



NATIONAL ECONOMIC DEVELOPMENT AND LABOUR COUNCIL

**NEDLAC CERTIFICATE IN TERMS OF SECTION 77 OF THE LABOUR RELATIONS ACT
IN RESPECT OF THE CONGRESS OF SOUTH AFRICAN TRADE UNIONS, THE
FEDERATION OF UNIONS OF SOUTH AFRICA AND THE NATIONAL COUNCIL OF
TRADE UNIONS SECTION 77 1(B) NOTICE ON PUBLIC TRANSPORT CHALLENGES**

1. INTRODUCTION

- 1.1. NEDLAC received a notice, dated 24 July 2020, in terms of Section 77 (1) (b) of the Labour Relations Act 66 of 1995, from the Congress of South African Trade Unions (Cosatu), Federation of Unions of South Africa (Fedusa) and National Council of Trade Unions (Nactu) on Public Transport Challenges.
- 1.2. The notice outlined the Applicant's concerns and demands in respect of the challenges in respect of the public transport system, including 100% loading capacity in the public transport in South Africa. Find attached as ANNEXURE A
- 1.3. It cited the following as its Respondents:
 - 1.3.1. Office of the Presidency;
 - 1.3.2. Cabinet; and
 - 1.3.3. National Command Council.

2. PROCESS AT NEDLAC

- 2.1. The meetings were held as follows:
 - 2.1.1. 06 August 2020: Section 77 meeting.

- 2.1.2. 12 August 2020: Transport Sub-Committee meeting.
- 2.1.3. 19 August 2020: Transport Sub-Committee meeting.
- 2.1.4. 26 August 2020: Transport Sub-Committee meeting.
- 2.1.5. 09 September 2020: Transport Sub-Committee meeting.
- 2.1.6. 11 September 2020: Section 77 meeting.

2.2. Summary of engagements:

2.2.1. Plenary held on 06 August 2020:

2.2.1.1. The Applicant stated that the South African public transport system was ineffective, and this was characterised by the lack of integration between the different modes of transport, mismanagement, safety issues at railway stations and the lack of a coherent coordinated public transport system.

2.2.1.2. It highlighted its demands as follows:

- i. The Taxi Industry must be subsidised in a manner that benefits commuters and addresses the separation created by the apartheid which had put workers far away from industries and economic activity.
- ii. Ownership in the Taxi sector should be de-concentrated through actively promoting driver and cooperatives ownership.
- iii. The Directive on the Peak Spreading must be implemented urgently, as its delay promotes virus spreading.
- iv. Taxi loading capacity must be reduced from 100% to 70% immediately, as the full capacity loading posed risks to the lives of passengers.
- v. A Violence Avoidance Plan must be established in order to remove the danger of violence erupting on routes as the number of commuters decline due to Covid-19.
- vi. Taxi drivers must be registered for the Unemployment Insurance Fund (UIF) and Compensation for Occupational Injuries and Diseases Act (COIDA) benefits as a pre-condition to access the taxi relief fund from the Department of Transport.

- vii. A framework to address the demands raised must be established towards building a safe, affordable, and decent public transport system, that would be defined and agreed to based on the needs of the commuter.

2.2.1.3. Inputs from Respondents: Department of Transport (DoT):

- i. It indicated that it agreed with the majority of the demands outlined by the Applicant and that a process was already underway on some of the issues that were raised in the notice, such as the Violence Avoidance Plan.
- ii. The 100% loading capacity decision was undertaken based on scientific evidence as well as extensive consultations. Therefore, it did not concur with the demand pertaining to the reduction of loading capacity to 70%.

2.2.1.4. The Applicant responded and indicated that the responses provided by the Respondents were welcomed. However, the issue of 100% capacity was important and further engagements were required on the interventions and plans the Department had in improving the public transport sector.

2.2.1.5. Following the plenary with the Applicant and Respondents on 06 August 2020, The Section 77 Standing Committee held its own separate meeting on the same day, 06 August 2020 and agreed on the following:

- i. Further engagements on the filed Section notice should be held at the Nedlac Rapid Response Task Team (RRTT) - Transport Sub-Committee meetings.
- ii. The Respondent was required to ensure appropriate representation at the Transport Sub-Committee meetings and the Standing Committee would be provided with a report back on the deliberations of those meetings by the Nedlac Secretariat.

2.2.2. At the Transport Sub-Committee meeting held on 12 August 2020:

2.2.2.1. The Applicant outlined their demands as per the notice and the Respondent only responded to the 100% loading capacity issue and stated that it was a well-informed decision.

2.2.2.2. The Applicant was not satisfied with the responses provided by the Respondents.

2.2.2.3. It was agreed that at the next meeting the Respondent should ensure appropriate representation and provide a response on the following outstanding issues:

- i. The presentation the Respondent shared with the Standing Committee and Applicant at the Section 77 meeting held of 06 August 2020.
- ii. Whether subsidies were for the benefit of commuters or public transport operators.
- iii. The signing of the Peak Spreading Direction.
- iv. The detailed rationale behind the 100% loading capacity on taxis.
- v. Details on the Violence Avoidance Plan.
- vi. Clarity on the progress of operation of trains and busses as they were operating on and off.

2.2.3. At the Transport Sub-Committee meeting held on 19 August 2020:

2.2.3.1. The Respondent stated that the presentation slides from the Section 77 meeting of 06 August 2020 were circulated, the Peak Spreading Direction was signed by the Minister of Transport. It also provided the rationale used by the Department to decide on the 100% loading capacity for public transport.

2.2.3.2. The Applicant appreciated the inputs made by the Respondents however it stated that it was still not satisfied with the responses including the 100% capacity where it required

further details on aspects such as the Medical Advisory Council (MAC) report of 09 July 2020, motion studies, window jammers etc.

2.2.3.3. It was agreed that the Respondent would, at the next meeting, provide further details on the 100% loading capacity as requested by the Applicant and also address issues that it did not address at the meeting.

2.2.4. At the Transport Sub-Committee meeting held on 26 August 2020:

2.2.4.1. The Respondents made the following inputs:

- i. In response to the Applicant's previous question of whether subsidies were for the benefit of the commuters or the taxi operators, the issue of subsidies was in the interest of commuters.
- ii. The 100% loading capacity issue was engaged on at the launch of the Taxi Lekgotla which took place on 20 August 2020 with some of the Nedlac representatives present, however it would further be engaged on at the next Taxi Lekgotla scheduled to convene in October 2020.
- iii. The South African Police Service (SAPS) committed to present on the requested Violence Avoidance Plan at the next Transport Sub-Committee meeting.
- iv. The Peak Spreading Direction was signed by the Minister of Transport and was left to be signed off by the Minister of Employment and Labour.

2.2.4.2. Inputs from the Applicant:

- i. It expressed its concerns regarding the Peak Spreading Direction that had not yet been signed by Government on minimizing the risk of Covid-19 transmission.
- ii. It further expressed that a fully loaded public transport vehicle endangered the lives of passengers and citizens at large.

iii. Moreover, the Applicant reiterated that it had requested Government to provide the rationale for 100% loading, including having the MAC invited for engagement. The response provided by the Respondents was inadequate.

2.2.4.3. It was agreed that an urgent engagement would be convened, to afford an opportunity for the Applicant to provide a scientific perspective on the 100% loading capacity and also to outline mitigation measures to the health risks posed by 100% loading capacity.

2.2.4.4. The Respondent committed to present the requested information at the urgent engagement on the 100% loading where it would bring scientists/ relevant representatives from the MAC, Department of Health, University of Cape Town, and taxi industry stakeholders to provide the rationale for the 100% loading of public transport.

2.2.5. At the Transport Sub-Committee meeting on 09 September 2020:

2.2.5.1. The Respondents made the following inputs:

- i. The study from the University of Cape Town that informed the decision of 100% loading capacity was shared with the meeting and further documentation that informed the decision would be circulated through the Nedlac Secretariat.
- ii. It delivered a high-level presentation on the Violence Avoidance Plan.
- iii. Regarding the Peak Spreading Direction, both the Ministers of Transport and Employment and Labour had signed the Direction and it was currently at the stage where it was being interrogated by the State Law Advisors.

2.2.5.2. Inputs from the Applicant:

- i. It appreciated the progress made in this regard however it remained dissatisfied on the issue of 100% and still requested for the report that was tabled by the MAC to Government on 09 July 2020 to be shared with it.
- ii. It also appreciated the presentation and was encouraged by the broader strategy however the Applicant stated that it did not specifically speak to its demand and therefore it did not receive the detailed plan that was requested on violence avoidance.

2.2.6. The Section 77 plenary meeting was subsequently convened on 11 September 2020:

2.2.6.1. The Applicant stated that it remained dissatisfied with the response from the Respondents on the following issues:

- i. The 100% loading capacity.
- ii. The Peak Spreading Direction that was not yet promulgated.
- iii. The lack of details on the Violence Avoidance Plan.
- iv. The lack of proper representation of the Respondents at the meetings.
- v. The assurance that all modes of transport would be operationalised to ensure that there were more transport options available, to reduce congestion and spread of the virus, was not realised.
- vi. The numerous amounts of meetings at the transport sub-committee of the Nedlac Rapid Response Task Team that were held thus far without much progress.
- vii. It was of the view that there was a lack of political urgency from the side of Government for all the reasons listed above.

2.2.6.2. The Respondent stated that it was open to further engagements and to distributing all relevant information material to the Applicant.

2.2.6.3. The Section 77 Standing Committee inquired from the Applicant whether the 100% capacity was still an issue when the Covid-19 infection rates were decreasing, and the economy was opening.

2.2.6.4. The Applicant responded and stated that the Section 77 was more than the 100% capacity issue, it was (a) more about a safe, reliable, affordable, and coherent public transport system and that (b) a second wave of infections was anticipated.

2.2.7. The Standing Committee convened a meeting on 15 September 2020 and agreed that the following remained unresolved:

2.2.7.1. The reduction of loading capacity of public transport from 100% to 70% was unresolved, nor had the sufficient evidence been provided to motivate that it was safe to move from 70% to 100% loading capacity;

2.2.7.2. The Peak Spreading Direction was still not yet promulgated; and

2.2.7.3. The Violence Avoidance Plan presented by Government lacked the necessary details.

3. DECLARATION

Given these circumstances, the Standing Committee agreed that the matters raised by Cosatu, Fedusa and Nactu could not be resolved. Therefore, on 15 September 2020 the Standing Committee deemed this Section 77 (1) (b) notice by Cosatu, Fedusa and Nactu as having been considered. Any protest action arising from this notice would be protected.

Signed at Rosebank on this 21 day of September 2020.

Lisa Seftel

LISA SEFTEL
EXECUTIVE DIRECTOR