

MTN's response: Jacqui O'Sullivan, Executive for Corporate Affairs at MTN SA:

The matters addressed in the letter are matters we have responded to you on before. The writer admits to being upset and what is disappointing is that ITWeb, as a news organisation, is happy to run more allegations that are not true, simply on the basis that this was sent to you. The fact that you haven't even asked specific questions on the letter is a concern, as much of the letter's claims have already been clarified with you.

That said, we will once again provide you the context and facts:

Once again, it is disappointing that there is an attempt to link the store transformation with the process of converting temporary employees to permanent status. These are completely separate activities, with the process of making temporary employees permanent, having been set in motion a number of years ago as a consequence of change in national legislation. There are also claims that the store transformation is a way to "fool" employees into retrenchment. These claims are simply untrue, and we reject them.

Regarding the transformation of our branded retail channel, MTN's objective is to actively seek to place more stores in the hands of black owners and in so doing, deliver on the clear desire of government, driven by the Minister of Communications, to bring new entrants to the telecommunications sector.

We want to reiterate that this store transformation is not about reducing stores or reducing jobs. We would, in fact, like to see a significant growth of stores in the next two years and this process will help drive that growth. To date, no store has been sold by MTN and so no section 197 consultation process has happened. It is important to understand that a section 197 process is not a retrenchment process.

As a point of clarity, the price of stores would be extremely varied, depending on the store size, its location, the performance of the store and various cost structures associated with the business. However, due to the franchise business model the stores are not cashflow positive from month one but operating costs will need to be covered. Without unencumbered cash to operationally finance the stores, the business sustainability and continuity would be put at risk during the initial period. The funding of the purchase of the stores is not required to be unencumbered.

With regard to the entirely separate process of making temporary employees permanent, the context is important. In 2015 the Labour Relations Act 1995 was amended to include Section 198A (the Deeming Provisions), which deemed temporary employees assigned to a client by a labour broker to be employees of the client if they have been so employed for a period exceeding three months and they don't fall in any of the three exceptions provided for by Section 198A. The Deeming Provisions were interpreted as creating a dual employment relationship where both the client and the labour broker were considered employers of the temporary employees. As a result, and in order to comply with the law, MTN approved a process of equalising the cost to company rate so that eligible temporary employees' pay rates were aligned to the monthly fixed package rate as extended to permanent employees performing the same position. In other words, the temporary employee cost to company rate and the permanent staff cost to company rate is similar for employees performing the same position.

The writer of this letter is unfortunately misrepresenting the facts. Based on the information provided in the letter, this employee is deemed by law to be a full time employee and this employee will have had his or her salary equalised (as explained above), to the same level as those who had been full time MTN employees, in 2018. The writer of the letter is also not being honest in saying that only 11 people are being addressed. The eleven employees that were initially engaged were just the start of the process and are employees that have been engaging

MTN directly on the matter for some time and, as such, we chose to initiate the process with them. The next larger batch will follow next week and so it will be rolled out, but this important fact and context was excluded in the letter.

In 2018, the Labour Appeal Court in a separate matter not involving MTN, ruled that employees employed by Temporary Employment Services (TES) are deemed to be employees of the client (the hiring company, such as MTN) for the purposes of the Labour Relations Act provided they meet the conditions as outlined in the LRA.

What this meant was that there was a change in statutory acknowledgement of responsibility to the client, (in our case, MTN SA) who is seen to be the sole employer. This ruling applied to all employers in South Africa. The formerly TES employees are, by law, already considered MTN employees. MTN is currently in the process of transitioning the temporary employees into MTN in compliance with the law. While all affected employees have been equalised from a cost to company perspective, the transition now is to share all relevant benefits, such as pension and medical aid.

So, with this as context, any allegation that MTN is trying to use the store transformation to dodge the law on making employees permanent, is not only ill-informed but also malicious. While we understand any change brings with it insecurity and anxiety, we will continue to engage all employees to manage these questions and concerns and we continue to encourage employees to use the channels we have made available to voice their concerns directly so they can be actively supported and addressed.