



# labour

Department:  
Labour  
**REPUBLIC OF SOUTH AFRICA**

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The Chairperson  
Parliament of the Republic of South Africa  
Select Committee on Petitions and Executive  
Undertakings  
PO Box 15  
**CAPE TOWN**  
8000

Our Reference: MT NTL/17April/18

Dear Honorable Chairperson

**RE: APOLOGY LETTER FOR THE COMMITTEE SESSION SCHEDULED FOR 18 APRIL  
2018**

I refer to the above matter and the Notice issued on 06 April 2018 for meetings to deliberate on the Labour Bills. The Notice is acknowledged and the content thereof considered.

## **1. Background**

During the course of April 2018 the Committee indicated its intention to invite the Department to attend meetings on deliberations on the Transkei Road Transport Corporation Petition; which are before the Committee.

On 06 April 2018 the Portfolio Committee on Labour issued a Notice requesting the Department to attend the sessions scheduled for 17 – 20 April 2018 to continue deliberation on the tabling of the National Minimum Wage.

## **2. Apology and Indulgence**

I wish to bring to the Committee's attention that on 18 April 2018 I will be attending the Portfolio Committee on Labour deliberations the whole day. Therefore I wish to tender my apology to the Committee for session scheduled for 18 April 2018 and request the Committee's indulgency to be excused from attending the Committee session.

**APOLOGY LETTER FOR THE COMMITTEE SESSION SCHEDULED FOR 18 APRIL 2018**

Furthermore I wish to request the Committee to allow me to delegate the responsibility of leading the Department of Labour team and engaging the Committee on any matter before the Committee relating to the Transkei Road Transport Corporation Petition to the Commissioner of the Unemployment Insurance Fund, Mr Teboho Maruping.

Please find attached as "The Department of Labour Submission" an explanatory note that may assist the Committee in its deliberation.

Trusting you find the above in order and your indulgency in this regard will be much appreciated.

**Yours Faithfully**

**Thobile Lamati (Mr)**

**Director General: Labour**

**Signature:**.....  


**Date:** 17/04/2018.....

## THE DEPARTMENT OF LABOUR SUBMISSION

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### **Introduction**

This is a submission based on the powers the Department of Labour has on matters raised in the complaints similar to those raised by the complaints before this committee. The Department of labour has a general mandate to monitor and enforce working conditions in all employment sectors except those covered by bargaining councils. The general position thus is that parties are allowed to refer matters emanating from working conditions to the Department only if there are no bargaining councils with requisite jurisdiction or where such Bargaining councils despite their jurisdiction have no requisite internal dispute enforcement mechanisms.

A second aspect that should be appreciated is limitations<sup>1</sup> in regulating enforcement of infringements of the legal framework used by the Department of Labour. Thirdly, working conditions such as pensions, provident fund payment and disputes arising therefrom, including the severance pay disputes<sup>2</sup> all fall outside the purview of the Department of labour. Herein I will outline the aforesaid aspects in much closer detail for the purpose of this hearing.

### **Severance pay: section 41 of the BCEA.**

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<sup>1</sup> Section 71 of the Basic Condition of Employment Act 75 of 1997 as amended.

<sup>2</sup> Section 41 of the BCEA.

### **Section 41(1)**

An employer who is affected by operational requirements to effect retrenchment is obliged to pay affected employees severance pay. This obligation applies even where such operational requirement is as result of an employer being affected by section 38 of the Insolvency Act 24 of 1936.

The severance pay shall be equal to at least one weeks remuneration for each completed year of continuous service with that employer, calculated in accordance with section 35 of the BCEA.(Amount of severance is subject to change by a government notice issued by the Minister from time to time) Internal collective agreements may override the amount of severance payable.

### **Section 41(6)**

Disputes about the entitlement to severance pay shall be referred to CCMA if no council has jurisdiction. In terms of the CCMA rules such referral should be within a period of 30 days from the date of dispute, unless good course be shown applicants may be required to request condonation for late referrals.

*In the case before this enquiry, the delay in referring the matter may affect successful condonation application*

### **Section 70: Limitation.**

This section prescribes that no enforcement will be allowed if amount payable is for a period longer than 12 months before the date on which complaint was laid with Department of Labour, or if the employees are covered by a collective agreement that provides for a resolution by arbitration of disputes concerning the amount owing in terms of this Act. The aforesaid limitation applies even where any other proceedings have been instituted for the recovery of the said claimed amounts.

### **Basic facts**

The TRTC employees were employed by a company that was liquidated in 1995. Their claim is for payment of their severance pay as well as pensions or provident fund payment. It appears that the matter was referred to court at some stage and that a court issued a judgement. It is not clear whether the judgement was based on merits or on technical or formal grounds. These workers appear before this hearing for a possible reprieve by this committee.

**Application to the rule and conclusion.**

- The department of labour has no jurisdiction on matters of enforcement of either Pension or Provident Fund to workers unless prescribed by a Sectorial Determination.
- On matters other than severance pay, a case referred to the council or court will not be enforceable through the department of labour.
- Severance pay disputes are administered through the CCMA and such referrals should be done within at least 30 days of time of disputes.
- Liquidated entities pay employees amounts determined by appointed administrators such payments are payable through the master of court office if there are disputes.