

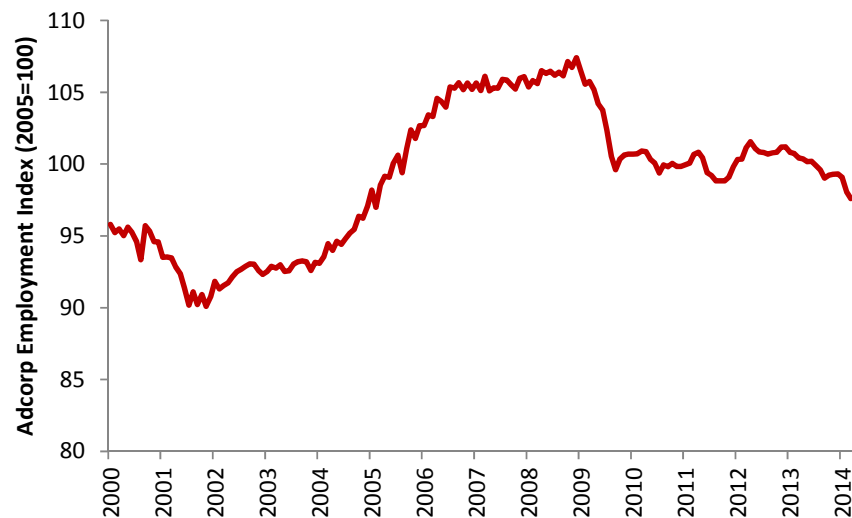
Adcorp Employment Index, June 2014

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Salient features

- Employment grew by 26,090 in June. Permanent work was flat (-0.02%) while temporary and agency work grew (4.3% and 4.8% respectively) during the month. Temporary work now accounts for 31.1% of formal sector employment, and agency work accounts for 25.4% of temporary employment.
- Informal employment grew as well (2.29%). The informal sector now employs 6.5 million people.
- Significant job losses were observed in mining (2,000), manufacturing (15,000) and construction (1,000). The public sector continued to create jobs during the month, amounting to 11,000 in government and 7,000 in state-owned enterprises.
- All occupations created jobs apart from basic work, i.e. elementary and domestic workers. The economy's absorption of high-skilled workers continued in June, absorbing 26,000 workers.
- This month we explore ways in which the recent platinum workers' strike might have been resolved without a five-month deadlock between employers and striking employees.

Adcorp Employment Index



Source: Adcorp (2014)

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Analysis: Platinum strike could have been averted

The platinum miners' strike is the biggest labour relations calamity since the 1922 Rand Rebellion when then-Prime Minister Jan Smuts employed the military to crush the open rebellion by mine workers and more than 200 mine workers were killed.

It may seem strange to draw similarities between the 1922 and 2012 events. But the trade unions' motives in both cases were identical. In 1922, following a drop in the world price of gold from 130 shillings a fine troy ounce to 95s a fine troy ounce in the preceding two-year period, the mining companies tried to cut their operating costs by decreasing average wages – mainly by weakening the 'colour bar' (racial segregation of the workplace) to enable the promotion of cheaper black miners to skilled and supervisory positions. In 2012, following a sharp drop in the world price of platinum, seething tensions as a result of dire living conditions, union rivalry, and company disinterest, trade unions sought a minimum entry-level wage of R12,500 per month, which bore no relation to the sector's financial position.

The rhetoric of trade unions– to improve the living standards of workers – has now become laughable. The true motive, which we are now beginning to understand from the testimony of witnesses at the Marikana Commission of Enquiry, was to raise the entry-level wage of mine workers to keep younger, inexperienced and less skilled workers out of the workforce, since these workers represent competition for the older, experienced and higher skilled workers who represent the dominant portion of trade union membership. Young people, who do not possess on-the-job experience, can only offer themselves for service at a lower rate, and since young people are not unionising at the rate that they were 30 years ago, trade unions have their backs against the wall. At present, unionisation in the mining sector is 78.1% of the workforce, but only 4% of workers strike, leading to strike-related intimidation now being the fifth leading cause of absenteeism in the country.

What caused the impasse that we observe today? First, government involvement has played a decisive role. Then-Minister of Mineral Resources, Susan Shabangu, thundered a threat to expropriate mining licences as the mines laid out their plans to lay off workers as platinum prices fell. This struck a note of fear among mining company managers that any labour action on their part would be met with reckless and disastrous retaliatory actions from the government. Then-Minister of Labour, Mildred Oliphant, was silent during the entire crisis. . For mining company managers, this was a sign that government would be impotent against even illegal union action. And for all his gung-ho naivete, the new Minister of Mineral Resources, Ngoako Ramatlhodi, made promises he could never keep and withdrew from talks within days without result. All of this meant that company managers were deeply afraid to take the vital actions necessary to secure their long-term economic viability, since the government was rightly dreaded to interfere with their day-to-day operations and tactical responses to the strike.

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What should have been done to avoid the impasse? When any unresolvable civil dispute between private parties arises, it must be referred to the courts. This is how everything from acrimonious divorces to hostile takeovers is addressed. The Labour Court, however, is populated by liberal white judges with subtle and deep connections to the labour movement – either via their origins or part-time appointments at left-wing academic institutions, or simply through long and dutiful careers under the pro-union, anti-business Labour Relations Act (1995). In the current platinum mining dispute, the Labour Court should never have referred matters back to the parties, and the mining companies should have applied for leave to appeal the lower court’s decision to the Labour Appeal Court – and ultimately the matter should have made it to the Constitutional Court. The Constitutional Court is the only neutral arbiter in the country that is capable of counter-balancing the right of workers to strike against the right of business enterprises to trade, both of which are enshrined in the Constitution (sections 23 and 22 respectively). There is, unfortunately, no hope that mining companies will pursue aggressive litigation against trade unions, precisely on account of the governmental inference that has plagued the strike since its initial days.

Our hope must lie with the Farlam Commission of Enquiry, for two reasons.

Firstly, a Commission of Enquiry has considerable powers, generally greater even than those of a judge and restricted only to the Commission’s terms of reference. The Commission is created by the head of state, and in practice, once a Commission has started the government cannot stop it. The head of state is obliged to implement the recommendations of the Commission, and failure to implement its recommendations would be all but impossible, given the constitutional litigation that would inevitably ensue. A Commission, in other words, is a politically advantageous and effective alternative to long-range political flip-flopping that yields no conclusion, of the kind that we are observing in the present strike.

Secondly, the Marikana Commission of Enquiry may yet reach a surprising conclusion. Retired judge Ian Farlam is patron of the Centre for Constitutional Rights, where his colleagues include former President FW de Klerk, Advocate Paul Hoffman SC and Dr Anthea Jeffery from the SA Institute of Race Relations, who as innovative thinkers are not shy to reach politically troublesome conclusions. Judge Farlam’s judgments have attracted significant public and professional interest, notably those relating to the enforceability of a Muslim marriage contract and the decriminalization of homosexuality. Quite possibly, Judge Farlam will seek to make his mark on South Africa’s labour relations history and, if so, we will see the most significant about-turn in labour relations since the 1979 Wiehahn commission.

There are several things that judicial activism – whether through the Farlam Commission or the Constitutional Court – could helpfully address. Ballots ahead of a strike, held in secret rather than by a show of hands in order to avoid intimidation. Civil liability for trade union members’ damage to property and injury to persons, following from a view that trade unions are juristic persons and that their officials and/or members are (much as company directors are) jointly and severally liable in civil suits. An end to closed- and agency-shop agreements, which force workers to join a union or pay union dues as a precondition for obtaining a job, as unlawful monopolistic practices. Civil liability for the South African Police Service for failing to protect willing workers against intimidation. Special protections for private security companies who assist willing workers to return to work. All of these initiatives, and probably many more that thoughtful judges could come up with, would represent a marked turnaround in South Africa’s labour relations regime.

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As South Africa has the world's highest rate of violent and protracted strikes, judicial activism rather than judicial impotence is undoubtedly called for.

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Additional Data

Employment by Type

Type	Employment Jun 2014	Percentage change vs. May 2014*
Unofficial sector	6,512,183	2.29
Official sector	12,555,293	1.31
Typical (permanent, full-time)	8,640,128	-0.03
Atypical (temporary, part-time)	3,915,165	4.28
- of which agencies	996,312	4.84
Total	19,067,476	1.64

* Annualized

Employment by Sector

Sector	Employment Jun 2014 (000s)	Percentage change vs. May 2014*
Mining	215	-11.06
Manufacturing	1232	-14.43
Electricity, gas and water supply	111	22.02
Construction	469	-2.55
Wholesale and retail trade	1724	2.09
Transport, storage and communication	537	9.01
Financial intermediation, insurance, etc.	1628	2.22
Community, social and personal services	2801	7.76

* Annualized

Employment by Occupation

Occupation	Employment Jun 2014 (000s)	Percentage change vs. May 2014*
Legislators, senior officials and managers	1,138	4.23
Professionals	806	7.49
Technical and associate professionals	1,631	1.47
Clerks	1,497	4.02
Service workers and shop and market sales workers	1,847	4.57
Skilled agricultural and fishery workers	95	39.13
Craft and related trades workers	1,317	1.83
Plant and machine operators and assemblers	947	2.54
Elementary occupation	2,271	-4.21
Domestic workers	796	-7.49

* Annualized

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