

South Africa: Numsa strike against sexual harassment is a 'powerful moment in labour history'

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What does it require to get management to take a sexual harassment complaint seriously? If the recent National Union of Metal Workers of South Africa (Numsa) strike is anything to go by, it takes about 290 striking workers remaining underground without food and clean water for nine days.

From June 19 to 27, an underground strike was staged at the Lanxess chrome mine near Rustenburg in North West, during which workers demanded that management immediately suspend and discipline an alleged perpetrator of sexual harassment. It took nine days for an agreement to be reached and for union members to return to work.

This is a most extraordinary show of strength, and a moment of exceptional unity, by workers in support of a comrade who experienced sexual harassment.

The workers, both men and women, were demanding that a longstanding sexual harassment matter be dealt with by the mine management.

The matter had been reported in August 2018, but had not been resolved by June this year. The complainant, an underground mine worker, was subjected to sexual harassment by a manager, a mine captain with whom she worked.

The woman lodged a grievance, but management, through an HR manager and two other senior employees, put pressure on her to withdraw the case. It appeared to complainant and the union that the HR manager and his two colleagues were colluding with the alleged perpetrator.

To add to the pressure the woman was under to not continue with the grievance, the union alleges that she was forced to sit in the same room with the alleged harasser and encouraged to resolve the issue through dialogue.

The union complained about the HR manager's behaviour and his apparent support for the perpetrator. Only after this was the mine captain suspended. However, his suspension was short-lived and he was reinstated without the woman being notified as to why his suspension was withdrawn. She was forced to continue working with him as though nothing had happened.

The strike that ensued as a result of the company's stance was brutal and violent.

As national Numsa spokesperson Phakamile Hlubi put it: "It was an extremely difficult time for our members. They slept on the cold hard floor, without blankets ... in the middle of winter. They inhaled chrome and, to make matters worse, they were at times denied water by mine management. There were several occasions when mine management refused to allow food to be sent down to workers.

Their attitude was that if workers are uncomfortable they must end the strike and then they will receive food. On one of the days of the strike, (June 21), mine management turned off the electricity supply to the mine. This cut off the water and ventilation for workers who were underground. During the course of the strike at least 12 workers were hospitalised for various ailments, most [of them due to] dehydration and hunger; others because they were denied access to chronic medication.”

When one considers some of the hard-won advances that have been made in the workplace to prevent and deal with the scourge of sexual harassment, it is astounding that this type of protest was required to enforce a woman worker’s right to safety and dignity.

In 2002 the South African Mining Charter introduced quotas requiring mining companies to employ a 10% female staff component. By 2018 this quota had been exceeded in the industry, with the Minerals Council South Africa Facts and Figures 2018 Pocketbook reporting that 15% of employees in the mining sector were women.

Asanda Benya, who has undertaken a study on women workers in the Rustenburg mines, indicates that women working in the mines remain predominantly in the lower-paying ranks, with many working underground. Underground female miners are generally managed by male mine captains and shift bosses, which has been identified as a fraught power situation that renders them particularly vulnerable.

Power dynamics in the employment context have been recognised by the courts as a critical element of sexual harassment. As the court held in *Campbell Scientific Africa vs Simmers and Others*, a 2016 case heard in the labour appeal court: “At its core, sexual harassment is concerned with the exercise of power and in the main reflects the power relations that exist both in society generally and specifically within a particular workplace.”

Benya reports that even travelling down the cage to reach the underground areas poses risks for female miners. Women she interviewed complained of experiencing inappropriate groping, touching and fondling as they stood packed in with their male colleagues.

This particular complainant’s case was not isolated. Last week *The Daily Sun* quoted Numsa regional secretary Jerry Morulane as saying that management was refusing to address broader, rampant sexual harassment on the mine and that shift bosses and mine captains in particular took advantage of women.

In the context of a Constitution that is founded on values of human dignity and the Employment Equity Act, which recognises that harassment of an employee is a form of unfair discrimination, it is astounding that workers had to go to these lengths to be heard. The act places a duty on employers to eliminate unfair discrimination in the work environment. And the Amended Code of Good Practice on the Handling of Sexual Harassment Cases in the Workplace, issued by the minister of labour in 2005 in terms of the Employment Equity Act, takes this even further.

The code places an obligation on employers to create a safe environment for female workers, as well as ensure that the workplace respects the dignity of employees and that complainants of sexual harassment will not feel that their grievances are ignored or trivialised or fear reprisals. It states that policies should be in place, employees should know about them, and that these policies should spell out that there are consequences for alleged perpetrators, which can include disciplinary action and dismissal. Employers must clarify procedures for reporting sexual harassment and must take action to eliminate it once a report has been made.

In *SA Metal Group (Pty) Ltd vs Commissioner*, a 2014 case heard in the labour court, the court held

that the code has to be used and applied. In *PE vs Ikwezi Municipality* and another, a 2016 case, the court goes further and says that employers should provide training on the code to their employees.

A 2006 case, *Piliso vs Old Mutual*, draws attention to the situation an employer may find itself in should it fail to take steps to eliminate the alleged conduct. Once a complaint has been brought to an employer's attention, the employer must take action. "It is accepted and trite that an employer has duty to take reasonable care for the safety of its employees and to provide its employees with a safe working environment."

Management frequently demonstrates a remarkable level of ignorance about how to deal with complaints of sexual harassment in the workplace. A complainant-centred policy on sexual harassment should by now be integrated into all workplaces. This would enable complaints to be made to specifically designated people who are not part of management and would set out procedures regarding how the complaint should be handled. Leaving it up to HR managers to deal with complaints can prove to be problematic, as the possibility exists that they may collude with alleged perpetrators who are their management colleagues.

Furthermore, pressuring complainants to sit in the same room as the perpetrators to try to "sort things out" is demeaning and prejudicial to the complainant and undermines their agency entirely. The choice as to whether this is something they wish to do should be left to the complainant. If the complainant decides against doing so, policies should clearly set out other available options.

In the case of the alleged sexual harassment at Lanxess mine, management reached a settlement with the union after a harrowing nine-day strike. Management agreed that the alleged perpetrator would be placed on special leave, pending the finalisation of an investigation into the allegations. It also consented to conduct an enquiry into three managers who had allegedly failed to deal properly with the allegations of sexual harassment to determine if they should be disciplined. Finally, it was agreed that all the investigations would be conducted by an outside team to ensure that managers would not interfere.

As Hlubi says: "It was a powerful moment in labour history where men and women united and risked their lives to fight against gender-based violence. They were willing to endure unbearable conditions underground, and exposed themselves to extreme discomfort and suffering, in order to make the point that they would not tolerate the abuse and bullying of workers. They want genuine change and they were willing to risk their lives for it. As Numsa, we are immensely proud of them for having been so brave and courageous."

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