

Justice for Shoprite Workers: A Call for Solidarity and Action

The background: Shoprite's relationship with unions

In Namibia, the South African retail giant 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 the company's stores. A third union, the Namibia Commercial, Catering, Food and Allied Workers Union (NACCAFU) began organising at the company in 2014 and Shoprite allowed NACCAFU 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 is hostile.

Events in 2014

In 2014 NACCAFU (which was registered as a trade union in 2013) 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, demanding the recognition of the union and the deduction union membership fees. Shoprite refused to accept these demands.

Also in 2014, NACCAFU submitted a proposal for wage negotiations to the company. Shoprite refused to even acknowledge the proposal and proceeded to invite workplace representatives of the other two unions (NAFAU and NWRWU), although they had very few members at the time. Subsequent to these consultations/negotiations, Shoprite 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 NACCAFU. Workers who did not receive the increase, were then given the choice to resign from NACCAFU in exchange for the increase. Alternatively they had to state that the increase

was not unilaterally imposed on them. This constitutes an atrocious unfair labour practice by Shoprite!

When workers refused to resign from NCCAFWU, Shoprite did not pay them their increase. Workers then referred this dispute to the Labour Commissioner, but the case was withdrawn when Shoprite paid the increase (backdated to July 2014) on the second day of the strike in December 2014. The workers who participated in the December strike were given final written warnings without any kind of disciplinary hearing or process.

Tensions continue in 2015

On 9 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 given a power point presentation at the end of which they were told that this is what they would get. 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. However, 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 have protests on 28 and 29 July 2015. This was seen by Shoprite as an unprotected strike which 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 were treated very differently. As they had not participated in the strike of December 2014, they should - according to the Shoprite logic - not have been charged and subjected to disciplinary proceedings. However, this is exactly what happened and 110 workers in Rundu and another 66 in Gobabis were dismissed. Only the workers in Windhoek were able to obtain legal representation and Shoprite provided no explanation or justification for the disparate treatment.

Violations of applicable labour laws and good practices

There are a number of workers' rights violations that are entrenched in the way Shoprite operates in Namibia. Below are some of those that became apparent in the course of the disciplinary proceedings.

1. Shoprite employs what they call Permanent Part-Timers or PPTs. These are workers who are permanently on part time. Their contracts provide for maximum of 45 working hours per week, which are the standard working hours for permanent employees.

2. The employment of PPTs was the subject of an investigation by the Ministry of Labour, which in its report dated 13 August 2015 made a number of findings and recommendations. The investigation 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 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.

3. 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.

4. Shoprite workers earn very low wages and the increases given locked them into being part of the "working poor". Workers in the salary ranges of N\$1530 to N\$1710 received an increase of N\$ 190 – 206. Thus the average salary increase was just around N\$ 200 per month. The PPTs received even less. They are paid on a weekly basis and were received N\$ 345 – 462 per week. Their increases translated in an additional N\$ 27 – 37. Thus most Shoprite workers continue to receive wages of less than N\$ 2000 per month.

5. 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.

6. 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 not cleaners, but e.g. cashiers, they are told if they do not like the instruction they can leave.

Victimisation continues

After the dismissal of 176 workers in Rundu and Gobabis, another 185 workers in Windhoek were facing disciplinary proceedings for participating in an unlawful strike. Shoprite has continuously violated workers' rights and used the rivalry between various trade unions to its own advantage. Workers essentially resisted the illegal acts committed by Shoprite. They demanded to be treated with respect. They demanded to live in dignity and to improve their starvation wages. They endured endless violations of their rights and then had to face retrenchments.

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 (most of them do not have electricity) and other basic necessities.

Shoprite on the other hand, boasted that it made a turnover of just over N\$ 130 billion in 2016. Last year Whitey Basson, then Shoprite's CEO, got a bonus of N\$ 50 million and his basic salary per year was N\$ 49.7 million. This translates to about N\$ 4 million in a month. Shoprite workers create this wealth but they are denied the opportunity to share in it. It would take a worker at Shoprite about 133 years to make what Whitey Basson makes in a month!

Support from activist lawyers

Instead of engaging the workers on their demands for better wages, transport allowance and medical aid, Shoprite chose to take disciplinary action. This was reported in local newspapers and the workers were without representation. Nixon Marcus read this story and contacted the newspaper which put him in contact with the workers and the union. After speaking to the workers Nixon decided to represent them. In October 2015, his colleague Uno Katjipuka, also from Nixon Markus Public Law Office took over the case and represented the workers free of charge throughout a long process that lasted almost 3

years, until August 2018. Nixon and Uno's law firm's motto is "the law in service to humanity" and they both live by it.

In May 2017, the Shoprite workers with the support of Nixon and Uno organised their own May Day Rally and invited veteran trade unionist and labour researcher Herbert Jauch to deliver a message of support. Being part of the Economic and Social Justice Trust (ESJT), Herbert also helped organise further action against Shoprite such as demonstrations and a petition as well as a call to government to boycott Shoprite. The number of people supporting the Shoprite workers grew as more and more Namibians realised that the workers participated in the strike to defend themselves, while Shoprite discriminated against workers on the basis of their union membership, refused to bargain with workers and unilaterally imposed salary increases. The workers undertook a valiant act of resistance against the injustices committed by Shoprite. The fight of the Shoprite workers for justice, respect and dignity became the fight of many other Namibians who support social justice.

Adding insult to injury

On 23 July 2018 Shoprite launched a court case against 93 of the workers suing them for damages of N\$ 4.5 million. The company wanted N\$288,000 for lost sales on the day of the strike (28 July 2015), N\$ 190,000 for the replacement workers during the strike, N\$ 616,000 for the venue hired for the disciplinary hearings and N\$ 3,442 million for legal costs for the court application to stop the strike and the subsequent disciplinary hearings. This was outrageous and represented an attempt by Shoprite to add insult to injury. The company wanted to intimidate not only to its own workers but Namibian workers in general. It was a blatant attack on workers' rights.

United we stand

Namibians then took action. A movement of young people, Affirmative Repositioning (AR), held a public debate on Shoprite and proposed practical action that could be taken. The newly formed Centre for Public Resistance (CPR) organised a mass demonstration in front of Shoprite in Windhoek and several other organisations expressed their outrage. Even the

trade unions managed to put their difference aside and attacked the company with one voice while the Namibian government finally declared their support for a boycott of Shoprite. Under such public pressure the company announced that it has dropped the lawsuit but the united front of protestors also demanded that the unfair disciplinary charges against the workers also had to be dropped. In addition, several international organisations have come to the fore in support of the Shoprite workers, most notably the National Union of Metalworkers in South Africa (NUMSA).

Further protests were planned and Shoprite finally had to bow to the pressure. On 8th August 2018, Shoprite offered to end the disciplinary cases if the workers accepted a final written warning. The workers accepted and can now focus on the struggle ahead to improve their working conditions. They still need to create organisational unity at the workplace and decide on which union to join to speak with one voice and to end the divide and rule scenario that has characterised Shoprite for many years.