

## Part 20

### Working against decency

By Ian Cox

The fires that recently devastated Knysna and surrounding areas brings to mind another fire in another country where life and property was saved by the efforts of South African firefighters. I refer South Africa's singing firefighters whose efforts last year assisted in saving Fort McMurray in Alberta, Canada from destruction. You may remember that it was not long before those same heroes were out on strike complaining about their low pay.

The reaction of the Department of Environmental Affairs' (DEA) working on Fire Project (WoF) was not friendly. "People in emergency services are paramount and are not supposed to strike", said the CEO of the company administering this WoF project. He promised an internal disciplinary enquiry over the strike when the firefighters got home.

The truth that eventually emerged turned out to be very different to WoF's "official" version. It transpired that our brave firefighters were being paid less than the statutory minimum wage that applies in Alberta. Canadians were outraged at this, so much so that Alberta's premier refused to let our firefighters leave until she was satisfied that they had been paid this minimum wage.

South Africa has yet to get to the bottom of this debacle. Parliament's Environmental Portfolio Committee has asked for a detailed narrative report on what happened in Canada. That was back in October 2016. As far as I can tell no report has been forthcoming.

This case would be bad enough if it was an isolated case. Unfortunately it turns out that DEA is paying less than the statutory minimum wage at home as well. DEA's Eco Furniture Project is a case in point. This project sees DEA's using timber harvested from its invasive species control programme to make a wide range of furniture and other products, including school desks,

The project is a big one. Seven factories country wide presently manufacture about 100 000 school desks per annum. This program is massively subsidised with over half the cost of producing this eco furniture, or some R86 million rands, being ultimately subsidised by the taxpayer. This is in addition to the capital costs of establishing these factories.

However, it turns out that the taxpayer is not the only one subsidising this project. The workers employed in these factories are doing so as well.

The furniture manufacturing industry falls under the jurisdiction of the Furniture Bargaining Council. The applicable gazetted collective agreement that that was negotiated between employers and employees in the furniture industry and which sets minimum wages, applies to both members and non-members of the bargaining council.

This law has not stopped DEA paying workers employed in its s eco furniture factories about 20% less than this statutory minimum wage. DEA claims that its Expanded Public Works Programmes (EPWP) entitles it to ignore the collective wage agreement.

There is no legal basis for this claim. The legitimacy of collective agreements is recognised in section 23 of the Constitution. There is nothing in the Labour Relations Act (LRA) or the applicable Furniture Industry Collective Agreement that suggests that South Africa's labour laws do not apply to government. Such a provision would also offend against another constitutional principle, namely that everyone is equal before the law.

However none of this has stopped DEA from carrying on breaking South Africa's labour laws by paying its furniture factory workers less than the remuneration they are legally entitled to.

This hides an even bigger problem. It seems that the EPWP has also adverse consequences for job creation and the South African economy. Trade unions complain that EPWP programs have resulted in some 40 000 decent paying jobs in municipalities now lying vacant because the work is being done by lower paid temporary workers employed in the EPWP.

This is inherently unfair and not only for the worker. Private furniture manufactures who make school desks for government now face unfair competition from government itself which uses exploitive and unlawful employment practices and massive tax funded subsidies to beat off competition in the market.

It should be completely unacceptable for a government department to undermine South Africa's laws in this way. Government justifies regulating the employment sector on the basis that it needs to deliver decent work opportunities but its own programmes sometimes destroy those opportunities.

DEA should not be able to get away with under paying some of its employees, but the fact is that it is doing so and will continue to do so until it is stopped.

There may be a sting in the tail that could restore a measure of justice to what is an inherently unjust situation. Section 23(3) of the LRA says that collective agreements modify contracts of employment to the extent those contracts conflict with the collective agreement. This means that DEA is legally obliged to pay its furniture factory workers at least the minimum statutory rate despite what its employment contracts may say to the contrary.

So DEA could be sued for the shortfall.

Time will tell if this will happen. In the meantime we are living with the unpleasant situation where one department in government is insisting that we comply with our labour laws while another is breaking those same laws.

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