

Potholes in the road

overtime in the trucking industry

Overtime allows many workers to take home extra money every week. It allows them to buy those items which are normally out of reach especially if their standard wages are low. But it involves spending less time at home and working harder and longer. Unions have called for overtime to be made more expensive in order to curb overtime work and increase the time employees can spend at home. Overtime exhausts workers and is sometimes equated with exploitation and abuse.

At the end of February a one-day strike took place in the road freight industry. The dispute concerned overtime and was between the Road Freight Employers' Association (RFEA) and six trade unions. The RFEA represents about 380 companies who employ approximately 60% of the employees in the industry. The major unions involved in the dispute were COSATU's SATAWU (then known as TGWU), the NACTU-affiliated Transport and Allied Workers Union, as well as the Professional Transport Workers Union. This article uses the road freight industry to highlight some of the potholes when dealing with overtime.

The industry

Companies in the road freight industry are struggling, according to Nico Badenhorst, the RFEA's director of labour relations. A number of companies were liquidated in

Etienne Vlok examines why overtime pay is a contested area in the trucking industry.

the past year. Companies' profit margins have shrunk because of increased competition and clients' cost-saving drives. Smaller companies often win contracts by not paying minimum wages, in accordance with the main agreement provisions, and cutting prices. They then get the job, but, claims Badenhorst, only last a few months, thereafter causing damage to the industry as the loss of contracts by abiding companies adversely affects their viability. He admits that the road freight market has increased recently as it took business from rail but states that the relation between this and increased competition within the industry is not the same.

Overtime

The road freight industry relies on overtime to ensure that goods are delivered in a short space of time. A survey done by the RFEA found that employees work on average 14 hours overtime per week. This ranges from local drivers who do no or very little overtime to long distance drivers who do 30 hours if they get exemptions. Badenhorst believes that the industry cannot avoid overtime. He

provides the example of the drivers who have to get night harvests to the market as quickly as possible.

The unions agree that a large part of truckers' work hours come from overtime. 'Long distance drivers earn a minimum of R532 per week on average with the rest depending on how much he drives. If he does not get sick he can get R1 200 per week chasing overtime,' says Abner Ramakgolo, SATAWU's deputy national co-ordinator for road freight and maritime.

Currently, truck drivers in this industry may drive a maximum ordinary hours of nine per day but according to Ramakgolo, it is being cut in accordance with the BCEA. Per arrangement, long drives can be increased to 15 hours per day, including overtime.

But what is overtime? Does it include the time a driver is away from home? Ramakgolo claims overtime payments only cover actual driving hours, not a wider definition of working time. Thus, employers see loading as the driver not working. SATAWU believes the driver is still at work when loading and acting as security over his or her load. Badenhorst, however, states that off-loading is regarded as normal hours and overtime. The rest of the time that the driver is away from home or sleeping over at his destination is not regarded as overtime. If the driver qualifies, he or she may receive a subsistence allowance for a night away or for meals.

Badenhorst says employers agree one must try to limit overtime in terms of cost and human factors but they say that one must also look at the industry. 'It is easy to shout that overtime is exploitation but this is far removed from the economic reality. Our industry is open to time being lost on driving trips. Unlike on the shopfloor, we do not have total control, although monitoring or tracking gives us some. This can lead to creation of overtime - whether

intentional or unintentional.' Employers feel they do not have control to ensure that trips only take the amount of time they should. They worry that drivers could intentionally extend the length of a trip to earn some overtime pay or that trips could be extended unintentionally due to poor timekeeping.

The BCEA

The 1983 BCEA put overtime pay at time-and-a-third of the ordinary hourly rate. The 1997 BCEA increased it to time-and-a-half. This rate may be varied by a bargaining council agreement, sectoral determination or by the Minister of Labour.

Anton Roskam, an attorney at Cheadle, Thompson & Haysom, says: 'Workers and employers can, with a collective agreement at the bargaining council, amend the BCEA but only in so far as the Act allows it. Overtime is not a core right so an employer can get out of it totally. However, the employer has to get the agreement of the union at the bargaining council. It cannot implement anything unilaterally.'

Badenhorst believes that when the BCEA was implemented in December 1998 the principles, such as that on overtime, were well-publicised in the media. Thus the workers who read the provisions had high expectations of big increases. 'But the time-and-a-half is not a core provision and this allowed our industry to negotiate it. I have sympathy with union officials who have to explain that it is not a core provision, only a principle. Workers believed that because it is in the BCEA they are entitled to it,' says Badenhorst.

Ramakgolo claims SATAWU 'was caught by surprise as it did not know that the employers are allowed to pay time-and-a-third even though the BCEA suggests time-and-a-half. We thought we would automatically get time-and-a-half for

overtime. The workers were unhappy when they found this out'.

The employers in the industry have a problem with the BCEA. They do not believe that it, especially the sections on overtime and the ten-hour overtime limit, was written with their industry in mind. The nature of this industry with 15 to 25 hours per week overtime agreements is different to others. Badenhorst argues that the BCEA can be applied in industries with little overtime without it affecting productivity or cost hugely. 'The nature of our industry is to move around, thus a shift system is not viable. We cannot introduce a three-shift system on long distance trips. Double crewing is also not viable as it is extremely expensive and the drivers cannot sleep properly because of the traffic, movement and noise,' continues Badenhorst. 'The industry is very capital intensive due to the capital in the trucks and the running costs. It is susceptible to any fluctuation in the diesel price.'

The negotiations

The negotiations started in September 1999. The negotiators try to reach agreement so it can become effective from 1 March every year. One of the reasons the 1999/2000 negotiations took so long was because of the large number of demands on the table. A dispute about wages and benefits developed. Badenhorst describes the negotiations: 'The employers have limited resources available and with that we see how we can address the unions' demands. The parties have to see how to distribute the monies available and make it acceptable to both sides. I say "acceptable" and not "to their satisfaction" because limited resources and high expectations will not lead to satisfaction, only acceptability.'

The negotiations deadlocked on overtime and across the board increases

However, Ramakgolo regards the latter as not too serious as the percentages were acceptable. The dispute on overtime caused the national strike by the unions on 21 February. The employers did not want to pay time-and-a-half for all overtime as demanded by the unions. Ramakgolo explains 'With last year's negotiations we thought it would be automatic that overtime would be paid at time-and-a-half as we understood the BCEA to stipulate this. But it did not happen because, contrary to our knowledge, overtime was supposed to be negotiated. When we gave a 48-hour notice of industrial action last year the employers told us it would be an illegal strike. Our members were furious when they did not get time-and-a-half as they also thought that the BCEA stipulated it. So we did not want to back off. We had a mediation on 21 February and the next day the dispute was settled. The employers compromised. We agreed that the first ten hours would stay at time-and-a-third. From the eleventh hour of overtime employers will pay time-and-a-half.'

On 21 February the strike took place. The RFEA claims 5% of workers participated while SATAWU claims 180 000 drivers took part. On the evening of 21 February the parties reached an agreement and the unions called off the strike. Badenhorst says that the agreement had already been draughted by then and this helped cut the strike short. 'The first objective is to avoid a strike otherwise to cut it as short as possible,' Badenhorst describes the actual negotiations. 'Ten days prior to the strike we had unofficial meetings with the unions and explored alternatives. We had mediating committees without a third party to get a better understanding of what the other was exploring. We started moving away from our all-or-nothing stance. We then explored some options and had to get mandates. At



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industry level mandating is difficult for both sides. But as we had explored mandates before, we managed to cut the strike short. On both sides losses were minimal. The employees got overtime to make up for their losses.'

Badenhorst believes the strike did not impact on the negotiations. 'If the strike was a day later we would still have reached an agreement on the day we did. A strike is a disaster but we will not settle at all costs to avoid it. If a strike means short-term consequences and the other side does not give us options we will take it rather than there being long-term consequences.' However, SATAWU argues that the industrial action forced the agreement. 'At the last meeting the employers did not give us anything. When we gave them the 48-hour notice they saw that we were serious. They then came with something on the day of the strike. We got a mandate and signed the agreement,' explains Ramakgolo.

The RFEA believes that if they were to pay time-and-a-half for all overtime it would mean an increase of almost 13% in

total wages for the employers. The employers calculated that every hour overtime will mean approximately a 0,23% increase. If it were to do this, employers say they would have to cut down on trips which would mean a cut in jobs and revenue. The other option is double crewing with its problems. 'From this we realised we cannot pay the kind of increases the unions wanted,' says Badenhorst.

Badenhorst continues: 'When we negotiate we have to get a deal between the two [management's and the unions'] points of view.' In the past, two agreements existed between the unions and the RFEA. Agreement A concerned the workers in Gauteng, while B concerned the workers in the rest of the country. Agreement A determined that Gauteng workers receive time-and-a-third for up to 15 hours overtime. Overtime above that was paid at time-and-a-half. For agreement B all overtime was paid at time-and-a-third. According to the RFEA it was willing from the onset to level out the two agreements. Badenhorst recalls that the unions wanted

the first 15 hours of overtime to be paid at time-and-a-half. In the negotiations it became clear that the employers' proposals did not address the expectations of the workers in A. The Gauteng workers are in the majority.

The agreement

The parties agreed to set up a task team consisting of senior delegates from the employers and the six unions. They also agreed to use an independent third party to help them investigate a suitable remuneration structure for the industry. They concluded the agreement on the basis that the first ten hours of overtime would be paid at time-and-a-third. From eleven hours would be paid at time-and-a-half. They would also scrap the two agreements (Agreement A and Agreement B) and replace it with one. The employers claim that the five hours is another 1,15% increase for the workers who were previously under agreement A and a 3,45% increase for those previously under B. This is on top of a wage increase of 7%. For the employers this means a 10,45% increase for the workers previously under agreement B. The RFEA compares this to the 8,63% average wage settlement for 1999 as researched by Andrew Levy & Associates.

Part of the agreement is that a task team that will look at overtime and the pay structure. From the union's perspective the workers' minimum wage is very low so they therefore have to work overtime if they want to take home more money. 'We have to unpack the current pay structure,' urges Ramakgolo, 'as it creates problems such as driver fatigue. They do not get a chance to rest or be at home and the result is family disputes. The task team could help minimise accidents and the use of commercial sex workers by, especially, long-distance drivers. The task team will

also look at the wage gap between the drivers from Gauteng and the other regions. It will also discuss what can be regarded as overtime and minimum levels for loads.' Although SATAWU is not totally happy with this agreement it regards it as a step forward, especially the task team.

Innovative work organisation

Unions and employers should be innovative in dealing with overtime. However, as is the case in this agreement, such measures should be linked to an overall restructuring of pay because many workers depend on the money they take home from overtime.

The Department of Labour is currently looking at reducing working hours. The International Labour Organisation (ILO) has commissioned Professor Gerhard Bosch of the Institute Work and Technology in Germany to assist the department. He has conducted extensive research on working time, particularly within the European context. According to Bosch, management is not innovative concerning work organisation when labour is cheap. Cheap labour allows them to use more overtime. Where labour is expensive, which is not the case in South Africa according to Bosch, it forces companies to be innovative to cut working hours.

On the one hand, the Department of Labour is trying to cut working hours. On the other, the Minister of Labour, Membathisi Mdladlana, has announced proposals to make Sunday work cheaper as part of the labour law review process. According to the proposals, employers would not have to pay workers double on Sundays. Yet making overtime cheaper will only encourage employers to use workers even more on Sundays and thus working time will increase. The department needs to take this into account when it changes the laws. ★