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EMPLOYMENT

Section 150A LRA intervention in the Sibanye-Stillwater deadlock?

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After a lengthy period of striking – nearly 3 (three) months – over wage increases at Sibanye's gold operations, the time is ripe for the type of intervention envisioned under 150A of the Labour Relations Act 66 of 1995 ("**LRA**").

Section 150 application

According to media reports, Sibanye on 23 March 2022 made a section 150 application to the Commission for Conciliation, Mediation and Arbitration ("**CCMA**") seeking conciliatory intervention in the deadlock. In terms of section 150, the Director of the Commission may institute a conciliation process either with the consent of the respective parties or, in the absence of such consent, in the public interest.

It is uncertain whether the section 150 conciliatory process will be effective, given that, initially, the trade unions (National Union of Mineworkers ("**NUM**"), UASA, Solidarity, and the Association of Mineworkers and Construction Union ("**AMCU**")) referred a dispute to the CCMA after negotiations, which took place over a period of approximately 7 months, deadlocked in November 2021. This initial conciliation culminated in the CCMA issuing a certificate of non-resolution in January 2022.

In efforts to reach an amicable resolution to the deadlock, the CCMA stepped in once again facilitating a meeting between Sibanye and the trade unions on 7 March 2022. The intervention lead to a revised wage offer which Solidarity and UASA unconditionally accepted on 14 March 2022. The two trade unions exited the ring leaving NUM and AMCU – the remaining coalition members currently on strike.

Waning investor confidence

Undeniably, the Sibanye strike is a matter of public interest. The protracted nature of the strike increases the potential risk of the loss of employment, impacts an already waning investor confidence, and deepens the damage to our struggling economy.

Regrettably, the length of time has also affected the effectiveness of the strike in that it is no longer functional for collective bargaining purposes because there appears to be no end in sight.

Given the urgency and importance of ensuring an amicable and expeditious resolution to this matter, it is unclear why the Minister of Employment and Labour ("**Minister**") has not taken action in terms of section 150A. This provision authorises the Minister to direct the Director of the Commission to establish an advisory arbitration panel, in the public interest, to facilitate the resolution of the dispute.

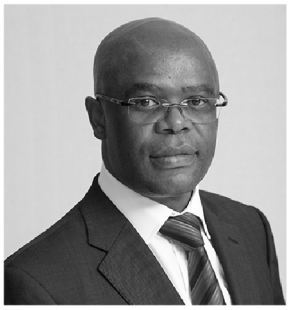
Section 150D(1)

The advisory arbitration panel is empowered to issue an advisory arbitration award. The award is binding on the parties as per section 150D(1), if one or more of the trade unions and/or employer's organisations that are party to the dispute, accept or are deemed to have accepted the award.

Where the parties to the arbitration are parties to a bargaining council, the arbitration award will be binding on trade unions, employer's organisations, and members of such structures in accordance with section 31 – essentially treating the award as a collective agreement.

Sibanye's deadlock demonstrates to us that disputes of mutual interest can be and should be arbitrated, where circumstances justify this kind of intervention. The deadlock warrants action by the Minister. It also presents us with an opportunity to reflect on whether section 150A ought to be amended to include timelines in order to encourage proactivity in cases where collective bargaining processes cease to be effective.

Entitlement to embark on strike action when there is an unreasonable delay between the date of issue of the certificate of outcome and notice of intention to strike.



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