

FAWU BULLETIN

Newsletter For Members and Staff

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FAWU Wins Case Against SAB: Worker To Get 5 Years Salary

At the end of 2004, cde Wellington Mothata, an NEC delegate of the Limpopo province at the time, was charged and dismissed by his employer, South African Brewery (SAB) for dishonesty.

The company argued that cde Mothata lied in that he said he could not attend a hearing about a work related issue because he was on a training course (sent by the company) on the suggested date of the hearing. Afterwards he attended a FAWU National Congress meeting in August 2004 for which the union has requested time-off for the comrade and the employer did not object. Despite this, upon his return to work, the employer charged cde Mothata for being dishonest.

The dispute was referred to the CCMA but the commissioner wrongly decided in favour of the employer and declared that the dismissal was substantively fair. At FAWU, we were aggrieved and did not feel convinced at all by the Commissioner's reasoning. The union approached the Labour Court to review and set aside the Commissioner's award.

The Labour court agreed with the union's submission that the Commissioner's reasoning was flawed and unjustifiable. In this light, The Court set aside the award by reinstating cde Mothata retrospectively from the date of dismissal.

SAB, unhappy with the Labour Court's ruling, lodged an appeal to the Labour Appeal Court in Johannesburg. The matter was heard by the court's full bench headed by Judge President Zondo who was very critical

towards the employer and the Commissioner about their conduct in the handling of the matter.

The Judgement

The Labour Appeal Court ruled that cde Mothata's dismissal was substantively unfair as he never lied and was never dishonest to the employer. Furthermore, the court ordered that he be reinstated from the date of his dismissal and also ordered the company to pay FAWU's legal costs. SAB was ordered to pay cde Mothata's a salary of not less than 5 years (60 months) and allow him to resume duties.

It is indeed a big victory for workers, for the union and once again demonstrates our commitment to fight and defend workers' rights. We respectfully advise SAB to respect the Labour Appeal Court judgement and protect cde Mothata from any victimization by any of its managers.

Vusi Landu
National Legal Co-ordinator

Chokka Fish Workers Gets COSATU Support

The five-month long strike by about 500 squid fishermen in Port Elizabeth, Jeffereys Bay, Humansdorp and St. Francis Bay continues as the employer remain intransigent in their stance not to agree to a basic salary and to increase the commission fee per kilogram of fish caught.

Negotiations are currently being stalled by the employer who, after various meetings still refuses to give in to the union's demand for a better salary. The union is ready to make certain compromises with regard to the basic salary amount but the employer must meet it halfway. The strike is further complicated by the scab labour operating fishing boats. This dangerous situation has led to the King Fisher accident in December last year in which fishermen have lost their lives.

A march earlier this year was held in support of the strikers, but it was to no avail and the possibility of further action is being assessed.

The workers and their families are currently surviving through food parcels they are receiving from the Social Security Agency. The agency says that it their responsibility to pay social grant to deserving people and the union has made an application for special assistance from the Agency. The fishermen earn no money and their families are suffering while out on strike. Although many refuse to go back, some have returned to work.

DOL Visits West Coast- Promises to Look into Poor Conditions

A representative from the Department of Labour visited the West Coast town of Saldanha last week to address members of the community, particularly those whose livelihood depends on fishing.

It seems as if serious strides are being made to formulate a sectoral determination for the fishing industry . Workers in this industry are vulnerable and many in fishing communities like Saldanha rely on fishing for a living.

Off-shore fishing workers endure many hardships as a result of the fact that they are not regulated by the Department of Labour but rather the Merchant Shipping Act. It therefore meant that they are not entitled to certain benefits that inland workers enjoy.

An official of the Department of Labour (DOL) however promised that it is looking into formulating a sectoral determination for the industry as these workers are also vulnerable in the same way as farm workers and domestic workers.

It is also important that the union should ensure that seasonal workers also receive UIF when not employed. The onus therefore is on FAWU to make sure that employer contributes and deducts from seasonal workers so that they too can enjoy this benefit.

COSATU CEC Statement 25 February 2009

The Congress of South African Trade Unions held the first scheduled meeting of its Central Executive Committee of 2009 from 23-25 February. The CEC, as per the constitution, was attended by the Presidents and General Secretaries and/or representatives of 21 affiliates and the chairpersons and secretaries of all the nine provinces. Amongst the many issues discussed were:

Resolution of the CEC on the job-loss bloodbath arising from the global economic meltdown

The CEC adopted the resolution, which is a historic victory for the people of South Africa, probably unique in the world, in which constituent organisation to the social dialogue structure – Nedlac, have come together jointly to produce a strategy to deal with the impact of the crisis and protect jobs and livelihoods.

Elections

The CEC recalled the discussion paper it drafted to prepare for discussion for the COSATU 9th National Congress held in September 2006. The paper analysed the economic and political environment we faced at the time. At the time we observed that the “**post-apartheid socio-economic order** could be characterised as one in which there is positive economic growth and opportunities for amassing wealth for a limited few. This growth is not equitably shared While there is a formal break with the apartheid racial ordering of society the dualistic development path continues, albeit with new features. Fundamentally the accumulation regime has not changed hence development and under-development continues to coexist.”

This did not have to be, and neither was it inevitable. Of course no one can claim that it is possible to root out more than 300 years of colonial legacy in 12 years. Similarly, it cannot be argued that what is taking place in South Africa is entirely in line with the National Democratic Revolution, as historically conceived by the liberation movement. The NDR is about thoroughgoing transformation of social and property relations. There have been numerous warnings against the danger of superficial change, or put another way, the dangers of simply replacing a white ruling oligarchy with a black one but leaving the social and property relations unchanged. The ANC’s 1969 Morogoro Strategic Perspective in particular was scathing on this as an acceptable for our NDR.”

COSATU went further to ask itself profound questions “Has democracy failed the workers and the poor? Have we reached a tipping point where the post apartheid state could be defined as one acting on behalf of the affluent in our society? How do we account for the sharp differences in the perspectives about the economy and our society as if we were coming from different planets? What is the weight of the working class politically in South Africa and how has this allowed for the apparent pro-capitalist bias? What steps do we need to take to asset working class power that is proactive in determining a

readjustment of resources in our society? Finally what is the value of our democracy to the working class?

Our mood has changed from this following the historic 52nd national conference of the ANC. A contested leftward shift in the ANC economic policies has taken place. Precisely because we played such a historic role in delivering the shift, we recognise that the responsibility to win elections for the ANC on this left platform is particularly on our shoulders because we stand to benefit most from the pro-worker and pro-poor manifesto and ANC policies.

The challenge of the working class is to defend the Polokwane gains, the defence of which is not going to be a once-off event. Given that the gains are being highly contested we have adopted a long-term, more systematic strategy to defend them. These include adoption of the *Walking through the open doors* project and the drafting and adoption by the Alliance political centre of the framework for the Alliance programme of action enunciated in the *Seizing the moment – building the post-Polokwane consensus* discussion document.

We emphasize - the biggest challenge COSATU and the working class face, as the primary motive forces of our revolution, is to defend the gains we have achieved in the recent past. The defence of the ANC that retains its historic bias to the working class includes ensuring a decisive elections victory. That is the only way we can cement the left shifts and defend the alliance that will drive a fundamental transformation to address key demands of our people. The adoption of a new and more detailed government five-year programme based on the manifesto and informed by the Polokwane resolutions and the Freedom Charter is a critical objective we must achieve. Failure to do all these things means a defeat not of the ANC but of the NDR itself.

This is the background that informs our approach to the 2009 elections. To us they are as important as the 1994 elections.

The CEC assessed our state of readiness and our efforts to ensure a decisive ANC victory. We are convinced that the ANC will win these elections decisively. We are however warning our structures and the alliance against complacency and over-confidence. We call on COSATU structures and the structures of the Alliance formations, in the remaining 54 days before elections, to redouble their efforts to ensure a victory of the democratic forces. Every house, every workplace, farm and every village must be visited, door-to-door, and turned into a firm support base for our revolution. Moreover we must ensure that our support base does exercise its right to vote on the day of elections.

The battle lines have been drawn. On one side is the minority elitist grouping that occasionally unite behind a shared objective to weaken and ultimately destroy the ANC, and yet who are deeply divided by their historical origins, ideological orientation, struggle credentials, quest to be the best opposition and delusions to be governing parties.

This grouping historically has been led by the DA and now contests this leadership position with the dissidents who left the ANC. Both are implacably opposed to the demands of workers for decent jobs, better wages an end to

casualisation and labour broking, and the DA even wants to make it easier to fire workers.

On the other side is the majority reflecting the spectrum of the South African population and class forces led by the ANC, a people's movement which enjoys moral credibility and with an impeccable and unmatched track record of struggle credentials, which has been earned since its formation 97 years ago and which was consolidated when the ANC assumed office following that historic April 27 1994 national and general elections.

The CEC condemned the outrageous and shameless personal attacks in the media on Comrade Kgalema Motlanthe and dedared its unequivocal support for the President. COSATU is angry that sections of the media continue to form unholy alliances and/or get used by some faceless political scavengers hell-bent on destroying other comrades to pursue their narrow factional political ambitions.

The meeting also passed a resolution calling for calm and peace throughout the country in general but in KwaZulu Natal in particular, where there has been a disturbing rise in intolerance, threats and violent attacks, even murders. It is essential that everyone unites to prevent any repetition of the political violence that plagued the province and the country before the 1994 elections.

There is a degree of disappointed expectations within the working class that must not be ignored by COSATU and the alliance. Certain communities are very angry at real and perceived lack of service delivery, in particular by the local government. The message "nothing has changed" since 1994, untrue as it is, certainly is a formidable challenge. Door-to-door campaigning is the only effective weapon against the despondent feelings amongst our people. Direct engagement will expose that the "nothing has changed" syndrome is definitely caused by disappointed expectations but is not true.

No South African, in particular a black South African, has not been touched by the changes introduced by the ANC government since 1994. As an example certain communities may still not have water and houses but they definitely do have access to social grants and/or education, health and other services. In the face of the opposition parties' propaganda some of our people do forget or ignore the profound nature of the challenges in the face of disappointed expectations on the specific localised demands and anger against their councillors.

This small degree of despondency is the challenge we must face and turn around – we have only 54 days to do so! We will release as many stewards, organisers and leaders as we can, without abandoning other union responsibilities, such as the need to defend our members' jobs in the current global economic turmoil. We will engage with our people and show that there are real possibilities and good reason to be hopeful about the future moving forward. Our challenge we emphasize is to defend the gains of Polokwane on the policy front, in particular during the implementation of the manifesto phase.

Presently mobilisation programmes include sector meetings, workplace and industrial meetings; door-to-door work has proven to be the best tool for

mobilising communities. Mass distribution of the ANC Manifesto is ongoing, together with the COSATU booklet – *Defend our movement – expose the Black DA*, which is very popular and in high demand. We have produced 3 million copies translated into 5 languages.

The CEC was also addressed by the ANC elections tasks team, led by Manne Dipico and Tony Trew, who presented some of the ANC's research. This showed an increased level of voter registration – 23.3 million - a higher intention to vote, and thus a likelihood of a high turnout. Voters show growing appreciation of the progress made by the ANC and support for its policies. The research confirmed COSATU's view that jobs is by far the biggest issue in voters' minds.

The CEC confirmed plans to set up structures to co-ordinate the campaign, in addition to the work being done in ANC election structures. Affiliates and provinces are to submit weekly progress reports every Friday.

The CEC endorsed the following key messages of the campaign:

1. We will show that the past 15 years demonstrate that the country has made huge strides led by the ANC government
2. We will acknowledge the huge challenges that remain
3. We will reassure voters that the ANC has workable plans in its manifesto and policies to tackle these challenge, and
4. We will call our people to action: "working together we can do more"

COSATU sends its best wishes to its four leading members on the ANC's national list for Parliament - Alinah Rantsolase, COSATU National Treasurer, Crosby Moni, NUM Deputy President, Tulas Nxesi, SADTU General Secretary and Noluthando Mayende-Sibiya, NEHAWU President – and the many provincial COSATU officials on the provincial lists.

Bargaining trends: "Collective bargaining at a time of economic crisis"

The CEC received a report from NALEDI on bargaining trends. It noted that wage settlements in 2008 averaged 8.7%, with the best settlement of 15% having been negotiated between the NUM and the Chamber of Mines. Yet inflation (CPI) doubled to 11%, which was well above the average wage increase. The position is much worse for the poorest workers, for whom the effective rate of inflation was 15%, as a result of huge increases in the price of basic foods. 52% of workers still earn less than R2500 a month.

It was agreed to resist attempt by employers to use the global international crisis as a justification for lower wage increases than justified on the basis on inflation increases.

During 2008 a small number of new jobs were being created, but the CEC cautioned that Stats SA's definitions of 'formal-sector' jobs included many in sectors with a high level of casualisation. The drop in the expanded figure for unemployment, down to 29%, which includes those who have given up seeking work, is more a result of Stats SA redefining them as 'discouraged workers' and excluding others.

It was agreed that we must prepare for solidarity action, and convene a Living Wage Committee. Affiliates must submit timetable of bargaining so that we prepare for more effective solidarity within the Federation. Affiliates who have not submitted their 2008 agreements should do so.

Labour brokers

The meeting reaffirmed the federation's opposition to labour broking, which is a multi-billion industry, which covers manufacturing, wholesale and retail, transport, construction, local government, health-care, banking, information technology, cultural and entertainment industry and communication sectors of our economy. The services sector alone has more than 3000 private employment agencies and more than 55% (408 616 of 902 350) of the daily average temporary staff assigned.

According to research work done by NALEDI, workers not only face precarious working conditions but there are also early signs of the emergence of sweetheart unionism in the industry.

Little has been done to stem the tide of labour broking, but workers' resolve to deal with the monster has been bolstered by the ANC's election manifesto's commitment to decisively deal with labour broking and the Minister of Labour's public agitation against the phenomenon.

It was agreed to demand that the labour law review process puts the matter high on the agenda.

COSATU will have a meeting early in March 2009 to ensure that the issue is on NEDLAC Labour Market Chamber agenda. But the process may take a long time because of the scope of this approach. Accordingly, we propose that while the labour law review process takes its course, we check with our lawyers the prospects of challenging labour broking provisions in court under the LRA and to see if there might be lessons from the Namibian court case on labour broking

Section 77 Notice on food and electricity prices

On food prices, the CEC noted some significant successes. There has been an agreement on the following issues:

1. Social assistance, including extension of school nutrition programme to high schools;
2. Dedicated food market enquiry
3. Price monitoring committee
4. Investment in agriculture, including reinvestment of additional VAT collected as a result of high food prices into agriculture

The *'Framework for South Africa's response to the international economic crisis'* also proposes important measures to protect the poorest consumers. We salute the COSATU members and the millions of other workers and communities who participated in the COSATU led programme of mass mobilisation to protest against high food prices. This is a victory to members,

which must be acknowledged by our society and be celebrated by workers who delivered it.

Fishery strike solidarity

The CEC declared its support for striking FAWU members in the fishing industry who have been on strike for six months, in protest against a commission-only system of payment. It was agreed to approach the Minister of Labour to follow up on his suggestion that the sector should be covered by a Sectoral Determination, and to check whether decent working conditions can be made a condition of granting fishing companies their quotas.

May Day Rallies

COSATU noted that this year's May Day celebrations would take place immediately after the 22 April 2009 elections, which we see as being about the defence of our gains and revolution and in the context of job loss bloodbath as a result of the international economic crises. The theme of this May Day celebrations shall therefore be: ***Consolidating working class power in defence of our revolutionary movement for decent work!***

KZN elections must be peaceful

The Central Executive Committee of the Congress of South African Trade Unions, during its scheduled meeting which began today in Johannesburg, resolved to issue an urgent appeal for calm and peace in the Province of KwaZulu Natal, where the election campaign has already been marred by serious threats, violence and murder.

It is crucial that we unite as a nation to prevent a return to the horrific political violence of the late 1980s and early 1990s, when hundreds died in politically motivated murders. It is essential to guarantee voters' constitutional right to attend election rallies and to vote in complete safety and security.

COSATU calls upon all political parties, the IEC and the SAPS to do everything possible to ensure that the campaign and the elections are free of any violence or intimidation.

[Released by COSATU]

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