

Violence and the Law in the 1989 Railway Strike

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Jonathan Joffe is a Consultant at MAST, a Monitor Group Company.

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The 1989/90 SATS strike is regarded as one of the most bitter and bloody disputes in South African labour history. It was also one of the most complex disputes, deserving of a thorough analysis. This paper does not pretend to be such an analysis. It is rather a chronological description of the dispute, making preliminary observations. It is written very much from the perspective of the legal advisor to the trade union and, therefore, both a lawyer and a participant.

The Law

The employment of employees in the South African Transport Services (SATS) (now Transnet) is specifically excluded from the scope of the *Labour Relations Act 28 of 1956*, as amended. (the "Labour Relations Act"). The employment of these employees is regulated by the *South African Transport Services Conditions of Service Act, 41 of 1988*. (The "SATS Act")

The SATS Act was introduced in 1988 and is the most contemporary piece of public sector legislation. It contains two "innovations" which are not yet contained in other laws regulating employment in the Public Sector: Firstly, it introduces a Labour Council to centralise collective bargaining in SATS. The Labour Council is loosely modelled on industrial councils that have been formed in the private sector. However, it differs in that parity regulates the voting power of the trade union members. The effect of this is to encourage a fragmentation of trade unions and to entrench minority trade unions. Only trade unions formally and explicitly recognised by SATS are eligible to participate in the Labour council. Although the South African Railway and Harbour Workers Union (SARHWU) is the oldest trade union in SATS, it is not recognised. Secondly, it prohibits strikes. The SATS Act makes a strike by an employee in SATS an offence. The laws of natural justice do not apply in the strike situation. After affording the employee the right to make limited representations, SATS has the "right" to dismiss.

On 15 March 1989 the *Legal Succession to the South African Transport Services Act, 9 of 1989*, (the "Legal Succession Act") was promulgated. This Act laid the legal foundation for the privatisation of SATS. In accordance with this Act, on 1 April 1990 all assets, liabilities, rights and obligations of SATS, (except those relating to rail commuter services), were transferred to a newly-formed public company. This company, Transnet, has share capital although, at the outset, the State is the only shareholder. All employees of SATS became employees of Transnet without interruption of their service. The SATS Act will remain in operation until October 1991 and, until that date, SATS employees will be regarded as employees of the State. Thereafter they will become private sector employees and fall under the Labour Relations Act. (The Legal Succession Act did not transfer the rail commuter assets of SATS to Transnet. These assets were transferred to a newly-formed corporation, the South African Rail Commuter Corporation Limited.)

Background

In September 1988 over 8 000 SATS workers went on strike in Natal. For the first time SATS entered into direct negotiations with SARHWU, the representative trade union. The strike was settled on the basis that SATS agreed to recognise SARHWU. However, this recognition was conditional on SARHWU satisfying three requirements: registering with the Department of Manpower, proving representivity, and concluding a formal recognition agreement.

SARHWU resolved to register at its congress at the end of 1988. However, it made no progress towards registration during the first six months of 1989. Two reasons have been advanced for this:

Firstly, the decision to register was an unpopular one. Members felt it highly inequitable that their union be required to register, in terms of the Labour Relations Act, when they were afforded none of the benefits of that act. In particular, they were not afforded the protection of the Unfair Labour Practice jurisdiction.

Secondly, SARHWU had been severely disorganised by the 1987 strike and the severe repression that followed. The administration of the union was effectively destroyed. Registration involved a considerable administrative exercise. The Black Trade Union of the South African Transport Services (BLATU), SATS' sweetheart union, was already registered for all black employees of SATS. It enjoyed an effective closed shop and was in a powerful position to oppose SARHWU's registration.

In July 1989 SARHWU notified SATS that it had resolved to register and that it now wished to begin negotiations towards its recognition. SATS agreed to begin negotiations. At the first meeting SARHWU notified SATS that its members had mandated it to raise a series of substantive issues, such as wages and privatisation, with SATS. SARHWU wished to enter into parallel negotiations on these issues. SATS initially agreed that SARHWU could table these demands. However, it then refused to enter into negotiations on them. SATS went further and demanded that SARHWU provide it with an undertaking that it would not raise any substantive issues until it was formally recognised.

SARHWU would not give this undertaking. SATS was already negotiating wages with BLATU, and SARHWU's members were totally dissatisfied with this. In addition, the passing of the Legal Succession Act, and reorganisation of SATS, was creating considerable insecurity amongst SARHWU's members. There was little possibility that SARHWU would be registered, and therefore recognised, before the end of 1989. Its membership would not tolerate this delay in negotiating these issues.

SARHWU warned SATS of the consequences of its insistence that it provide the undertaking, and its refusal to negotiate the substantive issues. It argued that there was no reason why such negotiations could not take place before the union was formally recognised. It argued that SATS should seek solutions to real problems, rather than raise technical objections. SATS would not move from its position.

The refusal of SATS to negotiate on these substantive issues was the departure point for the 1989/90 strike. From this point on, workers had no mechanism to express their demands and to participate in negotiations. SATS proceeded to reach agreement on wages for black workers with BLATU. This was highly provocative and contrary to SATS's apparent acceptance that SARHWU was now the representative union.

Workers' Committee Initiative

In October 1989 workers in the Southern Transvaal elected a Workers' Committee to put various demands to SATS. These included a R1500-00 living wage, problems with the application of the new disciplinary procedure, and privatisation. The Workers' Committee met SATS and put the demands to it. They claimed to act in terms of section 19(4) of the SATS Act which allows a group of employees to make representations to SATS. SATS refused to negotiate on these issues and claimed that the committee was SARHWU in another guise. On 1 November 1989 workers in the Southern Transvaal went out on strike.

During the first week of November 1989 the strike spread to other parts of the country, in particular Natal, Bloemfontein, Kimberley, Cape Town and the Northern Transvaal. Workers throughout the country elected a National Workers' Committee who requested to meet SATS. At the meeting SATS stated that it could not negotiate on these issues because it had already reached agreement with BLATU. The SATS Act prevented it from entering a further agreement within twelve months. SATS clearly completely under-estimated the consequences of utilising technicalities (which were, in any event, not legally correct) to avoid negotiating on genuine demands. The meeting broke down and SATS refused to attend a further meeting with the National Workers' Committee.

Cosatu Initiative

In mid-November the Congress of South African Trade Unions (COSATU), in consultation with SARHWU, launched an initiative in an attempt to prevent a repeat of the 1987 strike. It approached SATS to persuade it to enter into negotiations directly with SARHWU. SATS indicated that it recognised that SARHWU was representative of a large percentage of black workers and that it had taken an in-principle decision to recognise SARHWU. However, it was insistent that SARHWU first register with the Department of Manpower. COSATU persuaded SATS to enter into direct negotiations with SARHWU in an attempt to find a solution to the strike. At this point SATS had begun dismissing striking workers. COSATU specifically warned SATS that this was provocative and created an additional issue which, at the end of the day, the parties would have to settle.

Negotiations

SARHWU and SATS began negotiations on 21 November 1989. The negotiations centred around three main issues: the recognition of SARHWU, wages and the dismissed workers. SATS remained firm that it would only recognise SARHWU when it was registered. SARHWU stated that workers would not return to work until SATS had made some concession on the issue of wages. SATS had reached agreement on wages with BLATU, an unrepresentative union, and workers would not go back to work until some cognisance had been taken of their real demands. Although SATS agreed to refer the issue of dismissed workers to an independent arbitrator, the issue became an increasingly serious one as dismissals continued.

SATS agreed to "slow down" dismissals during negotiations, but would not stop them altogether. The stated reason for this was that SATS was encouraging increased managerial initiative and would not override those managers who wished to dismiss striking workers. The continuing dismissals, however gradual, undermined the entire negotiation process.

On 5 December 1989, after numerous sessions of negotiations, it appeared that deadlock had been reached. SATS refused to budge on the issue of registration and SARHWU refused to take wages off the negotiating table unless it was guaranteed speedy recognition. SARHWU appreciated the negative consequences of the talks deadlocking and proposed that the entire dispute be referred to an independent mediator. SATS refused this. The talks therefore broke down in deadlock.

Mass Dismissals

It was at this point that SATS embarked on a course of action with disastrous consequences. Relying on the experience of the mining houses in the 1987 mineworkers strike, SATS began the mass dismissal of striking workers. It was clear that SATS wished to dramatically increase the stakes before returning to the negotiating table with SARHWU. It hoped to shift the entire focus of the dispute to the issue of dismissals. However real SARHWU's initial demands, when it returned to the

negotiating table its only demand would be for the re-instatement/re-employment of dismissed workers and, therefore, the very survival of SARHWU.

Between 5 December and 20 December the number of dismissed workers rose from 4 000 to over 22 000. During this period the level of violence rose dramatically. This violence took two main forms.:

Firstly, apparently organised attacks against property of SATS. This included the burning of rolling stock (carriages and wagons) and derailment of trains. The reasons for this violence are not difficult to find, the deadlocking of negotiations, and mass dismissals, left striking workers with the impression that they had come to the end of the road. Under the jurisdiction of the Labour Relations Act "deadlock" is the cut-off point which signifies that the dispute will be referred to the industrial court for adjudication or be the subject of a legal strike. However, without this legislation, or an alternative dispute-settling mechanism, there appeared no way forward. The history of SATS, and in particular its open attempts to destroy militant trade unionism reinforced this notion. It was also reinforced by the publicly stated policy of SATS to streamline its workforce, with a view to privatisation. Mass dismissals were seen as nothing more than a disguised retrenchment and declaration of war against SARHWU and its members.

Secondly, organised attacks by non-striking workers on striking workers. Although there were clashes between striking and non-striking workers from the beginning of the strike, it was in mid-December that the phenomenon of vigilantes emerged for the first time. A number of incidents occurred, particularly around the Braamfontein station in Johannesburg, where large groups of armed non-striking workers attacked striking workers en route to union meetings. The flashpoint for these confrontations was the station platforms. It was apparent that SATS, or some of its white supervisors, were in fact turning a blind eye to the vigilante attacks. The vigilantes used the trains and grouped

on the station platforms without any apparent interference from SATS or the South African Police.

The vigilante attacks can be directly linked to the strategy adopted by SATS. The position of non-striking workers was greatly bolstered by the breakdown in negotiations and the mass dismissal of striking workers. In the early weeks of the strike the non-striking workers were subject to considerable pressure to join the strike. Many of them considered doing so but decided not to as a result of their experience of the 1987 strike. The deadlock and mass dismissals indicated that their decision had been a correct one. They believed that SATS had made a decision to get rid of the striking workers and destroy SARHWU. Their position shifted from being the "intimidated scabs" to being the "protected workers of SATS." The failure of SATS to discipline them or their supervisors for their participation in vigilante attacks certainly reinforced this notion.

Mass Evictions

In the third week of December SATS embarked on a further strategy which exacerbated the potential for violence. On the basis that it had dismissed striking workers (which, it believed, the SATS Act gave it a "right" to do) it now began evicting them from the SATS hostels. Most of the striking workers were migrant workers living in single-sex hostels.

SATS did not deem it necessary to apply to court for eviction orders, but simply instructed its security personnel (and the SAP) to forcibly remove workers from the hostels. Without notice, and often at gunpoint, migrant workers found themselves literally on the streets with no shelter for the night. The phenomenon of large groups of dismissed, and evicted, workers gathering nightly in church halls lead to extreme insecurity and anger. The potential for violence between striking and non-striking workers, and confrontation with the police, increased dramatically.

With Christmas rapidly approaching the evictions placed an extraordinary strain on SARHWU's limited resources. It was forced to find accommodation for large numbers of workers on a daily basis. Its attention therefore shifted entirely from the dispute itself, to the daily battle for survival of its members.

SARHWU launched four separate Supreme Court applications challenging the eviction of the workers from the hostels. All four applications were settled on the basis that the workers could return to the hostels and that SATS would pay SARHWU's

legal costs. SARHWU then secured an undertaking from SATS that all workers could return to the hostels and that they would only be evicted if SATS had an actual court order. SATS was unable to get court orders before the Christmas/New Year period and workers remained in the hostels. This was a crucial component in SARHWU's ability to sustain the strike over this period, which numerous other trade unionists had advised would be impossible.

The Germiston Massacre

The massacre at the Germiston station on the 9 January 1990 was the nightmarish consequence of the strategy adopted by SATS at the beginning of December. On this day a vigilante group of approximately 1 000 non-striking workers waited, armed, on the station platform for workers who were arriving by train to attend a SARHWU meeting. When the train arrived, rather than guiding it directly through the station, the platform officials stopped it. Striking workers attempted to barricade themselves inside the carriages, but were overpowered by the non-striking workers, who greatly outnumbered them. Eight workers were killed and over 50 seriously injured.

It subsequently emerged that the non-striking workers had been allowed to leave work, and had used SATS trains to get to and from the Germiston station. They told journalists that they had been given time by their white supervisors to prepare for the attack. A senior SATS official told SARHWU that the attack was organised with "military precision". To date, as far as is known, SATS has not taken any disciplinary action against any of these workers or against their supervisors.

The Germiston massacre had a considerable effect on the entire dispute. The strike became international news and was presented as a challenge to the Government's reform initiative. Many trade unions and community organisations now rallied in support of the striking workers and a national stayaway was mooted. This appears to have had a considerable impact on thinking within SATS. After a month of deadlock, mass dismissals and mass evictions, the General Manager now spoke of "labour peace".

MDM Initiative

The Mass Democratic Movement (MDM) had arranged a meeting with SATS for 11 January 1990. The original purpose of the meeting was to attempt to persuade SATS to return to the negotiating table with SARHWU. In the light of the Germiston massacre the meeting was used by the MDM to spell out to SATS the consequences of its failure to resolve the dispute. In particular the MDM stressed that nothing less than full re-employment of striking workers would be acceptable.

Negotiations between SATS and SARHWU resumed in a highly emotional atmosphere on 11 January 1990. SATS offered 100% re-employment of dismissed workers. SARHWU rejected the offer saying that, in the current climate, nothing less than 100% reinstatement was acceptable. The level of distrust at the meeting was tangible and, rather than allowing the negotiations to deadlock, SATS proposed that

the entire dispute be referred to independent mediation. SARHWU accepted this, noting that it had made exactly that proposal five weeks, and many deaths, earlier.

Mediation and Settlement

Mediation was very much the "end game" of the dispute. By this stage the issues had been clarified and both parties made abundantly clear their strengths and weaknesses. The mediation was, nevertheless, a productive exercise which placed the relationship between SARHWU and SATS on a solid footing. Four days (and nights) in intense contact with one another created a far greater understanding between SATS and SARHWU.

On 27 January 1990 SARHWU and SATS reached agreement. The main features of the settlement agreement were:

Recognition

SATS agreed to recognise SARHWU, in areas, and for categories of employees for which it acquires registration. SARHWU had applied for registration of General and Track workers in Southern Natal.

Wage Negotiations

SATS agreed to enter into wage negotiations with SARHWU in April 1990 for General and Track workers in Southern Natal. This will occur within fourteen days of SARHWU acquiring registration, irrespective of whether a formal recognition agreement has been signed. If SARHWU is not registered, SATS will not negotiate with BLATU for workers in Southern Natal.

Dismissed Workers

SATS agreed to re-employ all dismissed workers. These workers were re-employed with retention of considerable benefits, including their pension benefits and length of service for the purposes of any future retrenchments and promotions. No worker would be disciplined for participation in the strike unless he/she has been convicted of an offence involving a serious act of violence. Before disciplining, SATS must consider any acts of provocation and the equities of the matter.

Return to Work

SARHWU agreed that its members would return to work in the first week of February 1990. Any problems arising from the return to work would be dealt with by SARHWU and the SATS Regional Labour Manager having jurisdiction. Any disputes would be referred to independent arbitration.

The settlement agreement satisfied both parties, and in this respect, was evidence of the value of mediation in these circumstances. SATS was able to retain its insistence that SARHWU register before being recognised and thereby not upset its relationship with the other twelve trade unions which it recognises. SARHWU was able to survive

a three month strike without losing any membership. It was also able to get SATS to commit itself to wage negotiations in 1990. The procedure to deal with problems arising from the return to work represented a significant advance for SARHWU in that it has given it access to the SATS managerial structures. It has also subjected SATS to the scrutiny of an arbitrator, if necessary.