

# **WORKMEN'S COMPENSATION - A COMPARATIVE ANALYSIS**

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In the article "Workmen's Compensation - Who Benefits?", attention was drawn to the inadequacies in the provisions of the Workmen's Compensation Act (WCA).

The following article looks at the workers' compensation system in Britain in an attempt to arrive at suggestions for alternatives in South Africa. Furthermore, this article attempts to show how the WCA weights the capital-labour relation in favour of capital, by not providing for worker representation structures in the implementation of the Act.

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## **THE COMPENSATION ACT PER SE**

The weaknesses of the South African Workmen's Compensation Act have been discussed in the first two articles of this issue of CRITICAL HEALTH. They are re-iterated here in order to compare them to the British compensation system, with a view to formulating alternatives.

### **Calculation of compensation amounts**

In South Africa, calculations for compensation awards are based on percentage of wage earned at the time of the accident or disease. This disadvantages lower-paid workers who are mostly black. In the case of industrial diseases, the Act overtly discriminates against black miners.

The percentage-of-wage formula seems to imply the assumption that workers' needs decrease when injured or diseased. But, in fact, the opposite is mostly true.

Injured or diseased workers in Britain receive flat rate benefits: Everyone

receives the same benefit for a particular injury. In this ruling, there is no discrimination regarding sex or colour. The flat rate benefit is assessed according to fixed percentage disability formulae.

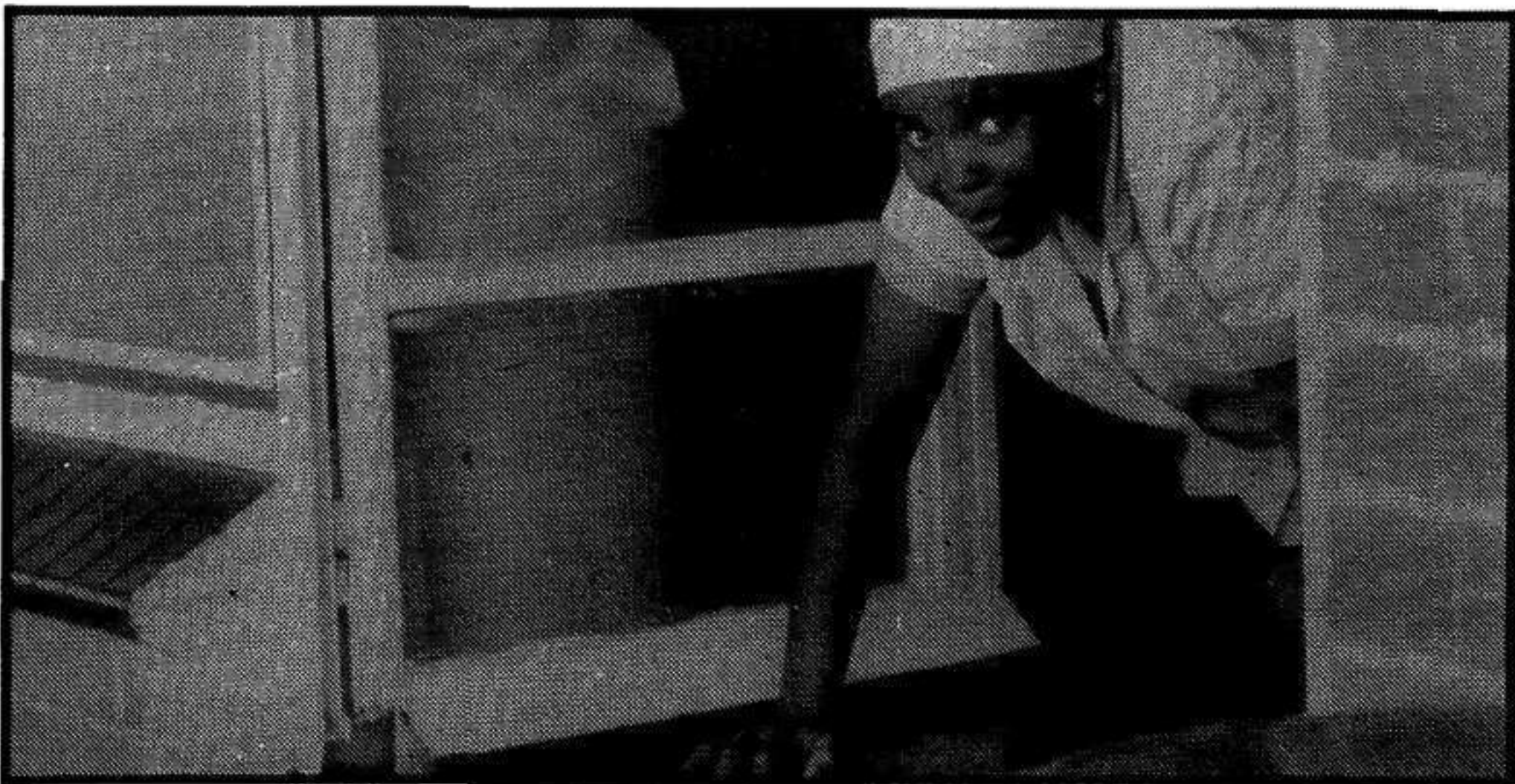
However, compensation for any injury, disease and disablement is increased in accordance with the number of dependent children (in contrast to South Africa, where dependent children are only taken into account in the case of death benefits, with the number of dependent children being limited to three). In addition, there is an earnings-related supplement.

Benefits in themselves, however, are not related to wages. This removes one aspect of discrimination against low-paid workers. Benefit rates are usually reviewed and increased annually to take account of the rising cost of living.

## Coverage

The South African Workmen's Compensation Act is characterised by its exclusions rather than inclusions. The Act does not cover state employees (who receive compensation from other sources), outworkers, casual workers, employees not employed for the purposes of the employer's business, and domestic workers.

The British National Insurance Act of 1946, in contrast, is characterised by its inclusions rather than exclusions. The Act covers all workers, except for self-employed people.



Domestic workers are not covered by the WCA

## Scheduled diseases

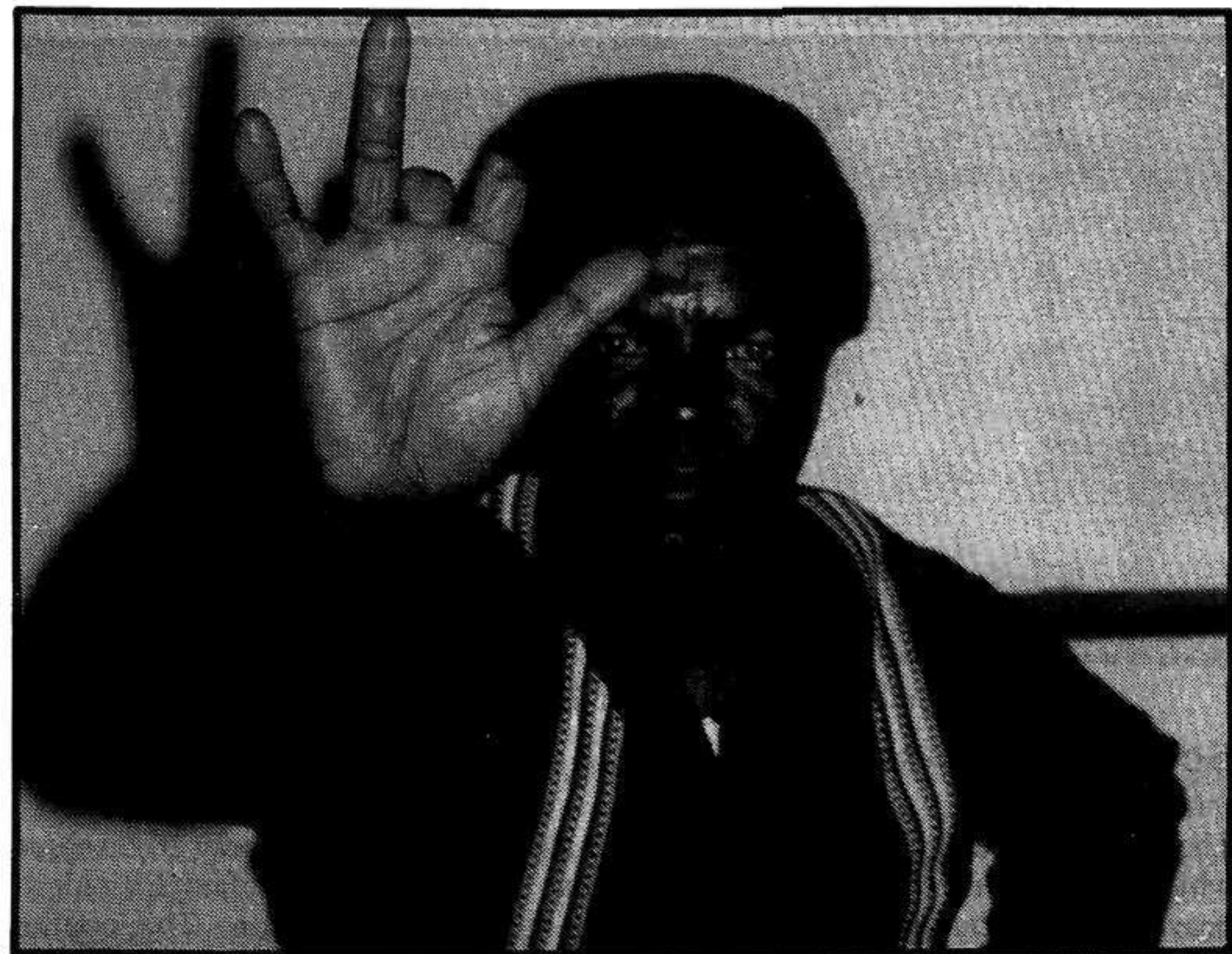
The Second Schedule of the Workmen's Compensation Act lists only 16 diseases which are recognised to arise out of particular occupations. It is often difficult to prove that a particular disease arose from a particular occupation. This applies especially in the case of lung diseases, which develop over a long period, before the first symptoms manifest themselves.

By 1983, the British National Insurance Act listed 49 diseases recognised to arise out of certain occupations. Even though this vast number of diseases compares favourably with the small number of diseases listed in the South African Act, the list is still criticised for not being sufficiently comprehensive. Another weakness of the British Act with regard to industrial disease, is the fact that the onus is on the worker to prove that a particular employment in his/her work history gave rise to the disease.

### Calculation of disablement

The First Schedule of the South African Workmen's Compensation Act provides a list of percentage disability for certain injuries and loss of limbs, which is then used in the formulae to calculate the amounts of compensation. These percentages are fixed according to an estimated anatomical loss, without taking into account loss of function, or re-employability.

This criticism applies to the British Act as well (except that compensation awards for the same injuries do not vary with percentage of wages, as in the case of the South African system). In Britain, an office worker who sits all day at a desk will receive the same benefit for a disabled foot as, say, a postman who is forced by the disability to give up his job.



Loss of function and re-employability are not taken into account

## **Job protection**

In South Africa, accidents with resulting injuries often mean dismissal for the worker concerned. There are no provisions in the South African compensation laws to ensure that the worker retains his/her job, or is posted at another job in the same enterprise without reduced pay.

The British Act does not make such a provision either; but it does provide for special hardship allowances, and for unemployability allowances, if the worker concerned is not covered by other pensions.

## **Common law rights**

For South African workers, the introduction of a state-administered compensation scheme in 1941 meant the loss of common law rights. Employees cannot, under any circumstances, institute civil cases against their employers. Thus, employers cannot be held responsible, in their personal capacity, for accidents or diseases, not even in cases where negligence is involved. In successful additional compensation claims, compensation is paid out from the Workmen's Compensation Fund.

The British Act, in contrast, grants workers common law rights in cases of employer negligence. But claiming damages is difficult even under this system, as "contributory negligence" is commonly invoked by employers in their defence.

## **The "misconduct" clause**

Under the South African system, no compensation is paid "...if the accident is attributable to the serious and wilful misconduct of the workman ... unless the accident results in serious disablement, or the worker dies in consequence thereof" (Act no. 30 of 1941, ss. 27 (b)).

"Serious and wilful misconduct" is a vague concept which is open to abuse to the disadvantage of the worker concerned. This clause does not take account of cases where workers have to disregard safety precautions because of bonus schemes and other methods to increase production output. In such cases, it is again the worker, rather than the employer, who is made to pay.

The 1946 National Insurance Act in Britain, in contrast, has dropped the clause relating to non-compensation for injuries arising out of employees' "serious and wilful misconduct". Furthermore, the British compensation system does make provision for "misconduct" based on employers' instructions.

## **THE ADMINISTRATION OF THE ACT**

### **Bureaucratic inefficiency**

The compensation system in South Africa shows very little regard for the effects of its implementation on individual workers' lives. Workers face long delays in

obtaining compensation. This is partly due to bureaucratic inefficiency of the Workmen's Compensation Commissioner's offices, which, in turn, results from staff shortages and inexperienced administrative employees. The Workmen's Compensation legislation which the state has taken on, is not matched by an adequate infrastructure to administer that legislation.

The same is true of the British compensation system within which, likewise, workers face long delays in obtaining compensation at a time when they most need it.

### **Workers' dependency on employers**

In South Africa, it is usually the employer who reports accidents and sends in all the relevant forms. It is also the employer who receives the compensation money to be paid to the worker. Thus, the worker is dependent on the employer for payment of compensation.

This dependency on the good will of the employer is exacerbated by the fact that workers often do not know about their rights. The 1941 Workmen's Compensation Act states that employers are to pay for medical treatment for injured workers by doctors of the workers' own choice, and to provide free transport to hospital. Yet many workers are only allowed to go for treatment after they have finished their work for the day, and then at their own expense.

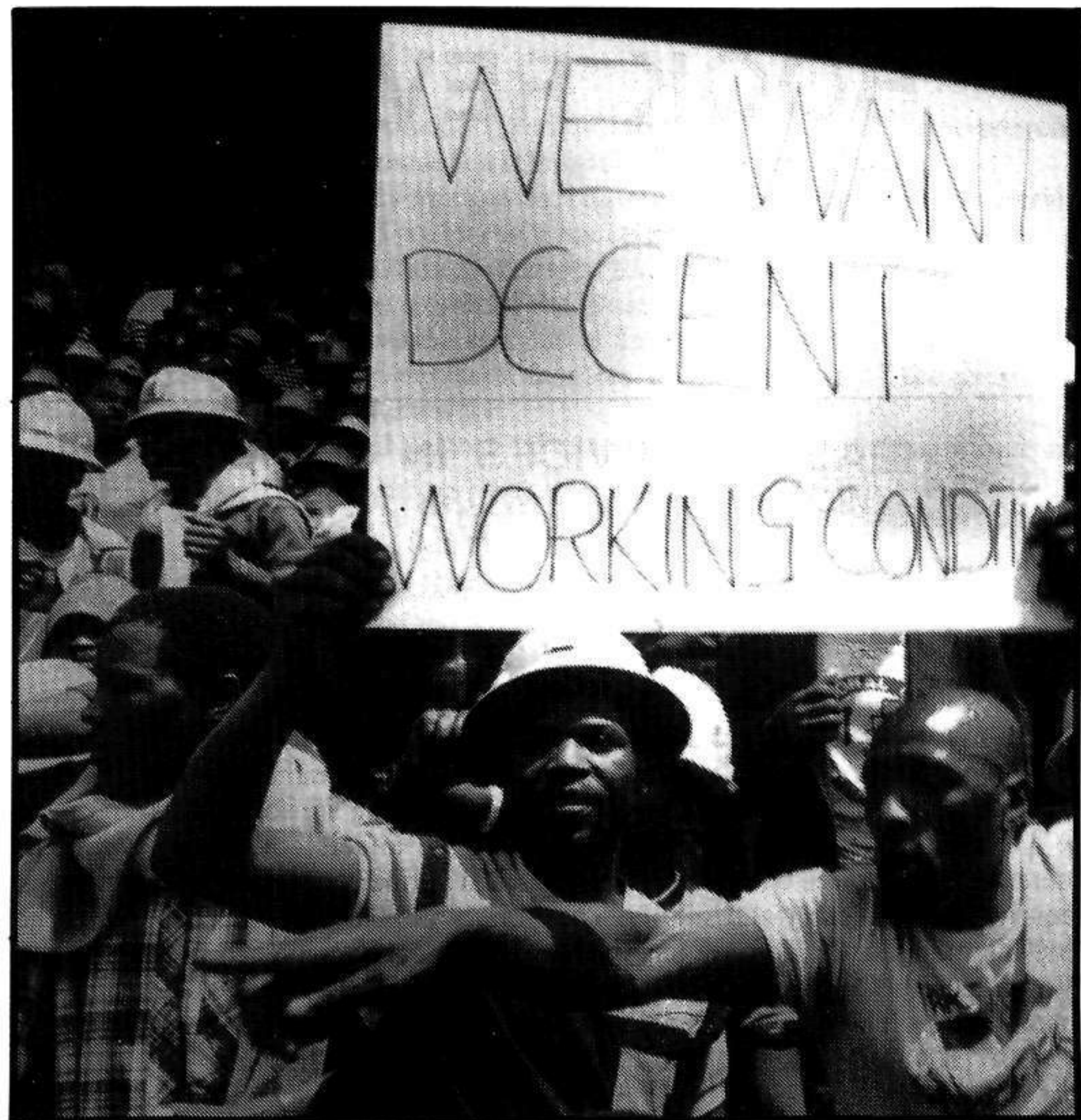
### **Worker representation on the Compensation Commission**

In South Africa, the Workmen's Compensation Commissioner appoints assessors in order to assist in the administration of the Act. These assessors are meant to represent both workers and employers equally. The Act furthermore stipulates that "...the Minister shall consult trade unions or employers' organisations which, in his opinion, are principally concerned" (Act no 30 of 1941, ss. 13(4)), before appointing assessors.

In present-day South Africa, there are several unregistered unions which represent a large number of workers; these are not consulted. Even though quite a number of progressive unions have registered, there is still a tendency for the Commission to consult only "established unions which had existed for approximately 15 years". As a result, black workers on the whole are not represented.

A researcher comments on this exclusion: "A situation in which nearly two-thirds of the economically active population has no representation on a board which is meant to serve workers' interests, must surely bring into question whose interests are in reality being met." (D. Rosengarten)

This is not what organised labour had envisaged when the state-run compensation scheme was introduced in 1941. To them, the aim of a state-administered fund was to remove worker insurance from the sphere of private insurance companies, and to institute a board with equal representation of capital and labour.



A large number of workers have no representation on the Commission

## Access to the Supreme Court

Related to the non-representivity of the board is the fact that compensation claims hardly ever get to Supreme Court level. Virtually all disputes, except in rare instances where assessors are called upon, are decided by one person - the Compensation Commissioner.

Information in this article is from Dan Rosengarten: "Workers' Compensation - South Africa, A Case Study"; BA Hons. Dissertation (Development Studies), University of the Witwaterstand, Johannesburg, 1983.