

THE EFFECTS OF VIOLENT STRIKES ON THE ECONOMY OF A DEVELOPING COUNTRY: A CASE OF SOUTH AFRICA*

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SUMMARY

The issue of violent and lengthy strikes has been a feature of South Africa's industrial relations for a while now. There are no mechanisms in place to curb violent strikes even though their effects are visible in all corners of the Republic. Violent and lengthy strikes have devastating effects on the economy, cause injury to members of the community and non-striking workers, and more particularly poverty as employers would retrench workers if their businesses do not make profit as a result of prolonged non-production. In the mining sector where strikes are a common feature, it has been reported that employers have lost billions of rands through lengthy and violent strikes. The article acknowledges the developments brought about by amendments in the Labour Relations Act, which appears to be short of addressing the situation. The article proposes that if interest arbitration can be introduced into the Labour Relations Act, the situation may change for the better as employers and unions will be compelled to resolve their dispute(s) within a short space of time. It further submits that a strike should be allowed to proceed only if it is lawful and does not involve violence. In addition, the Labour Court should be empowered to intervene in instances where violence has developed and force the parties to arbitration.

1 INTRODUCTION

Economic growth is one of the most important pillars of a state. Most developing states put in place measures that enhance or speed-up the economic growth of their countries. It is believed that if the economy of a country is stable, the lives of the people improve with available resources being shared among the country's inhabitants or citizens. However, it becomes difficult when the growth of the economy is hampered by the exercise of one or more of the constitutionally entrenched rights such as the right to strike.¹ Strikes in South Africa are becoming more common, and this affects businesses, employees and their families, and eventually, the economy. It becomes more dangerous for the economy and society at large

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¹ S 23(2) of the Constitution of the Republic of South Africa, 1996.

if strikes are accompanied by violence causing damage to property and injury to people. The duration of strikes poses a problem for the economy of a developing country like South Africa. South Africa is rich in mineral resources, the world's largest producer of platinum and chrome, the second-largest producer of zirconium and the third-largest exporter of coal. It also has the largest economy in Africa, both in terms of industrial capacity and gross domestic product (GDP).² However, these economic advantages have been affected by protracted and violent strikes.³ For example, in the platinum industries, labour stoppages since 2012 have cost the sector approximately R18 billion lost in revenue and 900 000 oz in lost output. The five-month-long strike in early 2014 at Impala Platinum Mine amounted to a loss of about R400 million a day in revenue.⁴ The question that this article attempts to address is how violent strikes and their duration affect the growth of the economy in a developing country like South Africa. It also addresses the question of whether there is a need to change the policies regulating industrial action in South Africa to make them more favourable to economic growth.

2 BACKGROUND

When South Africa obtained democracy in 1994, there was a dream of a better country with a new vision for industrial relations.⁵ However, the number of violent strikes that have bedevilled this country in recent years seems to have shattered-down the aspirations of a better South Africa. South Africa recorded 114 strikes in 2013 and 88 strikes in 2014, which cost the country about R6.1 billion according to the Department of Labour.⁶ The impact of these strikes has been hugely felt by the mining sector, particularly the platinum industry. The biggest strike took place in the platinum sector where about 70 000 mineworkers' downed tools for better wages. Three major platinum producers (Impala, Anglo American and Lonmin Platinum Mines) were affected. The strike started on 23 January 2014 and ended on

² In 2014 Nigeria briefly emerged as the continent's largest economy after rebating its GDP calculation, but by the end of 2015 South Africa's GDP had grown to \$301 billion at current exchange rates while Nigeria's had declined to \$296 billion; Doya "South Africa's Economy Regains Rand as Africa's Biggest on Rand" *Bloomberg* (10 August 2016) <https://www.bloomberg.com/news/articles/2016-08-10/south-africa-s-economy-regains-rank-as-africa-s-biggest-on-rand> (accessed 2019-01-01). However, the latest figures of the first quarter of 2019 shows that South Africa's GDP has gone down to 3.2% growth, <https://www.dailymaverick.co.za/article/2019-06-04-shock-as-sas-first-quarter-economic-growth-shrinks-by-3-2/> (accessed 2019-06-08).

³ As Van Niekerk put it in *National Union of Food Beverage Wine Spirits & Allied Workers v Universal Product Network (Pty) Ltd: In re Universal Product Network (Pty) Ltd v National Union of Food Beverage Wine Spirits & Allied Workers* 2016 (37) ILJ 476 (LC) (UPN) par 37 "[I]t is regrettable that acts of wanton and gratuitous violence appear inevitably to accompany strike action, whether protected or unprotected ... A week in the urgent court where employers seek interdicts against strike related misconduct on a daily basis bears testimony to this."

⁴ Burkahrd "Platinum Pay Strike Costs South Africa R400-millions a Day" <https://mg.co.za/article/2014-02-04-platinum-pay-strike-costs-south-africa-36-million-a-day> (accessed 2019-02-01).

⁵ See Preamble to the Constitution.

⁶ <https://businesstech.co.za/news/business/98727/strikes-cost-south-africa-r6-1-billion/> (accessed 2019-02-02).

25 June 2014. Business Day reported that “the five-month-long strike in the platinum sector pushed the economy to the brink of recession”.⁷ This strike was closely followed by a four-week strike in the metal and engineering sector. All these strikes (and those not mentioned here) were characterised with violence accompanied by damage to property, intimidation, assault and sometimes the killing of people. Statistics from the metal and engineering sector showed that about 246 cases of intimidation were reported, 50 violent incidents occurred, and 85 cases of vandalism were recorded.⁸ Large-scale unemployment, soaring poverty levels and the dramatic income inequality that characterise the South African labour market provide a broad explanation for strike violence.⁹ While participating in a strike, workers’ stress levels leave them feeling frustrated at their seeming powerlessness, which in turn provokes further violent behaviour.¹⁰

These strikes are not only violent but take long to resolve. Generally, a lengthy strike has a negative effect on employment, reduces business confidence and increases the risk of economic stagflation. In addition, such strikes have a major setback on the growth of the economy and investment opportunities. It is common knowledge that consumer spending is directly linked to economic growth. At the same time, if the economy is not showing signs of growth, employment opportunities are shed, and poverty becomes the end result. The economy of South Africa is in need of rapid growth to enable it to deal with the high levels of unemployment and resultant poverty.

One of the measures that may boost the country’s economic growth is by attracting potential investors to invest in the country. However, this might be difficult as investors would want to invest in a country where there is a likelihood of getting returns for their investments. The wish of getting returns for investment may not materialise if the labour environment is not fertile for such investments as a result of, for example, unstable labour relations. Therefore, investors may be reluctant to invest where there is an unstable or fragile labour relations environment.

3 THE COMMISSION OF VIOLENCE DURING A STRIKE AND CONSEQUENCES

The Constitution guarantees every worker the right to join a trade union, participate in the activities and programmes of a trade union, and to strike.¹¹ The Constitution grants these rights to a “worker” as an individual.¹² However, the right to strike and any other conduct in contemplation or

⁷ Marriam “State Mulls New Strike Laws, Ban on Scab Labour” (2014-08-07) *Business Day*.

⁸ “Labour Laws Need Overhaul to Stop Runaway Strike Train” (2014-11) *Business Times* 2.

⁹ Ngcukaitobi “Strike Law, Structural Violence and Inequality in the Platinum Hills of Marikana” (2013) 34 ILJ 836 846.

¹⁰ Webster and Simpson “Crossing the Picket Line: Violence in Industrial Conflict” 1990 11(4) *Industrial Relations Journal of SA* 15–32 <http://www.csvr.org.za/wits/papers/paperswgs.htm>. (accessed 2019-03-18).

¹¹ S 23(2)(b) and (c) of the Constitution.

¹² S 23(2)(c).

furtherance of a strike such as a picket¹³ can only be exercised by workers acting collectively.¹⁴

The right to strike and participation in the activities of a trade union were given more effect through the enactment of the Labour Relations Act 66 of 1995¹⁵ (LRA). The main purpose of the LRA is to “advance economic development, social justice, labour peace and the democratisation of the workplace”.¹⁶ The advancement of social justice means that the exercise of the right to strike must advance the interests of workers and at the same time workers must refrain from any conduct that can affect those who are not on strike as well members of society.

Even though the right to strike and the right to participate in the activities of a trade union that often flow from a strike¹⁷ are guaranteed in the Constitution and specifically regulated by the LRA, it sometimes happens that the right to strike is exercised for purposes not intended by the Constitution and the LRA, generally.¹⁸ For example, it was not the intention of the Constitutional Assembly and the legislature that violence should be used during strikes or pickets. As the Constitution provides, pickets are meant to be peaceful.¹⁹ Contrary to section 17 of the Constitution, the conduct of workers participating in a strike or picket has changed in recent years with workers trying to emphasise their grievances by causing disharmony and chaos in public. A media report by the South African Institute of Race Relations pointed out that between the years 1999 and 2012 there were 181 strike-related deaths, 313 injuries and 3,058 people were arrested for public violence associated with strikes.²⁰ The question is whether employers succumb easily to workers’ demands if a strike is accompanied by violence? In response to this question, one worker remarked as follows:

¹³ There is no definition of picketing in the definitions’ section of the Labour Relations Act 66 of 1995. The Constitution, however, makes provision for the right to “picket”. S 17 of the Constitution provides that “everyone has the right, peacefully and unarmed, to assemble, to demonstrate, to picket and to present petition”. Some academics and courts have relied on s 23(2)(b) of the Constitution to confer the right to picket on workers. See in this regard, Woolman “Freedom of Assembly” in Woolman, Roux, Klaaren, Stein, Chaskalson, Bishop (eds) *Constitutional Law of South Africa* (2005) 2. See also *South African National Defence Union v Minister of Defence* 2007 (5) SA 400 where the High Court relied on s 23(2)(b) of the Constitution to confer the right to picket on workers.

¹⁴ Basson *Essential Labour Law* 2ed (2002) 37.

¹⁵ The LRA replaced the Labour Relations Act 28 of 1956.

¹⁶ S 1 of the LRA.

¹⁷ S 213 of the LRA defines strike as “the partial or complete concerted refusal to work, or the retardation of work, by persons who are or have been employed by the same employer or by different employers, for the purpose of remedying a grievance or resolving a dispute in respect of any matter of mutual interest between employer and employee, and every reference to “work” in this definition includes overtime work, whether it is voluntary or compulsory”, s 213 of the LRA.

¹⁸ The use of the word “strike” in this study should be interpreted broadly to include a strike and other activities associated with a “strike”. These include pickets and even pickets that have developed into demonstrations.

¹⁹ S 17 of the Constitution.

²⁰ SAIRR (2013) <http://irr.org.za/reports-and-publications/media-releases/Strike%20violence.pdf/>.

“[T]here is no sweet strike, there is no Christian strike ... A strike is a strike. [Y]ou want to get back what belongs to you ... you won't win a strike with a Bible. You do not wear high heels and carry an umbrella and say '1992 was under apartheid, 2007 is under ANC'. You won't win a strike like that.”²¹

The use of violence during industrial action affects not only the strikers or picketers, the employer and his or her business but it also affects innocent members of the public, non-striking employees, the environment and the economy at large. In addition, striking workers visit non-striking workers' homes, often at night, threaten them and in some cases, assault or even murder workers who are acting as replacement labour.²² This points to the fact that for many workers and their families' living conditions remain unsafe and vulnerable to damage due to violence. In *Security Services Employers Organisation v SA Transport & Allied Workers Union (SATAWU)*,²³ it was reported that about 20 people were thrown out of moving trains in the Gauteng province; most of them were security guards who were not on strike and who were believed to be targeted by their striking colleagues. Two of them died, while others were admitted to hospitals with serious injuries.²⁴ In *SA Chemical Catering & Allied Workers Union v Check One (Pty) Ltd*,²⁵ striking employees were carrying various weapons ranging from sticks, pipes, planks and bottles. One of the strikers Mr Nqoko was alleged to have threatened to cut the throats of those employees who had been brought from other branches of the employer's business to help in the branch where employees were on strike. Such conduct was held not to be in line with good conduct of striking.²⁶

These examples from case law show that South Africa is facing a problem that is affecting not only the industrial relations' sector but also the economy at large. For example, in 2012, during a strike by workers employed by Lonmin in Marikana, the then-new union Association of Mine & Construction Workers Union (AMCU) wanted to exert its presence after it appeared that many workers were not happy with the way the majority union, National Union of Mine Workers (NUM), handled negotiations with the employer (Lonmin Mine). AMCU went on an unprotected strike which was violent and resulted in the loss of lives, damage to property and negative economic consequences including a weakened currency, reduced global investment, declining productivity, and increase unemployment in the affected sectors.²⁷ Further, the unreasonably long time it takes for strikes to get resolved in the Republic has a negative effect on the business of the employer, the economy and employment.

²¹ Von Holdt “Institutionalisation, Strike, Violence and Local Moral Orders” 2010 72 *Transformation: Critical Perspectives on Southern Africa* 127–141.

²² *Mahlangu v SATAWU, Passenger Rail Agency of SA, Third Parties* (2014) 35 ILJ 1193 (GSJ).

²³ (2012) 35 ILJ 1693 (CC).

²⁴ SABC news 25 May 2006 at 16h00.

²⁵ (2012) 33 ILJ 1922 (LC).

²⁶ *SA Chemical Catering & Allied Workers Union v Check One (Pty) Ltd supra* 1933A.

²⁷ In the mining sector, mining dropped by 4.5% (R12 billion) between June 2012 and March 2013. This resulted in a negative impact on South Africa's GDP and currency depreciation. In 2013, the Fraser Institute downgraded South Africa to 64th out of 96 countries in respect of investor friendliness (Leon (2013) <http://politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=427549&sn=Detail&pid=71616> (accessed 2019-02-01)).

3 1 Effects of violent and long strikes on the economy

Generally, South Africa's economy is on a downward scale. First, it fails to create employment opportunities for its people. The recent statistics on unemployment levels indicate that unemployment has increased from 26.5% to 27.2%.²⁸ The most prominent strike which nearly brought the platinum industries to its knees was the strike convened by AMCU in 2014. The strike started on 23 January 2014 and ended on 24 June 2014. It affected the three big platinum producers in the Republic, which are the Anglo American Platinum, Lonmin Plc and Impala Platinum. It was the longest strike since the dawn of democracy in 1994. As a result of this strike, the platinum industries lost billions of rands.²⁹ According to the report by Economic Research Southern Africa, the platinum group metals industry is South Africa's second-largest export earner behind gold and contributes just over 2% of the country's Gross Domestic Product (GDP).³⁰ The overall metal ores in the mining industry which include platinum sells about 70% of its output to the export market while sales to local manufacturers of basic metals, fabricated metal products and various other metal equipment and machinery make up to 20%.³¹ The research indicates that the overall impact of the strike in 2014 was driven by a reduction in productive capital in the mining sector, accompanied by a decrease in labour available to the economy. This resulted in a sharp increase in the price of the output by 5.8% with a GDP declined by 0.72 and 0.78%.³²

South Africa's primary source of income is through employment; the state relies heavily on the income taxes it collects from employed people. The implication is that unemployment has a negative effect on the state while if more people are employed, their income tax will add to the government's coffers. Unemployment means that people are unable to support themselves and their families, conversely the state has an obligation of ensuring that such people sustainable means in the form of social assistance.³³ The state, together with the private sector, bears the responsibility of alleviating poverty in society. Unemployment is a real contributor to poverty. Other factors that contribute to poverty include a general lack of education, lack of relevant skills in certain areas such as science, inequality, inherited past practices and structural problems such as low wages supporting big families, low domestic savings, the ongoing electricity shortage from 2013 to 2015 threatening investors, low levels of business confidence, severe drought, reduced fiscal capacity, and the growing risk of stagflation. In addition, a

²⁸ Trading Economics "Unemployment Rate" <https://tradingeconomics.com/south-africa/unemployment-rate> (accessed 2018-08-02).

²⁹ Cheadle *Strikes and the Law* (2017) 26.

³⁰ Bohlmann, Dixon, Rimmer and Van Heerden "The Impact of the 2014 Platinum Mining Strike in South Africa: An Economy-Wide Analysis" ERSA Working Paper 478 7 http://www.econrsa.org/system/files/publications/working_papers/working_paper_478.pdf (accessed 2018-05-03).

³¹ The Standard Industrial Classification Codes <http://www.statssa.ov.za/additional-services/sic/sic.html> (accessed 2018-05-04).

³² *Ibid.*

³³ S 27(1)(c) of the Constitution.

lengthy strike comes with a threat of job losses in vulnerable sectors such as mining, metals and agriculture. It is also believed that protracted strikes contribute towards weakening the country's local currency (the South African rand). All these factors put a strain on the already struggling economy of South Africa.

3 2 Effects on employment

An unprotected strike has a negative effect on employment and may result in the dismissal of employees.³⁴ In South Africa, it seems that everyone agrees that unemployment is the major economic problem and that government policy needs to address this scourge. The high levels of unemployment could pose a danger as stretches the government's ability to provide people with social services. Generally, the LRA prohibits the dismissal of employees if the reason for their dismissal is participation in a protected strike.³⁵ However, and despite this prohibition, the employer may dismiss employees if they commit misconduct³⁶ during a strike or on the basis of operational requirements.³⁷ Since it is expected that the employer will not make production or profit during a strike as a result of work stoppage, he or she may put forward economic conditions that have turned around since the commencement of the strike as a reason to cut down his or her workforce. In this regard, he or she will attempt to justify dismissal based on operational requirements. In *SACCAWU v Pep Stores*³⁸ the court held that it is permissible for an employer to retrench employees where their misconduct has given rise to a genuine operational requirement. In order for an employer to justify terminating the contracts of employees for operational requirements, the dominant reason for the dismissal must be that operational requirements are impacting on the survival of the business. In other words, the economic viability of the employer must be at stake.³⁹ In *Tiger Food Brands Ltd t/a Albany Bakeries v Levy NO*⁴⁰ violence was ongoing and the employer considered the threats so great that it closed down the business pending section 189 of the LRA procedure. As with the *Pep Store* case, no solution was found to the anarchic situation, and indications were that such would continue as a concerted effort by the employees. Thus, no alternatives could be found, and retrenchments took place.

Other than dismissal, the "no work no pay" principle applies where employees are on strike. A contract of employment is a contract with reciprocal rights and obligations. The employee is under an obligation to

³⁴ S 67(5) of the LRA.

³⁵ If there is compliance with ss 64(1) and 65(1) of the LRA, the strike will be protected and the employer will not be permitted to take action against participating employees unless they commit misconduct.

³⁶ S 188(1) of the LRA.

³⁷ *FAWU obo Kapesi v Premier Foods Ltd t/a Blue River Salt River* [2010] BLLR 903 (LC).

³⁸ (1998) 19 ILJ 1226 (LC).

³⁹ Whitearnel "Can Unidentified Protected Strikers Engaging in Misconduct be Retrenched? *FAWU obo Kapesi v Premier Foods Ltd t/a Blue River Salt River*" 2011 23 *SA Merc LJ* 269 276.

⁴⁰ (2007) 28 ILJ 1827 (LC).

make him or herself available for work, and the employer in return has to remunerate the employee for the work he or she has done or services rendered. The employer is entitled to refuse to pay the employee if the latter refuses to do the work he or she was employed to do.⁴¹ The LRA also emphasises this common law rule by providing that “an employer is not obliged to remunerate an employee for services that the employee does not render during a protected strike or protected lock-out”.⁴² Section 67(3) of the LRA does make one exception to this rule (no work no pay) that is “if the employee’s remuneration includes payment in kind in the form of accommodation, food and other basic amenities of life, at the request of the employee, the employer may not discontinue payment in kind during a strike or lock out”. The LRA does provide, however, that the employer may at the end of the strike recover the monetary value of such remuneration by way of civil proceedings in the Labour Court.⁴³

On the question of whether the employer has to provide benefits such as medical aid, pension fund, and a housing subsidy to employees on strike, the Labour Court in *SAMWU v City of Cape Town*⁴⁴ answered this question in the negative. The court held that it was not an unfair labour practice for an employer to apply a policy of “no work, no pay, no benefits” because there was no difference between withholding a *pro rata* share of contributions in respect of benefits and withholding remuneration during a strike. This decision does not, however, set a clear precedent because section 5(1) of the LRA states that no person may discriminate against an employee for exercising a right under the Act. This would include the right to strike. The withholding of benefits may be challenged on the ground that the conduct of the employer is contrary to section 5(1) of the LRA and amounts to discrimination.

3 3 Effects on the employer

Strike violence has been described by the International Labour Organisation (ILO) as abuse of the right to strike.⁴⁵ The Labour Court has labelled strike violence as “collective brutality”.⁴⁶ The reasons for the use of these terms in relation to strike violence is the consequence that comes with it such as the scaring away of non-striking employees and replacement labour hired to continue with production while the employer’s workforce is out on strike. Therefore, in all instances where violence prevents the engagement of replacement labour or scare away non-strikers from work, the employer is made to suffer an illegitimate increase in collective bargaining power from the side of the strikers. This is not only because violence effectively

⁴¹ *Coin Security (Cape) v Vukani Guards & Allied Workers Union* (1989) 10 ILJ 239 244J–245A.

⁴² S 67(3) of the LRA.

⁴³ S 67(3)(b).

⁴⁴ (2010) 31 ILJ 724 (LC).

⁴⁵ As Gemigon *et al* in *ILO Principles Concerning the Right to Strike* (1998) 42 state “Abuse in the exercise of the right to strike may take different forms [including] damaging or destroying premises or property of the company and physical violence against persons.”

⁴⁶ *Tsogo Sun Casinos (Pty) Ltd t/a Montecasino v Future of SA Workers Union* (2012) 33 ILJ 998 (LC) par 11.

increases participation in the bargaining process, but also because non-strikers must still be paid as they avail themselves for work.⁴⁷ In instances where violence gets completely out of control, it scares the employer into a settlement. Myburgh argues that the perpetuation of violent strikes in the context of protected strikes skews collective bargaining power and takes the form of economic duress.⁴⁸ As a result of violence, the employer feels obliged to increase its wage offer or accede to union demands, not because of pressure brought to bear by collective bargaining and strike action *per se*. The effect of this is not to advance economic development in line with the purpose of the LRA.⁴⁹ In fact, the strike fuels violence, which then becomes the focal point of the strike. The employer is then placed under economic pressure to conclude a wage agreement at a wage level that does not reflect the forces of supply and demand, but rather the force of violence.⁵⁰

3 4 Effects on customers

The relationship between the business of the employer and its customers is based on loyalty and confidence. The employer is expected to keep this relationship going by supplying goods or deliver services to clients when needed. It is expected that this would take place without disturbance. However, during strikes or conduct in furtherance of a strike, this relationship gets affected since the level of production or service delivery is reduced or does not take place.

It is well known that the continued existence of a business relies on customers' satisfaction with services or goods provided. A business that does not have customers can hardly survive as they are the backbone of the business. If a strike is violent and takes long to resolve, this may chase away customers or clients as the possibility of not getting what they want is high if less or no production takes place. The possibility that customers could shift loyalty to other businesses doing the same business as the employer is high. The end result is that a prolonged strike has the potential of chasing away customers or clients as they may not want to associate themselves with a business environment that poses a risk to their lives. In addition, customers may want to share solidarity with employees and refuse to associate with a business whose employees are on strike. To stop this from taking place, the

⁴⁷ It is the employer's duty to provide employees with a safe work environment, and where it fails to do so, the employee is entitled to refuse to perform their duties: *National Union of Mine workers v Driefontein Consolidated Ltd* (1984) 5 ILJ 101 (IC) 135. In these circumstances, against a tender of services, the employer is not relieved of its obligation to pay the employee *Solidarity v Public Health & Welfare Sectoral Bargaining Council* 2014 (5) SA 59 (SCA) par 11 (citing *Johannesburg Municipality v O'Sullivan* 1923 AD 201).

⁴⁸ Myburgh "The Failure to Obey Interdicts Prohibiting Strikes and Violence (The Implications for Labour Law and the Rule of Law)" 2013 23(1) *CLL* 1 4.

⁴⁹ S 1 of the LRA.

⁵⁰ Myburgh (2013) *CLL* 1 5. Along similar lines, Snyman AJ held as follows in *KPMG Road and Earthworks (Pty) Ltd v Association of Mineworkers and Construction Union* (2018) 39 ILJ (LC) 609 par 3 "But where employees behave unlawfully, under the guise of exercising these rights and legitimate objectives, then the entire collective bargaining process is undermined. One is left to ponder the question – was the dispute resolved on the basis on the basis of legitimate collective bargaining, or because of unlawful conduct by employees? This question should never need to have to be considered, as the resolution of disputes by unlawful means is simply untenable and flies in the face of our Constitutional dispensation."

employer and the union need to speed up the process of resolving their dispute through a non-violent mechanism such as a collective bargaining process.

4 HOW TO ADDRESS PROTRACTED VIOLENT STRIKES?

As stated above, a strike that takes an unreasonably long period to get resolved has devastating effects on the economy. It also increases the levels of unemployment, thereby perpetuating poverty with serious effects on the lives of people. The question that arises is how to put a stop to a lengthy strike and protect the economy from shrinking with negative effects on existing jobs.

4.1 Strikes should only be allowed to continue if they are lawful

The definition of “strike” lends itself any obstruction of work that is lawful.⁵¹ So, if workers refuse to undertake “work” that is illegal and unlawful, this will not constitute a strike.⁵² Where employees refuse to work in support of an unlawful demand (for example the removal of a supervisor without following due process), this will also not constitute a strike.⁵³ Therefore, where the action involved does not constitute a strike, participants do not enjoy the protection offered by section 67(1) of the LRA.⁵⁴ If the means used by strikers to obstruct work constitute unlawful conduct such as violence, then the conduct will not qualify as a strike, and will thus not be protected.⁵⁵ If a strike becomes violent and no longer pursues legitimate or lawful demands, the court should intervene as violent and unruly conduct is the antithesis of the aim of a strike, which is to persuade the employer through peaceful withholding of work to agree to the union’s demands.⁵⁶ For a court to intervene, Rycroft argues that the following question needs to be asked: “has the misconduct taken place to an extent that the strike no longer promotes functional to collective bargaining, and is therefore no longer deserving of its protected status.”⁵⁷ The Labour Court in *National Union of Food Beverage Wine Spirits & Allied Workers v Universal Product Network (Pty) Ltd*⁵⁸

⁵¹ S 213 of the LRA.

⁵² *Simba (Pty) Ltd v Food & Allied Workers Union* (1997) 18 ILJ 558 (LC) 568H–I. See also *SA Breweries Ltd v Food & Allied Workers Union* 1990 (1) SA 92 (A), (1989) 10 ILJ 844 (A) 847C–D.

⁵³ See *City of Johannesburg Metropolitan Municipality v SA Municipal Workers Union* (2009) 30 ILJ 2064 (LC). See also *TSI Holdings (Pty) Ltd v National Union of Metalworkers of SA* (2006) 27 ILJ 1483 (LAC) par 48.

⁵⁴ This would be protection against dismissal.

⁵⁵ Myburgh “Interdicting Protected Strikes on Account of Violence” 2018 38 ILJ 703 716.

⁵⁶ *National Union of Food Beverage Wine Spirits & Allied Workers v Universal Product Network (Pty) Ltd supra* par 30. See also *Tsogo Sun Casinos (Pty) Ltd t/a Montecasino v Future of SA Workers Union supra* par 3.

⁵⁷ Rycroft “What Can Be Done about Strike Related Violence” https://www.upf.edu/documents/3298481/3410076/2013-LLRNConf_Rycroft.pdf/eda46151-176d-4091-a689-f1042e03e338 (accessed 2019-05-15).

⁵⁸ (2016) 37 ILJ 476 (LC).

adopted Rycroft's functionality test which entails that the Labour Court could assume the power to alter the protected status of a strike to unprotected action on the basis of violence.⁵⁹ This entails the weighing up of the level of violence against the efforts of the trade union to curb it in order for a court to determine whether a strike's protected status is still functional to collective bargaining.⁶⁰

Rycroft further argues that there is an inseparable link between strikes and functional collective bargaining and justifies this on three grounds. First, the Interim Constitution of South Africa 200 of 1993 provided that "workers have the right to strike for the purposes of collective bargaining."⁶¹ Secondly, strikes must be orderly. And lastly, the strike must not involve misconduct. This he infers from the fact that employees engaged in misconduct can be dismissed irrespective of whether the strike is protected or not.⁶² Informed by the decision of *Afrox Ltd v SACWU 2*,⁶³ Rycroft argues that a strike can lose its protection if it is no longer functional to collective bargaining. So if a strike is no longer functional to collective bargaining, it is bound to lose protection, and those who participate in such activities will face dismissal or an action for damages can be instituted against those responsible.

4 2 Introducing interest arbitration

As stated above, a strike that takes an unreasonably long period of time to get resolved has devastating effects on the business, customers, economy and employment thereby perpetuating poverty which has severe effects on the lives of people. The question that arises is how to put a stop to a strike that is taking too long to get resolved. The article argues that the introduction of interest arbitration could be used to stop strikers from continuing with violent industrial action. Interest arbitration gives the court or similar structure the power to intervene and force the parties to find a solution to their problem. Interest arbitration gives the parties an option to agree on mechanisms that will terminate industrial action once it becomes violent or cause damage to property. This is not yet applicable in South Africa and it is submitted that the LRA needs to be amended to include a provision on interest arbitration.

In Canada, if a strike continues longer than expected with no solution forthcoming, Canadian law provides certain mechanisms for ending the dispute.⁶⁴ The Canadian Labour Code confers certain powers on elected

⁵⁹ Par 32.

⁶⁰ Van Eck and Kujinga "The Role of the Labour Court in Collective Bargaining: Altering the Protected Status of Strikes on Grounds of Violence in *National Union of Food Beverage Wine Spirits & Allied Workers v Universal Product Network (Pty) Ltd* (2016) 37 ILJ 476 (LC)" 2017 20 PER/PELJ 17.

⁶¹ S 27 of the Interim Constitution of SA 200 of 1993. This was, however, not retained in the Constitution of 1996.

⁶² Rycroft "What Can Be Done About Strike-Related Violence" 2014 *IJCLLIR* 202. See also s 67 of the LRA.

⁶³ (1997) 18 ILJ 406 (LC).

⁶⁴ The Canadian Labour Code of 1985, and Acts of various provinces and territories require collective agreements to make provision for the settlement of disagreements such as grievances and disputes.

officials to intervene where there is a compelling public interest in doing so.⁶⁵ Interest arbitration as a remedy is used in periods of prolonged strikes, particularly where a work stoppage has the potential to interfere with “public safety, public health or the general economic health of the nation.”⁶⁶ The parties to a dispute have to first agree on an arbitrator and if they fail to do so, the Minister of Labour will appoint an arbitrator in terms of legislation.⁶⁷ The Minister has the discretion to refer the matter regarding the maintenance of industrial peace to either the Canadian Industrial Relations Board or direct the Board to do what he or she deems necessary as authorised by the Canadian Labour Code.⁶⁸ The Minister is also empowered to do what he or she deems expedient to maintain industrial peace and promote conditions favourable to the settlement of industrial disputes.⁶⁹

Borrowing from Canada the concept of interest arbitration, South Africa will have to amend the Labour Relations Act to include such a provision. Interest arbitration gives the parties an option to agree on mechanisms that will terminate industrial action once it becomes violent or cause damage to property. The article suggests that this will assist in reducing the number of protracted strikes and the negative impact that these strikes have on the economy.

However, the introduction of interest arbitration in our labour law will not be easy and will face some challenges. The first challenge is its compatibility with the Constitution. The fact that the introduction of interest arbitration will have the effect of bringing a strike or industrial action to an end has constitutional implications. The right to strike is entrenched in the Bill of Rights.⁷⁰ The Constitutional Court has also ruled that it is not for the courts to restrict the scope of collective bargaining tactics which are legitimately robust.⁷¹ Therefore, in order to address the question of whether the introduction and implementation of interest arbitration would be constitutional, the article submits that the answer to this question will have to be found in section 36(1) of the Constitution.⁷² To force the parties to abandon their right to strike for arbitration will require compliance with section 36(1). Section 36(1) provides that “any limitation of the right in the Bill of Rights must be in terms of the law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”.

Before a limitation of the right to strike or participate in the activities of a strike can be said to be justifiable the factors listed in section 36(1)(a)–(e)

⁶⁵ S 80 of the Canadian Labour Code.

⁶⁶ Spano “Collective Bargaining under the Canada Labour Code – Remedies when Parties Fail to Resolve Labour Dispute” (2009) <http://www.loppar.gc.ca/content/lopp/researchpublications/prb0846-e.pdf> (accessed 2019-03-12) 9. *Greater Toronto Airports Authority* (2005) <http://www.canlii.org/en/ca/cirb/doc/2005/2005canlii63057/2005can;ii63057.html> (accessed 2019-02-16) 9.

⁶⁷ S 107 of the Canadian Labour Code.

⁶⁸ *Ibid.*

⁶⁹ Spano <http://www.loppar.gc.ca/content/lopp/researchpublications/prb0846-e.pdf> 9.

⁷⁰ The Bill of Rights is in Chapter 2 of the Constitution.

⁷¹ *National Union of Public Service and Allied Workers obo Mani v National Lotteries Board* 2014 (3) SA 544 (CC) 598G–599B.

⁷² S 36(1) of the Constitution.

have to be taken into account. These factors allow the person or institution that intends to limit the right to weigh the advantages and disadvantages of limiting the right. In considering the advantages and disadvantages of limiting the right to strike, it can be taken into account that interest arbitration as prescribed by the law of general application could be sufficient to meet the situation and constitute the less restrictive means to achieve the purpose of orderly collective bargaining, generally, and of avoiding adverse effects of protracted industrial action.⁷³ It is submitted that there will be more advantages to ending violent strikes and limiting the right to strike will save the economy compared to allowing the strike to continue with negative consequences on the economy and employees as their loss of wages are inextricably linked to their employer's loss of profit.

The second challenge to the implementation of interest arbitration is that it might be contrary to the International Labour Organisation (ILO) recommendations which provide that where compulsory arbitration prevents strike action, it is contrary to the right of trade unions to organise their activities freely and could only be justified in the public service or essential services sectors.⁷⁴

The third challenge would be that the parties to the dispute will be reluctant to make reasonable attempts to resolve the dispute and leave it to the third party (arbitrator) to resolve the dispute for them. The parties will take extreme positions without any compromises to meet each other under the hope that the arbitrator will come up with a settlement. The disadvantage of relying on a third party will thus affect the ability of the parties to negotiate productively and improve their negotiating skills. This will also have the possibility of prolonging the strike rather than shortening it as it will take time to obtain an arbitrator with the required skills.

Lastly, the concept "lengthy" strike is problematic as it is not clear what would constitute a "lengthy" strike. There is no prescribed maximum period for a strike.⁷⁵ It is hoped that if interest arbitration is made law, this will be clearly stated. In the absence of a clear provision to this effect, employers could therefore, potentially approach the Labour Court prematurely. Therefore it is argued that the introduction of interest arbitration will, in the long run, not only serve the interest of the business or the employer as well as the economy, but it may also save the employees from the negative impact that may result from a protracted strike, like the possibility of retrenchments. During a strike, the employer may consider arranging negotiations for retrenchments in terms of section 67(5) of the LRA. This will be a signal to the employees of the devastating effects of the strike on the business. This will also give the parties a warning call to settle their dispute or find ways of ending the strike.

⁷³ *Ibid.*

⁷⁴ *ILO Digest* (1996) par 518–521.

⁷⁵ Budeli *The Impact of the Amendments on Unions and Collective Bargaining Paper* presented at the 27 Annual Labour Law Conference, Sandton Convention Centre Johannesburg, (5–7 August 2014).

4 3 New development in the LRA

A new development has now been ushered into the arena of labour relations in terms of section 150A of the Labour Relations Amendment Act.⁷⁶ Section 150A makes provision for a deadlock breaking mechanism for a protracted and violent strike in the form of compulsory arbitration undertaken by a statutory advisory arbitration panel. In terms of this section, there are thus three grounds in which the action can be triggered: (i) if the strike is no longer functional to collective bargaining because it has continued for a protracted period of time and no resolution appears to be imminent; (ii) there is an imminent threat that constitutional rights that may be or are being violated by strikers or their supporters through the threat of use of violence or the threat of or damage to property;⁷⁷ or (iii) if the strike causes or has the imminent potential to cause or exacerbate an acute national or local crisis affecting the conditions for the normal social and economic functioning of the community or society. The above provisions in the amended Act give the Director of the CCMA the power to try to force the parties back to the negotiating table to try and mediate the dispute. This is, however, short of being regarded as interest arbitration since no provision forces the parties to resolve their dispute.

Forcing the parties to go for arbitration will be a justifiable limitation of the right to strike since violent strikes affect the rights of innocent individuals and the economy. The Constitution provides that “everyone has the right to live in an environment that is free from all forms of violence from either public or private sources”.⁷⁸ It is therefore clear that a strike which is dominated or accompanied by intimidation, and other unlawful behaviour, limits the rights of others to live in an environment that is free of violence. The right to strike cannot weigh more heavily than other rights in the Bill of Rights. This is clearly stated in the Constitution, which provides that “everyone is equal before the law and has the right to equal protection and benefit of the law”.⁷⁹ The right to strike can then be limited by the rights of others and by important social concerns such as public order, their effect on the economy, safety, health, and democratic values.⁸⁰ So, it is important that the union or participants in a strike keep it peaceful to avoid the negative consequences that may arise should violence and destruction of property occur.

4 4 Empowering the Labour Court to stop or suspend a violent strike

In *Jumbo Products v NUMSA*, the court held that a strike “is the ultimate good of society and accordingly a court should be slow to interfere with the

⁷⁶ Act 8 of 2018.

⁷⁷ In *Gri Wind Steel South Africa v AMCU* (C561/17) (2017) ZALCCT 60 (23 November 2018) par 18, Steenkamp J commented that this proposed amendment was motivated by the fact that violence and contempt for the rule of law have reached alarming levels.

⁷⁸ S 12(1)(c) of the Constitution.

⁷⁹ S 9(1).

⁸⁰ Currie & De Waal *The Bill of Rights Handbook* (2013) 150.

process of industrial action".⁸¹ However, a court should interfere when the union fails to show that it had any legitimate interest of [its members] in mind.⁸² In South Africa, the Labour Court has exclusive jurisdiction on all matters affecting labour.⁸³ Section 69(12) of the Labour Relations Amendment Act⁸⁴ (LRAA) gives the Labour Court powers to grant an urgent interim relief if there is a variation on the picketing rule. A variation on the picketing rule may include instances where picketers commit misconduct such as violence. To deal with such acts, the article argues that in addition to the powers given to the Labour Court in terms of the LRAA, it should be given more powers that will allow it to intervene where there is a disregard for the rule of law and where strikes become violent or otherwise dysfunctional to collective bargaining.⁸⁵ It seems that the legislature has responded to this call by enacting the LRAA. In terms of the LRAA, the Labour Court can suspend industrial action in certain circumstances. The LRAA is not clear on what would constitute grounds for suspending a picket or industrial action. It is believed that if the strike is accompanied by violence that would constitute a valid ground for suspending a strike or conduct in furtherance of a strike such as a picket. This means that a union will be allowed to remedy a polluted industrial action by suspending a picket and perhaps resume it later. It would be advisable for the union to advise its members about their unlawful behaviour and take action against those responsible for wrongdoing. The union must also put up measures to deal with violence in case it erupts again.

It is clear that one of the grounds for ordering the union to suspend a strike or picket is when it becomes violent or cause injury to people or damage to their property. The new law makes it easy for affected people to approach the Labour Court for an order to suspend a strike or picket. It is assumed that the court will look at the degree of violence when making a determination to suspend or not suspend a strike. In Australia, the Fair Work Commission (FWC) is empowered to stop or terminate a strike that has degenerated into violence or threatens peace and order in society. There is not much evidence that is required for the FWC to act swiftly against violent industrial action as long as proof is offered to the effect that public peace is in danger, it would be sufficient for the FWC to suspend or terminate industrial action. Where an offence is committed, action can be brought against the individual perpetrator(s).⁸⁶ In a situation where the act was committed by a group of people, the issue of identification of the actual wrongdoer is a problem. To overcome this problem, the Fair Works Act⁸⁷ (FW Act) put in place measures to prevent industrial action by employees from becoming violent or causing damage to property. The Act empowers

⁸¹ (1996) 17 ILJ 859 (W) 878.

⁸² *Ibid.*

⁸³ S 157(1) of the LRA.

⁸⁴ Act 6 of 2014.

⁸⁵ Botha and Germishuys "The Promotion of Orderly Collective Bargaining and the Effective Dispute Resolution, the Dynamic Labour Market and the Powers of the Labour Court (2)" 2017 80 *THRHR* 531 551.

⁸⁶ *Dollar Sweet (Pty) Ltd v Federated Confectioner Association of Australia* (1986) VR 383; *R v Commissioner of Police (Tas), ex-parte North Broken Hill Ltd (Trading as Associated Pulp and Paper Mills)* (1992) 1 Tas R 99.

⁸⁷ Fair Works Act of 2009.

the FWC, which is tasked with enforcing these measures, to issue an order to suspend or prevent industrial action that is “happening, or is threatening, impending or probable” in the course of an industrial dispute.⁸⁸ The FWC is also empowered to terminate a bargaining period involving a protected action on the grounds of significant harm.⁸⁹ A bargaining period entails a period during which the application to negotiate terms of employment is lodged with the FWC in terms of the law.⁹⁰

In this regard, a proposal can be made in this article for the Labour Court to intervene and suspend industrial action that is accompanied by violence. When making the order, the Labour Court should take the following factors into account: the extent to which the protected industrial action threatens to damage the ongoing viability of a business carried on by the person; the disruption in the supply of goods or services to an enterprise or business; and the failure of the employees to fulfil their contractual duties in terms of the contract of employment with the employer which result in economic loss.

This is echoed by Cheadle when he states that it would be possible where the action is “accompanied by egregious conduct”.⁹¹ On the question of how will this work in practice, the article proposes that the affected party may lodge an urgent application to the Labour Court in terms of section 158(1)(a)(iv) to declare a strike or conduct in furtherance or contemplation of a strike not functional to collective bargaining and therefore unprotected as a result of damage and chaos and anarchy it has caused. On the basis of evidence provided before the court, including the degree of violence, the court may exercise its discretion to declare or not declare the strike unprotected. Most importantly, the task of the court will be to determine if the strike is still functional to collective bargaining or not. If the answer is in the negative, chances are that it will grant an order declaring the strike unprotected and the consequences for participating in an unprotected strike will follow.

4 5 Alternatively, hold the convening union liable for violent conduct

It is believed that if a convening union is held liable for the conduct of members, this will serve as a deterrent for future misconduct by members of the union. Taking into account the high levels of violent strikes prevailing in South Africa, the effective application by our courts of such liability is necessary. This necessity is further corroborated by the negative impact that violent strikes have on the international image and economy of South Africa as investors may be hesitant to do business in the country.⁹² In several instances where cases have been brought against unions for damage

⁸⁸ S 423 of the FW Act.

⁸⁹ S 423(2) of the FW Act.

⁹⁰ S 229 of the FW Act.

⁹¹ Cheadle, Thompson and Le Roux “Reform of Labour Legislation Needed Urgently” (2011-11-15) *Business Day*.

⁹² See “Warning on the Effect of Violent Strikes to the Economy” <http://bit.ly/2hi0xxp> (accessed 2018-03-15); “Worsen South Africa’s Economic Situation – Aveng CEO” <http://bit.ly/2hsVo3J> (accessed 2019-05-15).

caused by members during a strike, the Labour Court has found them liable. In *SATAWU v Garvas*⁹³ a gathering (pursuant to a strike) was held in Cape Town in May 2006 and organised by the *South African Trade & Allied Workers Union (SATAWU)* in protest against certain issues affecting the security industry. The gathering complied with the initial procedures prescribed by the Regulation of Gatherings Act⁹⁴ (RGA), in that the union was granted permission by the local authority and that it had appointed about 500 marshals to manage the movement of the crowd. It apparently advised its members to refrain from any unlawful and violent conduct and requested the local authority to clear the roads of vehicles and erect barricades along the prescribed route on the day of the gathering. Despite all these attempts by the union, the demonstration got out of hand. In the union's own words it "descended into chaos" with extensive damage to vehicles and shops along the route.⁹⁵ Several people were also injured. The total damage caused to property (private and owned by the City of Cape Town) was estimated at R1.5 million. Consequently, claims for damages were instituted against *SATAWU* in terms of section 11(1) of the RGA.

The union denied the claims for damages and relied on the provisions of section 11(2)(b) of the RGA which reads that the convenors of a gathering cannot be held responsible if the damages were "not reasonably foreseeable". The union alleged that if it were to be held liable, the defence in section 11(2)(b) would be rendered incoherent and irrational. The union argued that this part of the provision should be removed so that the defence becomes "real". The Constitutional Court had to consider whether the defence afforded by section 11(2) was as illusory and unattainable as the union argued. It held that the defence in section 11(2) could be interpreted to:

"provide for the statutory liability of organisations, so as to avoid the difficulties experienced with the common law remedy, that is, proving the existence of a legal duty on the organisation to avoid harm; afford the organiser a more comprehensive defence, allowing it to rely on the absence of 'reasonably foreseeability' and the taking of reasonable steps as a defence against liability; and place the onus on the defendant to prove this defence, instead of requiring the plaintiff to prove the defendant's wrongdoing and fault."⁹⁶

Regarding the meaning of "reasonable steps to prevent the danger", the court held:

"[T]here is an interrelationship between the steps that are taken by an organiser on the one hand and what is reasonably foreseeable on the other. The section requires that reasonable steps within the power of the organiser must be taken to prevent an act or omission that is reasonably foreseeable. If the steps taken at the time of planning the gathering are indeed reasonable to prevent what was foreseeable, the taking of these preventive steps would render that act or omission that subsequently caused riot damage reasonably unforeseeable. Both sections 11(2)(b) and 11(2)(c) would be fulfilled."⁹⁷

⁹³ (2011) 32 ILJ 2426 (SCA).

⁹⁴ Act 205 of 1993.

⁹⁵ *SATAWU v Garvis supra* 2429H.

⁹⁶ *SATAWU v Garvas* (2012) 33 ILJ 1593 (CC) 1605E–F.

⁹⁷ *SATAWU v Garvas* (2012) 33 ILJ 1593 (CC) 1606C–D.

After considering a number of factors, the court confirmed the ruling of the Supreme Court of Appeal which had held the convening union (SATAWU) liable for the damage caused to vendors by demonstrators.⁹⁸ The court found that section 11(2) was rational. The limitation of the right to freedom of assembly was found to be reasonable and justifiable in terms of the limitation clause in section 36(1) of the Constitution. The limitation was held to serve a legitimate purpose of protecting members of society, including those who do not have the resources or capacity to identify and pursue the perpetrators of riot damage and get to seek compensation. The union was ordered to pay damages to the victims.

In *Mangaung Local Municipality v SAMWU*⁹⁹ the court held that where a trade union has a collective bargaining relationship with the employer, and its members embark on an unprotected strike – of which the union is aware but in which it has, without just cause, failed to intervene – the union will be held liable in terms of section 68(1)(b) to compensate the employer for any loss incurred as a result of the strike.

In *In2Food (Pty) Ltd v Food & Allied Workers Union*,¹⁰⁰ the court argued as follows:

“The time has come in our labour relations history that trade unions should be held accountable for the actions of their members. For too long trade unions have glibly washed their hands off the violent actions of their members ... These actions undermine the very essence of disciplined collective bargaining and the very substructure of our labour relations regime.”¹⁰¹

In *Rustenburg Platinum Mines Ltd v Mouthpiece Workers Union*,¹⁰² the applicant had claimed an amount of R15 million from the union for losses suffered as a result of a strike convened by the union. The amount ended up being reduced by the court to R100 000.¹⁰³ During the course of the court proceedings, three things were held to be prerequisites for section 68(1)(b) to apply. First, the strike or lock-out, or conduct in support of a strike must be unprotected. Secondly, the applicant seeking to use this section must have suffered loss as a result of the strike or lock-out or conduct in furtherance of a strike. Thirdly, the party against whom the claim is made must have participated in the strike or committed acts while furthering the strike.¹⁰⁴ The union was ordered to pay the said amount in monthly instalments of R5 000.¹⁰⁵

In *Algoa Bus Company v SATAWU*,¹⁰⁶ the unions went on an unprotected strike which affected the respondent’s transport operations on most of its routes. The applicant quantified the loss caused by the strike as R1.4 million. It then claimed compensation from the respondent unions, namely the South

⁹⁸ *SATAWU v Garvas* (2012) 33 ILJ 1593 (CC) 1633F.

⁹⁹ [2013] 3 BLLR 268 (LC).

¹⁰⁰ (2013) 34 ILJ 2589 (LC).

¹⁰¹ *In2Food (Pty) Ltd v Food & Allied Workers Union supra* 2591H–I. See also *Security Services Employers’ Organisation v SATAWU* (2007) 28 ILJ 1134 (LC).

¹⁰² *Rustenburg Platinum Mines Ltd v Mouthpiece Workers Union* (2001) 22 ILJ 2035 (LC).

¹⁰³ *Rustenburg Platinum Mines Ltd v Mouthpiece Workers Union supra* 2045I.

¹⁰⁴ *Rustenburg Platinum Mines Ltd v Mouthpiece Workers Union supra* 2042G–H.

¹⁰⁵ *Rustenburg Platinum Mines Ltd v Mouthpiece Workers Union supra* 2046A.

¹⁰⁶ 2015 (36) ILJ 2292 (LC).

African Transport and Allied Workers Union (SATAWU) and the Transport, Action, Retail & General Workers Union (TARGWU). The court found the strike to be unprocedural, premeditated and had caused loss to the applicant.¹⁰⁷ The court considered the provisions of section 68(1)(b) of the LRA and ordered that the unions pay “just and equitable” compensation for the loss suffered which means compensation which the court considered to be “fair”. An amount of R1.4 million was payable in monthly instalments of R5,280 (payable by the union) and R214.50 (payable by every member by way of a salary deduction).¹⁰⁸

5 CONCLUSION

The right to strikes is important in a democratic country such as South Africa. However, it becomes difficult if such strikes take place too often, damaging the economy and loss of jobs which are the main sources of income in many families. Various sectors are affected by the effects of violent and lengthy strikes. Most importantly, the economy is affected with the result that poverty becomes the consequence. Therefore, the issue of numerous strikes which are also violent needs to be addressed by including interest arbitration to compel parties to resolve their issues and empower the Labour Court to intervene and suspend the strike or picket. In Australia, the Fair Works Commission is empowered to terminate industrial action where it is seen that the economy may be affected due to prolonged strikes. This article argues that interest arbitration can be added into the LRA to make it easy for the affected parties to approach the Labour Court to suspend violent industrial action. Adopting this route will prevent the loss of many jobs as a result of the business not making profit and effect retrenchments. If interest arbitration is made law in South Africa there will be more advantages to strikes than we currently have.

¹⁰⁷ *Algoa Bus Company v SATAWU supra* 2295C.

¹⁰⁸ *Algoa Bus Company v SATAWU supra* 2296J–2297A.