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# The Enforcement of the BCEA and Waiters: Will They Gain or Lose?

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## ABSTRACT

This study, conducted in Bloemfontein, found wide discrepancies between the prescriptions of the Basic Conditions of Employment Act and the actual working conditions of waiters. In order to make waiters' situation compliant with the law, several changes will have to be made. However, it was also found that not all changes would necessarily benefit the waiters. Policy makers should therefore be cautious in addressing these discrepancies and making a sectoral determination for waiters.

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## INTRODUCTION

In order to restructure the South African labour market, the government has passed several laws. One of these, *The Basic Conditions of Employment Act* (BCEA) of 1998, specifies certain new working conditions. Domestic workers, as well as farm labourers, who are usually low-wage and often part-time workers, have had very little protection in the past. They are explicitly mentioned in the BCEA, but are not the only vulnerable workers in the South African labour market.

In March 2000 the Department of Labour issued its *2000 Programme of Action and Budget*. According to this document, the Department commits itself to the protection of "vulnerable workers" and states that it would "undertake extensive work on sectoral determinations detailing minimum wages and conditions for domestic and farm workers, as well as workers in the retail, hospitality, clothing, civil engineering sectors and for learnerships in the hospitality industry".

Classified under the hospitality industry are restaurants, which employ waiters, often on a casual basis. Many waiters complain about the unpleasant manner in which they have to go about their tasks and how their employers treat them. Long working hours, low and unpredictable wages and lack of stability, are

some of the main issues. In a letter to a newspaper in Bloemfontein, a waiter writes about her working experiences in a local restaurant: "One day I worked from 09:00 till 17:00 without a break and I earned R14,94, from which R3,00 was deducted for breakages for which I was not responsible. Another R3,00 was deducted for an order book. We work for 3 per cent commission, but the manager can change that to 2 per cent or even 1 per cent if you make any mistakes. But what can we do about this? A person needs the money" (Translated from *Bloemnuus*, 21 January 2000).

The above statement is but one example of the many ways in which the BCEA is probably transgressed in the restaurant industry. This raises the issue of discrepancies between law and practice. To what extent does the restaurant industry comply with the prescriptions of the BCEA? Furthermore, if there are indeed discrepancies and these were to be addressed, would the waiters be better off?

It seems as if very little, if any, research has so far been done on this topic, which might serve as a guideline to the Department of Labour. According to Statistics South Africa, there is no information available on the number of waiters or restaurants in the country, let alone working conditions and remuneration.

A pilot study during the latter half of 1998 in Bloemfontein, lay the groundwork for an in-depth investigation into the working conditions of waiters in this city. The investigation was done at the beginning of 2000. In the light of the Department of Labour's endeavours to protect vulnerable workers, the results of this study could assist them in determining minimum wages and basic conditions for waiters.

## RESEARCH METHOD

### Sample

What makes Bloemfontein, a city with approximately 350 000 inhabitants (1996 Census Report), ideal for this study, is the fact that it houses several tertiary institutions and secondary schools. This is significant, since the assumption has always been that young people, in particular students, make up the largest proportion of waiters.

In order to determine the population of waiters and thus the sample size, a list of all the restaurants in Bloemfontein was compiled. This was done by making use of the *Free State White and Yellow Pages* (1999/2000) telephone directory, as

well as the *Braby's Greater Bloemfontein Business Directory* (1999/2000). All restaurants were contacted telephonically between 11 and 14 February 2000 and asked how many waiters they employed. The following restaurants were not included in the investigation: those which

- do not serve food and liquor after 17h00 (since this implies no night and double shifts),
- did not respond after three attempts were made to contact them,
- had changed their telephone numbers or names, or
- indicated that they were not willing to be part of the investigation.

In this way a list of 28 restaurants employing a total of 777 waiters was arrived at. Ten per cent of the waiters at each restaurant on the list, and at least one waiter per restaurant, were included in the sample. Therefore every restaurant on the final list was drawn into the study. In cases where 10 per cent of the waiters did not produce a whole number (e.g. 10 per cent of 18), the answer was rounded to the nearest whole number (2 waiters). This is why the sample size was 83 instead of 78 (10 per cent of 777).

### **Questionnaire**

Information was collected by means of a questionnaire. Informal, exploratory interviews and discussions were held with managers and waiters, and a concept questionnaire was then drawn up. This was tested, codified and finalized.

The questionnaire was divided into three sections. The first section dealt with age, qualifications, previous experience and present status as a waiter (part-time or full-time). This section was included to describe the general profile of waiters and to find out how many wait on tables as an occupation, not merely a side-line. The second section concerned working conditions, such as working hours, rest periods, deductions, particulars and termination of employment. The last section specifically dealt with remuneration, which consists of three parts in the restaurant industry, namely commission on sales, gratuities or tips by customers, and payments in kind.

### **Data Collection and Processing**

On 28 February and 1 March 2000, two fieldworkers went to the respective restaurants to collect the data. Since this was done during restaurant hours, it was impossible to select the waiters randomly. Therefore the method of accidental or availability sampling was used (Bless and Higson-Smith, 1994: 94-5). Waiters, who were not busy serving tables, were thus selected. Since the target group was reasonably homogeneous with regard to the tasks they have to

perform and the training needed to do so, and all restaurants on the final list were included, bias was probably minimized.

The waiters completed the questionnaires whilst the fieldworkers remained on the premises, so that the fieldworkers were available for assistance if necessary. They would then collect the questionnaires on completion. This ensured that all 83 questionnaires were completed and returned.

## **RESULTS**

### **Profile of Waiters**

The ages of the respondents ranged between 16 to 30, the highest frequency being 20 years of age. The average age is 21.5 years.

Seventy-four respondents had passed Grade 12, three indicated that they were still at school, and the remaining six left school without a Grade 12 certificate. Almost one third of the waiters in the survey had a tertiary qualification.

More than half of the respondents (47) indicated that they were full-time waiters. The remainder were either full-time students (19), part-time students (14), or at school (three).

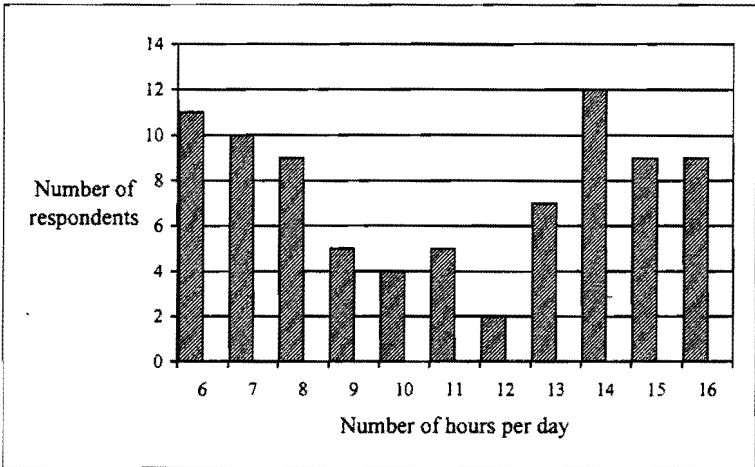
### **Working Conditions**

#### *Working Time*

There are two shifts in the restaurant industry: a day shift and a night shift. Waiters have to decide at the beginning of each week which shifts they would like to work and have the option of working both shifts on the same day (a double shift). The number of shifts they worked per week (single and/or double) was indicated on the questionnaire, as well as the length of each shift. From this information, each waiter's longest working day per week was calculated.

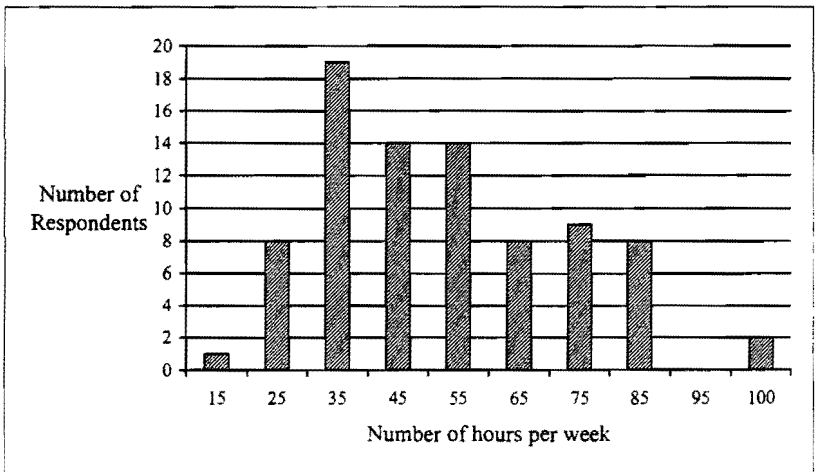
As can be seen from Figure 1, for 48 waiters the longest working day of the week exceeded nine hours. The rest indicated that they never worked more than nine hours per day. They are the waiters who do not work double shifts.

**Figure 1 Waiter's longest working day**



The length of each respondent's working week was calculated too, and is illustrated in Figure 2. It should be noted that 41 (49.4 per cent) of the respondents worked more than 45 hours per week.

**Figure 2 Length of working week**



Also included under working time are meal breaks. Sixty-seven of the respondents said that they did not get any meal breaks during shifts, whilst eight of the sixteen who did get a meal break, said that it was only 10 minutes long.

With regard to work on Sundays and public holidays, the overwhelming majority of the waiters (76) involved in the study said that these days were regarded as ordinary working days.

### *Particulars of employment*

Most of the respondents had not received any written particulars of employment from their employers. Only nine had signed some form of service contract.

Sixty-nine waiters said that they had to perform tasks other than their primary duties (serving clients and cleaning tables). These included cleaning the restaurant, taking stock and, in some cases, even assisting the cook. Only three waiters said that they were paid for these tasks.

### *Termination of employment*

On the question of notice periods, 53 waiters in the study indicated that their services could be terminated summarily, while 15 had no knowledge of any notice period. The remaining 15 respondents said that they could get anything between one and three warnings before they would be dismissed. However, if these waiters wanted to terminate their services, they were expected to set a period of notice. This period set from 24 hours to one week, 2 weeks or, in some cases, one month.

### *Deductions*

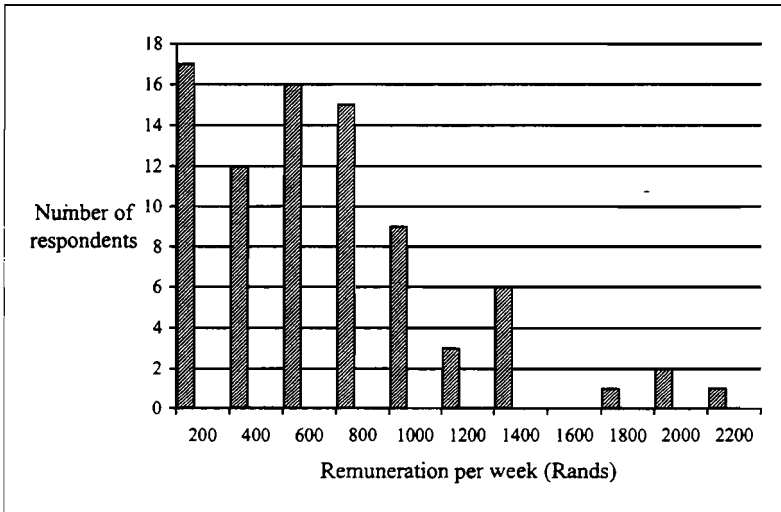
The respondents were also asked about the consequences when losses occurred (breakages, customers leaving without paying or theft of goods). More than half (46) said that after every shift they have to contribute a fixed amount to a common fund. Fourteen said that they have to bear the full cost of the losses themselves, whilst 13 indicated that losses are shared equally amongst all waiters. Only ten of the respondents did not have to pay for losses.

### **Remuneration**

Almost two-thirds (50) of the respondents said that they received a commission on sales which was either 2 per cent (9 waiters), 3 per cent (9 waiters), 4 per cent (24 waiters) or 5 per cent (13 waiters). The rest of the respondents (28) said

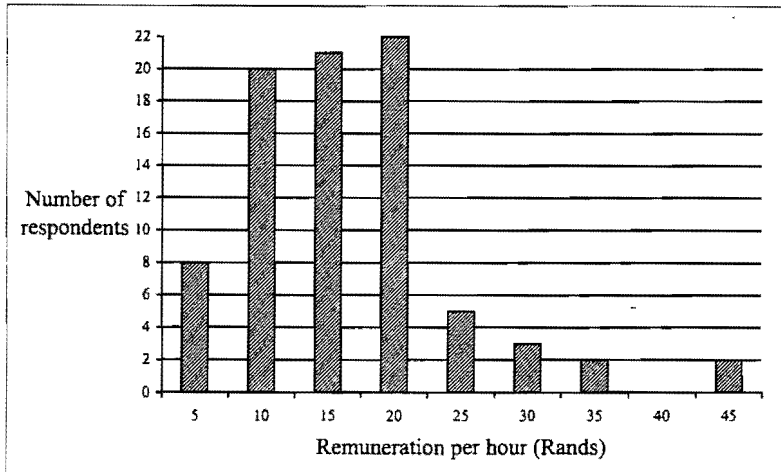
that their employers pay them no commission at all. They are solely dependent on tips by the restaurant patrons.

**Figure 3 Remuneration per week**



Furthermore, the waiters were asked to approximate their remuneration per shift (commission and/or tips). From this, remuneration per week (income per shift times number of shifts per week) was calculated. As illustrated in Figure 3, this ranged from R200 to R2 200 per week.

The hourly remuneration of each waiter was then determined (income per week divided by hours per week). The results are illustrated in Figure 4, which shows that 62 respondents (75 per cent) earned between R5 and R20 per hour. The average remuneration was R14.52 per hour.

**Figure 4 Remuneration per hour**

With regard to payments in kind, the majority of the waiters in the survey (66), answered that they either received free meals (to a certain value) or discount on food. Eighteen said that they receive no payment in kind.

### **LAWS vs. RESTAURANTS: DISCREPANCIES**

As seen from the results, it appears that there are wide discrepancies between the stipulations of the BCEA and the actual working conditions of restaurant waiters in Bloemfontein. These discrepancies are summarized in Table 1.

The BCEA contains a variation clause, which states that basic conditions may be varied, either through collective bargaining, or by the Minister of Labour. However, the discrepancies summarized in Table 1 are not a result of this clause, since waiters in this study indicated that they do not have recourse to collective bargaining. Therefore, these discrepancies seem to be blatant transgressions of the BCEA.



**Table 1 BCEA stipulations vs. actual working conditions**

Conditions	BCEA	Waiters
Working time:		
• Ordinary hours/day	Max. 9 hours	58% work longer, some up to 16 hours
• Ordinary hours/week	Max. 45 hours	49% work more, some up to 96 hours
• Meal intervals	1 hour after 5 consecutive hours	92% get none
• Night work	Allowance must be paid and transport provided	No allowance paid, no transport provided
• Sundays	½ times wage should be paid	No extra commission paid
Particulars of employment	Should be in writing and detailed	89% have nothing in writing
Termination of employment	Notice: 1 week, 2 weeks or 1 month (depending on length of service)	64% could be summarily dismissed without any notice
Deductions	Only by written agreement, and proven guilt	88% are in some or other way responsible for losses; guilt not proven

### **BCEA: WILL WAITERS GAIN OR LOSE?**

Contrary to the general perception that waiters are merely young people who earn pocket money, the results of this study show that this is not necessarily true. More than half of the respondents are full-time waiters making a living from waiting on tables. Like domestic and farm workers, they are vulnerable and need protection.

However, laws should improve the life experience of those to whom it applies. Therefore, the question is: if the BCEA is enforced in the restaurant industry, will waiters actually be better off? The answer to this is not a simple yes or no.

With regard to particulars and termination of employment, waiters seem to be extremely vulnerable. The overwhelming majority in this study can be summarily dismissed, and have to perform tasks for which they receive no compensation. Enforcement of the Law would give waiters at least job security and stability.

The BCEA is quite specific about the issues of deductions, night work and Sunday work. None of the respondents indicated that they were consulted regarding deductions for losses. No distinction is made between day and night work, and Sundays and public holidays are treated as ordinary working days. Since the Law stipulates that differential rates should be applied, waiters lose income to which they are legally entitled. In this regard, waiters would benefit from the enforcement of the BCEA.

On the other hand, in the case of working hours, enforcing the Law could be to the waiters' detriment. Since waiters themselves determine the length of their workday and workweek, they often work more hours than the Law allows. More hours implies higher remuneration. Therefore, the enforcement of maximum working hours, which would cause a reduction of the hours worked, will lead to lower income. Similarly, the enforcement of meal breaks will also cause waiters to lose income. According to this study, waiters would lose an average of R14.52 for every hour they do not work.

How much waiters would gain or lose is complicated by the fact that the BCEA allows the Minister to set minimum wages. There could be a strong case for this, since a considerable percentage of waiters in this study indicated that they in fact receive no remuneration from their employers. They are solely dependent on gratuities or tips, which, though an age-old practice, still depends on the customer's generosity. Even those who are paid a commission on sales, would earn nothing per shift if there are no customers to serve.

Although waiters could gain from a minimum wage in terms of income, one has to consider the impact on employment levels. Again, there are no clear-cut answers. Theory predicts that, in a competitive market, employment levels will decrease (McConnell & Brue, 1995: 375-7). In the restaurant industry, the opposite seems likely to happen. According to two studies in the USA by Katz and Krueger (1992) and Wessels (*Business Week*, 9 June 1997), higher minimum wages caused the employment levels of waiters to rise.

## CONCLUDING REMARKS

This study clearly shows that there are wide discrepancies between the stipulations of the BCEA and the actual working conditions of waiters. Although the results apply to Bloemfontein restaurants only, this may be the case throughout South Africa.

It is however difficult to conclude whether waiters would actually be better off if the BCEA were enforced in the restaurant industry. The application of some of

its stipulations, such as conditions and termination of employment would make waiters less vulnerable. On the other hand, maximum working hours and meal breaks could reduce waiters' income.

A strong case might be made for a minimum wage. Although it primarily effects waiters' income and employment levels, either negatively or positively, it could have far-reaching implications for both restaurants and waiters. In the United States, where there is a minimum wage for waiters, tips are legally regarded as part of wages and must be declared for tax purposes. Because "tip-tax" is difficult to administer, the trend is to do away with tipping and replace it with salary income (*Nation's Restaurant News*, 19 May 1997).

Although being a waiter is a low-wage occupation, it is much more complicated than it seems on the surface. Before the Department of Labour makes any sectoral determinations in this regard, much more investigation is needed.

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