

The Shoprite case: Far-reaching implications for Namibia

By Herbert Jauch, 6 November 2017

Far removed from the focus of political and economic discussions, a labour dispute has been brewing over the past 3 years. At first glance, it seemed like a fairly ordinary case of an unprotected strike and the resulting disciplinary cases. However, when placed in context, the Shoprite case exposes some of the severe shortcomings of Namibia's labour relations and the impunity with which transnational corporations are allowed to operate in the country. Policy makers seem to be trapped in the blind belief that we must be grateful for foreign investments and that the fall-out from it has to be accepted as part of the deal. This approach has already led to disastrous outcomes in the case of the Ramatex textile company a few years ago and it seems that we still have not drawn the lessons. What made matters worse in the Shoprite case is that the divisions within Namibia's trade union movement have made it easier for the company to sustain highly exploitative labour practices.

The background

The Shoprite/Checkers group of companies is one of the largest and most powerful retail group in South Africa. With the end of the apartheid era, the company expanded aggressively into the rest of Africa and is now firmly established across the region. In 2016, Shoprite reported a turnover of just over N\$ 130 billion and paid its then CEO, Whitey Basson, a bonus of N\$ 50 million on top of his basic salary of N\$ 49.7 million per annum. This translates to over N\$ 4 million per month.

Shoprite workers, on the other hand, are paid such low salaries that they cannot afford to meet their most basic needs. The average worker at Shoprite still earns about N\$ 2,500 per month or less. As they receive no transport allowance, the workers spend between N\$ 480 and N\$ 960 per month on transport, depending on where they live. They also have to pay rent, on average N\$ 1,000, even for a shack in a backyard. This is before they can even think of food, water and gas for cooking and other basic necessities.

Unionisation

For many years, workers tried to address their poor working conditions by joining trade unions in the hope that they could negotiate improvements. Shoprite had recognition agreements with the Namibia Food and Allied Workers Union (NAFAU) and the Namibia Wholesale and Retail Workers Union (NWRWU) but ceased the deductions of union membership fees in 2014 because both unions significantly lost membership at Shoprite. A third union, the Namibia Commercial, Catering, Food and Allied Workers Union (NACCAFNU) began organising at the company in 2014 and Shoprite allowed NACCAFNU to represent the workers at its Rundu branch during disciplinary hearings in August 2015. Shoprite then seized the opportunity provided by a divided labour movement to side-line the unions altogether in 2015. The relationship between Shoprite and the unions can only be described as hostile.

In 2014 NACCAFNU applied to be recognised as an exclusive bargaining agent, but was unsuccessful. Shoprite workers then organised a demonstration in July 2014, during which they handed a petition to Shoprite management but Shoprite refused to accept the workers' demands. Instead, the company decided to implement salary increases unilaterally, ignoring workers' demands for transport and housing allowances, medical aid and long service awards. To make matters worse, Shoprite granted the increases only to those workers who were not members of NACCAFNU. The NACCAFNU members were given the "choice" to resign from the union in exchange for the increase. This constitutes a blatant unfair labour practice and Shoprite only reversed its practice when the matter was referred to the Office of the Labour Commissioner and a strike occurred in December 2014.

In June 2015, workers themselves submitted their wage negotiation proposal to the Shoprite management. Shoprite invited five employees (one per region) to represent the employees in these "negotiations". These representatives were, however, merely informed about the increases that the company had decided upon. The company further told them that "if they do not like it they can go wherever they want". The workers representative refused to sign the increases proposed by Shoprite but the company unilaterally proceeded with the increases.

In light of Shoprite's refusal to bargain at all (let alone in good faith) and angered by the company's decision to unilaterally impose the increase, workers decided to go on strike on 28 and 29 July 2015. The strike ended upon the advice of the Deputy Minister of Labour and the Employment Equity Commissioner and their assurances that they would look into the "problems with Shoprite".

Shoprite then decided to lodge disciplinary proceedings against those employees who participated in both strikes (December 2014 and July 2015) while those who participated only in the strike of July 2015 were given warnings. However, the company acted without consistency as several of the workers in Windhoek had the disciplinary charges against them withdrawn at the commencement of the hearings.

Workers in Rundu and Gobabis were treated very differently as 110 workers in Rundu and another 66 in Gobabis were dismissed. Only the workers in Windhoek were permitted to obtain legal representation and Shoprite provided no explanation or justification for the disparate treatment.

Violations of labour laws and good practices

There are a number of workers' rights violations that are entrenched in the way Shoprite operates in Namibia and elsewhere. Some of the most blatant ones are the following:

1. Shoprite employs what they call Permanent Part-Timers or PPTs. These are workers who are permanently on part time. However, their contracts provide for maximum of 45 working hours per week, which are the standard working hours for permanent employees. The employment of PPTs was the subject of an investigation by the Ministry of Labour in 2015. It found that a practice of "segregated employment" exists at Shoprite/Checkers retailers and that

workers on part-time contracts receive far lower pay than permanent workers in the same job category. The contracts of these 2 groups of workers are not comparable and the Ministry of Labour recommended that the employment contracts be reviewed to remove any provision, definition, references or qualifying criterion that renders the employment conditions of one employment category less favourable than the other. The Ministry stated that the employment contracts of the two employment categories should be harmonised and be brought squarely into the ambit of the Labour Act. Furthermore, Shoprite was told that it needs to provide sound justifications for employing workers on fixed-term contracts, otherwise they need to be permanently employed as stipulated in the Labour Amendment Act of 2012. It is not clear whether Shoprite has accepted and acted on any of those recommendations.

2. Shoprite does not have a formal internal grievance procedure or disciplinary code. This has allowed Shoprite to essentially do what it wants to when it comes to discipline matters. The preferred tactic seems to be handing out written and final written warnings for any and all offences, without any kind of hearing being provided. The chaotic and arbitrary nature of Shoprite's disciplining methods reached the stage where one of the branch managers felt compelled to send out an email to branch managers, reminding them that "short-timing" (deducting the time an employee was late from his pay), cannot be done without disciplinary action.

3. Decisions concerning the workers' wages and employment conditions are taken in South Africa. Shoprite Namibia has no authority and consequently cannot comply with the requirements of the Namibian Labour Act, in particular not when it comes to the obligation of collective bargaining and the duty to bargain in good faith. This is another clear violation of workers' rights.

4. Shoprite does not accept that workers are employed into specific positions, despite what their appointment letters may say. Employees are routinely asked to do other jobs, at times for months on end. It may be for this reason that Shoprite does not employ cleaners, expecting other employees to sweep and clean after the end of their regular shift without paying overtime. When workers refuse on the ground that they are employed for other tasks, they are told if they do not like the instruction they can leave.

5. Workers experience many incidents of improper treatment by management. These range from insulting employees in front of customers, being given the worst shifts, not being promoted (either from part-time to permanent or upward) to being subjected to tribalism. With no grievance procedure in place, the employees have no way to address these grievances.

Victimisation continues

After the dismissal of 176 workers in Rundu and Gobabis, over 100 workers in Windhoek are still facing disciplinary proceedings for participating in an unlawful strike. They were lucky to be represented free of charge by Nixon Marcus' law firm but Shoprite seems determined to set an example and to send an intimidating warning to its staff: do as well tell you to or else...

Following the signing of a public petition calling for the dropping of charges against the Shoprite workers and a lunch-time demonstration at the Shoprite Katutura branch, the Minister of Labour, Industrial Relations and Employment Creation called a press conference and confirmed Shoprite's poor labour relations. He also stated that the Ministry inspected Shoprite in 2014 and 2015 and met the company in August 2015 "in an attempt to secure compliance with applicable statutory conditions of employment, without success". The Minister personally met Shoprite officials in November 2015 and again in April 2016 and directed them to rectify the exploitative permanent-part-time employment status and to stop undermining trade unions.

It is telling that Shoprite basically ignored the Ministers and continuous to behave as if it is untouchable. The Economic and Social Justice Trust (ESJT) which is one of the organisations that supports the plight of the Shoprite workers then called on the Minister of Poverty Eradication and Social Welfare to liaise with his Cabinet colleagues and to declare a boycott of the Shoprite-Checkers group by government until such time that Shoprite drops the charges, respects trade unions and improves working conditions. To date, this has not happened.

Unless decisive action is taken to force Shoprite to change, Namibian laws and policies will be taken as nothing more than "friendly recommendations". This will not be restricted to Shoprite alone as other employers will watch with keen interest if the Namibian government and trade unions are able to effect change or if they remain barking dogs without teeth. Thus the outcome of the Shoprite case will have far reaching consequences not only for the Shoprite workers themselves but for Namibian workers generally. It is time to show that our political independence will also be able to contribute towards ending exploitative and colonial labour practices. Government and trade unions need to act decisively now or risk to be seen as party to continued exploitation.

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