it is only there where the Bargaining Council exercises jurisdiction.

[16] A Commissioner determining whether or not a Company physically exists in an area as defined in a Council's scope has little to do with the objectives of section 62 of the LRA. Neither would such a determination require a Commissioner to follow the *sui generis* process inherent in section 62. Neither would such a determination require the application of any of the principles enunciated by the Courts over the years, and which are applicable to demarcation matters.

[17] In conclusion, it is not the Commissioner's duty to determine whether a particular employer's business physically exists in a certain "area". Parties would have access to other authorities or forums to determine the area in which a particular business resides. Common sense would also dictate that when parties approach the Commission for a demarcation determination, that certainty regarding "area" has, or should be, a matter that is not in dispute.

**RULING**

[18] Making a determination as to whether an employer's business is geographically situated in an area as defined in a Bargaining Council's Main Agreement is not a Demarcation matter.

A handwritten signature in black ink, appearing to read 'R. Byrne', with a long horizontal flourish extending to the right.

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**RICHARD BYRNE**  
**SENIOR COMMISSIONER**