



NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL

**NEDLAC CERTIFICATE
IN RESPECT OF THE CONGRESS OF SOUTH AFRICAN TRADE UNIONS SECTION 77
1(B) NOTICE ON NON-TRADING PUBLIC HOLIDAYS**

1. INTRODUCTION

- 1.1. NEDLAC received a notice, dated 14 March 2019, in terms of Section 77 (1) (b) of the Labour Relations Act 66 of 1995, from the Congress of South African Trade Unions (Cosatu).
- 1.2. The notice (attached) outlined Applicant's demands in respect of Non-Trading Public Holidays.
- 1.3. It cited the following as its Respondents:
 - 1.3.1. The Presidency
 - 1.3.2. Department Labour
 - 1.3.3. Department of Home Affairs
 - 1.3.4. Department of Public Service and Administration
 - 1.3.5. Business Unity South Africa
 - 1.3.6. Black Management Forum
 - 1.3.7. Minerals Council of South Africa
 - 1.3.8. Business Leadership South Africa

2. PROCESS AT NEDLAC

2.1. The Section 77 Standing Committee convened a meeting with the Applicant and Respondents as follows:

2.1.1. 01 April 2019

2.1.2. 16 May 2019

2.2. Summary of engagements:

2.2.1. Input from the Applicant at the meeting on 01 April 2019:

2.2.1.1. The issue was previously submitted on 24 February 2014 and the matter was concluded, however the Applicant revived its notice and submitted the current notice on 14 March 2019.

2.2.1.2. The Public Holidays Act 36 of 1994 provides for a number of paid public holidays in a year.

2.2.1.3. The paid public holidays included the days marking the heroic struggle against apartheid system.

2.2.1.4. The President usually declares the Election Day as a public holiday which was very important to the democracy of any country, however often employers were treating public holidays as ordinary days by forcing or encouraging workers.

2.2.1.5. It therefore demanded that:

- (a) An urgent intervention was needed as the history of South Africa may be not celebrated in the long term.
- (b) Freedom Day, Workers Day and Election Day must be declared as Non-Trading Public Holidays.
- (c) The Public Holidays Act must be amended to reflect the above demand and must be applied in all sectors.
- (d) These demands must therefore be met in 10 days.

2.2.2. Response from the Respondents:

2.2.2.1. It agreed that there was a need to celebrate the public holidays.

2.2.2.2. It sought to clarify as to what Non-Trading meant, as there were different industries that needed to be attended to ensure the economy was moving forward.

2.2.2.3. The Public Holiday Act doesn't deal with Remuneration, but only the Public Holidays, that needed to be considered.

2.2.2.4. It requested that the Committee should grant it more time, and they will revert to the demands at the next meeting.

2.2.3. Standing Committee:

2.2.3.1. The Respondents would submit clarity seeking questions to the Secretariat on 08 April 2019 which would in turn be circulated to the Applicant.

2.2.3.2. The Applicant would thereafter respond by 15 April 2019 in writing to the clarity seeking question and a meeting would be convened shortly after.

2.2.3.3. Respondents would revert to its principals and members to seek a mandate to be able to engage at the next meeting.

2.2.4. Input from the Respondents on the meeting held on 16 May 2019:

2.2.4.1. The response from the Applicant was appreciated and welcomed by the Respondents.

2.2.4.2. The Basic Conditions of Employment Act (BCEA) dealt with issues of Labour Relations, where a worker would be treated unfairly regarding exercising their right, such as going to vote.

2.2.4.3. Furthermore the BCEA allowed workers to get a paid leave on holidays, however working on holidays depended on the agreement between the employer and employee.

2.2.4.4. It therefore disagreed with the Applicant that there should be a shutdown as the BCEA was protecting employees regarding unfair dismissal.

2.2.5. Applicant responded:

2.2.5.1. The Respondents did not address its demands adequately as there were vulnerable workers who were not protected, who needed protection.

2.2.5.2. It proposed that a task team should be established under the Labour Market Chamber at Nedlac to engage on the issue of protection of the vulnerable workers, as there was no compliance by employers with the current law which is the BCEA .

2.2.5.3. The task team would also look into reviewing the Public Holidays Act to ensure that it was also protecting the vulnerable workers.

2.2.6. The Respondents responded to the Applicant:

2.2.6.1. BUSA stated:

- (a) The issue of complying of enforcement with the BCEA was engaged on at a Nedlac task team which was dealing with the National Minimum Wage, and therefore it disagreed with establishing a task team.
- (b) On the issue of Non-Trading Public Holidays it disagreed with the Applicant that there should be Non-Trading Public Holidays.
- (c) On the issue of the employers breaching the BCEA it was willing to engage with the Applicant regarding reviewing the contracts of the employees who were prohibited to exercise their rights.

2.2.6.2. Government stated:

- (a) On the issues of enforcement it was willing to engage with the Applicant.
- (b) Regarding Non-Trading it agreed with BUSA that it disagreed with the Applicant on total non-trading of business and shut down of work in the country as it may also infringe on employees' rights who wanted to work in order to earn more on those public holidays.
- (c) It would therefore be obstructing the constitutional rights of those employees.

2.2.7. Standing Committee stated:

2.2.7.1. The inputs from the constituencies were appreciated.

2.2.7.2. It was clear that there was a deadlock regarding the issue of Non-Trading on Public Holidays between parties.

2.2.7.3. There was also a disagreement regarding the establishment of the task team, and therefore a task team would not be established in this regard.

2.2.7.4. Regarding the reviewing of contracts and enforcement issues the parties should engage on those bilaterally.

3. DECLARATION

Given these circumstances, the Standing Committee agreed that the issues raised by Cosatu could not be resolved and the parties would engage bilaterally on issue of mutual interest. Therefore on 16 May 2019 the Standing Committee deemed this Section 77 (1) (b) Notice by Cosatu as having been considered. Any protest action arising from this notice would be protected.

Signed at Rosebank on this 21 day of May 2019.

M 21/05/19
TEBOHO THEJANE
ACTING EXECUTIVE DIRECTOR