

Tackling business distress and job loss

Training Layoff Scheme

Losing a job is a devastating event in anybody's life and the CCMA knows this only too well. **Jeremy Daphne** and **Winnie Everett** talk about an exciting development in the gloomy area of business distress – the Training Layoff Scheme. They describe its purpose, how it works and give some encouraging examples.

The Training Layoff Scheme (TLS) is an effective tool in the quest for job security, in spite of the ups and downs that have occurred. Ask the workers and their families at Pasdec in Brits, where a training layoff came as welcome relief from looming unemployment and poverty.

Pasdec is a supplier to the automobile manufacturing industry. It was in distress as a result of manufacturers drastically cutting production and workers doing short time. The National Union of Metalworkers of South Africa (Numsa) agreed to explore the option of a training layoff. With the assistance of the Merseta (Manufacturing, Engineering & Related Services Sector Education & Training Authority), all 143 jobs were saved, and 372 workers completed the training.

A further 125 young matriculants (all children of existing workers) also went on training. Pasdec then secured the contract to supply Nissan and Renault with components, which means that not only were all the jobs saved, but 117 new jobs were created at a time when other employers were retrenching.

On completion of the successful training layoff, Kevin Pather, Pasdec's

CEO said: 'We have created a significant amount of new jobs for first-time workers. We have also gone to extraordinary lengths to secure employment stability for our existing staff by avoiding retrenchments through the provision of further skills development programmes.'

Pather praised Numsa for its key role in the project, and for local coordinator Jerry Morulane and his colleagues' insight and vision. 'Without the full trade union participation,' he said, 'this innovative project would not have got off to such a smooth start.'

The first training layoff in December 2009 was also a success – that of Atlantis Foundries, also organised by Numsa. There were about 1 000 workers involved. The company ran out of work towards year-end and the company and the unions agreed to apply for a training layoff.

The TLS allows a great deal of flexibility regarding the type of training delivered, and the company ran its own training programmes in communications, safety, problem solving, team building and engineering skills. A total of 567 workers were trained across various job categories. Ultimately the company reabsorbed all workers

before completion of the training as orders started to pick up.

'It was a great help to us and carried us through the storm without having to retrench employees,' said Employee Relations Manager, Evan van Schalkwyk. He added that, 'It was due to the assistance of the CCMA (Commission for Conciliation Mediation & Arbitration) and the Merseta that we could accomplish this'. This is exactly how the TLS should work!

BACKGROUND TO TLS

The TLS was agreed by labour, business and government as one of the mechanisms to limit the effects of the recent global economic crisis. The TLS was formulated in Nedlac's (National Economic Development & Labour Council) 'Framework for South Africa's Response to the International Economic Crisis' (Nedlac Framework Agreement, see *SALB 34.3*).

In essence, the TLS provides employers in distress the opportunity to recover by placing workers on training for a certain period, often combined with short time. The employer saves on the wage bill and the workers avoid being retrenched and are paid 50% of their basic wage



Pasdec trainee group – 372 workers completed training.



Pasdec workers learning technical skills allowing for 143 jobs to be saved.

up to a maximum of R6 239 (known as a training allowance).

Following recent amendments to the TLS rules the training allowance has been increased to 75% of salary up to a maximum of R9 538, which is a very positive development. One of the main criticisms of the TLS has been that the 50% salary sacrifice is too harsh on workers. The TLS is funded by the UIF (Unemployment Insurance Fund) and the National Skills Fund (NSF).

The TLS has certainly faced challenges since it started in September 2009. It was never formally launched, and one of the reasons for slow take-up was that many unions, workers and employers simply did not know about it.

People also said that entry into the TLS was complicated and bureaucratic, that there were too many role-players and too many levels of approval for participation. This can in part be attributed to the TLS being

the first of its kind implemented in South Africa and as such needed an adequate 'bedding down' phase.

Another key factor has been the multi-partner arrangement, involving a number of government departments and entities (Department of Labour (DoL), CCMA, Department of Higher Education and Training, the SETAs, NSF and Department of Economic Development).

Lengthy and, in our view, unnecessary bureaucratic delays have occurred at times, causing considerable damage to a number of parties involved. However, recent developments stand to go a long way to addressing these issues. This includes the formation of a new task team to move the TLS forward, including ensuring the sustainability and effective functioning of the TLS.

Bearing in mind the challenges, there have been many successes arising out of the implementation of the TLS over the past 18 months. The

TLS was one of the few identified responses to the economic crisis that was fully implemented. It was agreed upon by representatives of labour, business and government and as such it is a victory for tripartism.

To date the CCMA has recommended 42 companies involving 8 217 workers for the TLS. This does not include cases that were recommended but were subsequently withdrawn by the parties (some withdrawn cases were for positive reasons related to the improvement in business conditions).

The key message we want to project is that the TLS when used as part of a toolbox of solutions, has huge potential to save jobs and contribute to employment security. So far it has proved to be most viable in manufacturing environments, with Numsa and Sactwu (Southern African Textile Workers Union) being the most active union participants.

HOLISTIC APPROACH

When the TLS was introduced, the CCMA was in the process of developing its 'holistic approach' to job insecurity and business distress. The introduction of the TLS greatly facilitated its development.

In terms of this holistic approach, the CCMA encourages parties to alert the CCMA at the first signs of difficulty in a company in order to fully explore alternatives to job and income loss, to find sustainable solutions when faced with distress, and to move away from a mindset of quickly opting for retrenchment to save costs.

In exploring solutions, CCMA facilitators encourage business rescue and alternatives to retrenchment through collaboration with a range of institutions, including Productivity South Africa and the Industrial Development Corporation, where appropriate. The TLS is only one of the possible alternatives to retrenchment and it should not be seen as the only option. Also, it may not be suitable in all situations.

There have been a number of success stories in applying the holistic approach, more often than not triggered by a request for a training layoff.

In the Herman & Romans case, what started as a retrenchment facilitation and a proposed training layoff to prevent job losses, ended up with no job or income loss and the business stabilising through alternative interventions.

Herman & Romans is a property management company and it was in difficulty as a result of a decline in the property market. The company intended to retrench about 50 workers and entered into a section 189A facilitation with elected representatives of the workers as the workplace is not unionised. The parties applied for a training layoff, but in the facilitation process they continued to explore other alternatives.

Eventually the parties agreed to various cost-saving mechanisms, including management salary cuts, working one day less per week and a ban on overtime. They also reduced office space and overheads. The parties managed to save R1-million per month, cancelled the training layoff application and saved all the jobs. 'The use of the CCMA as an impartial organisation for facilitation made it possible to establish trust between the consulting parties and to explore all alternatives, and this led to agreement,' said HR executive, Tony Stokes.

Other aspects of the holistic approach include assistance to retrenched workers by arranging bulk processing of UIF claims, post-retrenchment training offered by SETAs, retrenchment counselling, debt counselling, and linkages with the DoL Public Employment Services retrenchee support facility.

The CCMA's guiding principle is not to let any retrenched worker 'walk into the sunset' without assistance and support. An important CCMA experience has been the number of cases where the parties

had agreed that retrenchment was inevitable but after applying the holistic approach the business was stabilised and jobs saved without even the need for a training layoff.

In the comprehensive research report, 'Review of the Training Layoff Scheme', Anton Roskam and Nikki Howard summarised international responses to the crisis and other job saving and income-protecting mechanisms. The Employment Promotions Programme (EPP) research shows that training programmes, especially when combined with short time, are generally effective ways to save jobs and assist businesses to recover.

The researcher's view is that the TLS should continue in South Africa as a recognised means to save jobs and that it is mainly the design of the TLS that needs attention. While participation should always be voluntary, they argue, there should be legislation to ensure proper delivery and accountability in the roll-out of the TLS.

Whether or not the operation of the TLS is legislated, the CCMA believes that it should become a

permanent feature of the South African labour market. If the Scheme is institutionalised, it will continue to be an option for businesses in distress and workers facing retrenchment or short time and not only in times of economic crisis. This is important given that high numbers of retrenchments are continuing.

CONCLUSION

In conclusion, negative comments made about the TLS are aimed at the details of the Scheme and miss the point. If we look at the basic aspects of the TLS which is to prevent loss of jobs through combining a training layoff allowance with skills development and the company being provided with a breathing space to recover, our finding is that the basic approach is sound. ^{LB}

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Accessing Training Layoff Scheme

The CCMA is the single point of entry for participation in the TLS. Unions, workers or employers may complete the 'Request to Participate in the Training Layoff Scheme' form, available at CCMA offices.

The CCMA will convene a facilitation to explain the TLS and conclude a training layoff agreement.

The participating employer needs to demonstrate that it is experiencing or facing distress by producing financial information.

The request will be considered by the CCMA Advisory Committee which then makes a recommendation to the Project Evaluation Committee (PEC).

The CCMA will notify the relevant SETA and the SETA then engages with the parties to agree on the training that will be delivered.

The SETA applies to the NSF for funds for the training allowance and, if approved by the PEC, the NSF disburses the funds to the SETA. The SETA then pays the funds over to the employer, who in turn pays the training allowance to the workers.