

FAIS Ombud orders broker to cough up for late submission of claim

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An insurance broker has been ordered by the FAIS Ombud to compensate a transport operator R171875, 56 after an insurance claim was repudiated due to late notification by the broker.

Templeton Zama of Vereeniging-based Zama Transport CC complained to Noluntu Bam, the Ombud for Financial Services Providers, that Acsenna Brokers CC, represented by Annette Janse van Rensburg, had failed to lodge the claim with the insurer, Senate, within the stipulated period of seven days.

The complainant requested the Ombud to compel the respondent to make good the damage it suffered due to the insurers rejecting its claim in the amount of R229 167.42.

In July 2008 complainant's truck was hijacked on the Meyerton/Vereeniging highway while transporting a load of steel coils. The driver and the truck were taken to Katlehong where the truck was abandoned and the driver was left stranded. The hijackers absconded with the trailer and the cargo valued at R229 167.42

The complainant notified the respondent of the loss on the same day, and all documentation pertaining to the claim was completed by the complainant on 30 July 2008.

Respondent received a letter from the insurer dated 8th August 200, rejecting the claim on the basis of late submission. This was, however, not forwarded on to complainant.

Instead a subsequent letter sent to respondent containing an additional basis of rejection namely that the complainant had contravened sub clause 20(i) of the terms and conditions of the policy, was forwarded to respondent. The clause warrants that no cover is provided whilst vehicle is stopped, unless it is contained within a security compound and the driver crew/security guard is present at all times.

The complainant declared that at the time of the hijacking, the vehicle had been stationary on the side of the Meyerton/Vereeniging Highway to enable the driver to fasten the chains holding the steel coils. The chains had loosened during the trip and the driver's actions were precautionary.

In response to a letter sent by the Office of the FAIS Ombud, the respondent admitted that the claim was initially rejected due to late notification. The respondent, however, pointed out that

the late notification was as a result of a misunderstanding by their representative, one Francois Mulder.

The respondent said that Francois understood the Senate wording as follows:

“The claim documentation must be in position of the broker within 7 days after the event. We can send it through Senate as soon as we have all the outstanding information.”

“Senate repudiated the claim the first time due to late notification. We requested that they reconsider the claim. They reconsidered the claim and came to the conclusion to reject the claim due to the fact that the client: stopped at an authorised point witch (sic) were unguarded.”

In a further letter, the respondent re-iterated that even if the claim was lodged timeously, the probability is that the claim would have been rejected by the insurer due to the complainant’s clear breach of sub-clause 20 (1) of the policy.

The Ombud wrote to the insurer seeking clarity on the matter. The insurer confirmed that the claim was rejected due to late notification.

Clint Janssen, the managing director of Senate said the claim was first reported on 7 August 2008, a full 12 days after the loss occurred on 25 July 2008. The policy carries a strict seven-day claim notification for hijacking losses, he added.

Janssen noted the reason for the strict seven-day claim notification period is as follows:

“Being the largest market in South Africa for this type of insurance cover (we cover in excess of 3 000 transport companies) over the last 12 years, we have needed to develop a network of hijacking investigators and informants focused on recovery of hijacked loads.”

“However this is only effective if we are alerted within a reasonable time of the incident. As such we have needed to encourage prompt notification, by way of the maximum seven-day notification period as a condition of cover, which is emphasised in large bold font in the policy document so as to specifically draw the reader’s attention.

“I add that this has become the industry norm and the same such criteria exist in all such commercial trucking transit insurance policies.”

The respondent was invited to comment in the light of Janssen’s letter, with specific reference to his confirmation that the late notification was the primary reason for the rejection of the claim. The respondent again denied its actions were the cause of the complainant’s loss and remained adamant that sub clause 20(i) would have in any event resulted in the claim being rejected.

In her ruling, Ms Bam commented on the “opportunistic” nature of the respondent’s conduct.

“When it received the letter of 8 August 2008 which rejected the claim for late submission, it never sent the letter to the complainant.

“When Senate responded on 20 August 2008, the respondents had no problem sending that letter to complainant because they saw the mention of sub clause 20 (i) as justification of their delay in submitting the claim.

“This type of conduct is unfortunate and is inconsistent with the duty to act in the client’s interest in terms of the Code of Conduct.”

Ms Bam said in all the letters sent by the respondent to the Office of the FAIS Ombud, it had consistently raised the defence that the claim would not have succeeded due to complainant’s alleged violation of the conditions of the policy.

However, Janssen had made it clear in his letter that the “reason for the declinature of the claim remains due to the late submission”.

“The claim was rejected on the basis of late submission which the respondent is refusing to take responsibility for. In the circumstances, this defence will not avail the respondent.”

“On respondent’s own version, they admit to notifying the insurer 12 days later and their reason for such late notification is that they misunderstood the requirements of the contract. On their own version, respondents were negligent.”

“The respondent’s conduct violated the provisions of the FAIS Act whilst rendering financial services to complainant.”

Ms Bam said that in so far as the defence raised by respondents that the claim would have been rejected anyway due to the violation of sub clause 20 (i), the defence has to fail for the following reasons:

“It is an undisputed fact that the claim was rejected by Senate only due to late notification.”

“In my view it would be speculative to venture into an exercise to establish whether complainant’s reason for stopping the truck on the highway would have caused its claim to fail”

“In any event, it can equally be argued that in the circumstances, the complainant was not in breach of the sub clause. Upon a proper interpretation of the contract, it cannot be said that any stopping anywhere will amount to loss of indemnity. On the facts of this case, the complainant’s driver made a necessary stop during the course of transporting goods. The vehicle was not parked as contemplated in clause 20 (i).”

Ms Bam said the insurer Senate had made it clear that the rejection of the claim was based on the late submission. This made the respondent's conduct the cause of the damage.

In upholding the complaint, Ms Bam ordered the respondent to pay the complainant the sum of R171875, 56 plus interest, the amount claimed having been adjusted in line with the policy terms and conditions.