

A defeat for labour brokers!

Workers must organise to claim our victory!

On 26 July 2018, the Constitutional Court passed a judgment on a case between metalworkers' union NUMSA and Assign Services (Pty) Limited, a labour broker. The highest court in the land ruled that a worker who earns less than R205,433 per year and is working under a labour broker and is placed at a client company for longer than three months becomes an employee of that client company, and "becomes employed on the same terms and conditions of similar employees, with the same employment benefits, the same prospects of internal growth and the same job security that follows."

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National Committee

The labour broker argued that after three months workers should become the employee of both the client company and the labour broker. This would no doubt allow for the same bad conditions for workers under labour brokers. Workers

know that when they try to claim rights from the labour broker, the bosses say they cannot comply as it will go outside of the contract with the client. When workers try to claim their rights from the client those bosses say that they should deal with the labour brokers. Under these conditions, workers are left in the same position – vulnerable to the exploitation by bosses without the security and the benefits of permanent employment.

The Constitutional Court rejected the "dual employer" argument and ruled that it was in the best interest of workers if the client company became the sole or only employer of workers after three months and said that workers are entitled to the same conditions of employment as other workers in that company.

We must acknowledge NUMSA and others who have fought the case to secure this important legal victory against the endless renewal of so-called temporary contracts which did nothing but allow for the ongoing hyper-exploitation of vulnerable workers in labour broker companies.

We support calls by the South African Federation of Trade Unions (SAFTU), of which NUMSA is an affiliate, for

the launch of nation-wide campaign to defeat labour broking once and for all. Labour broker workers as well as all non-permanent workers must mobilise and organise to claim the hard-won rights outlined in the Labour Relations Act's Section 198 and force bosses to comply. It is only through organised struggle that these rights will be realised.

There is no doubt that this legal victory comes in the context of consistent and courageous struggle by workers fighting against jobs that offer no security and poverty pay. The #OutsourcingMustFall campaign, led by WASP, played a vital role in creating a climate where this judgment would be the only acceptable outcome for the working class. SAFTU has since incorporated #OutsourcingMustFall into its programme and we welcome this solidarity.

We must continue this struggle and indeed expand our campaigns – mobilising contract and casual workers under labour brokers and so-called service providers to make sure that bosses implement Section 198. This judgement reflects the significance of the ongoing struggle of all workers who have and continue to fight for secure and dignified work and a living wage.

What does the LRA Section 198 say?

Amendments to the Labour Relations Act in 2015 improved the rights of workers who work through labour brokers, part-time or are on fixed-term contracts; earn less than R205,433 per year and are working for longer than three months. There are some exceptions to these rights under different conditions, for example if the company employs fewer than 10 workers. But in general workers under these contracts must be treated the same as other permanent workers doing the same or similar work.

We must organise and fight to claim these rights and more!

Labour broker workers (Section 198A):

- Must be made permanent by the client company after 3 months.
- Must be employed on the same wages and conditions as other workers doing the same work.
- Must get written details of your job when you start working for the labour broker.

Fixed- term contract workers (Section 198B):

- Must be made permanent by the company after 3 months and employed under the same conditions as other workers doing the same work.
- Must have a contract with a clear starting date and a clear ending date.
- Must have a written contract – if it's not you are considered permanent.

Part-time workers (Section 198C):

- Must be treated the same as full-time workers doing the same work.
- Must have the same access to training and skills development.
- Must have the right to apply for full-time jobs.