

REPORT OF INVESTIGATIONS BY THE ESSENTIAL SERVICES COMMITTEE  
PERSUANT TO INVESTIGATIONS CONDUCTED IN TERMS OF SECTION  
70(2)(a) READ WITH SECTION 71 OF THE LABOUR RELATIONS ACT 66 OF  
1995 TO DETERMINE WHETHER THE REGULATION AND CONTROL OF AIR  
TRAFFIC AND SERVICES WHICH SUPPORT THE REGULATION AND  
CONTROL OF AIR TRAFFIC ARE ESSENTIAL SERVICES.

## BACKGROUND

Section 20(1)(b) of the Public Service Labour Relations Act of 1994 listed the regulation and control of air traffic and the services which support it as essential services. In terms of item 24 of the Regulations No. R1734 of 01 November 1996 (here and after referred to as "item 24") the regulation and control of air traffic and the services which support it were deemed to be designated as essential services for a period of six (6) months from the 11 November 1996. This period was extended to ten (10) months by Regulation R654 of the 09 May 1997. Item 24 (2) as amended allows the committee to supplant the services deemed to be designated as essential services in terms of item 24 (1) as amended with its designations made in terms of Section 71(8) of the Labour Relations Act of 1995.

## ARRANGEMENTS

Notice of the investigation was published in Government Gazette No. R2094 on the 20 December 1996. On the 13 April 1997 and 18 April 1997 notice of the hearings was published in The Sunday Times and The Weekly Mail respectively. In addition, interested parties received notice of the hearing on or about the 15 April 1997.

The hearing was held on the 13 May 1997 in room number 321, 3<sup>rd</sup> Floor, CCMA House, 20 Anderson Street, Johannesburg.

### REPRESENTATIONS

Written and oral representations were received from the Messrs Norval and Swemmer of Air Traffic and Navigation Services (ATNS) and from the Department of Environmental Affairs and Tourism.

ATNS argued that the control and regulation of air traffic should be regarded as essential services primarily because of the threat to the safety and security of aircraft and passengers in the event of industrial action.

Air traffic controllers are a scarce resource. The training to provide the required expertise is time consuming. It takes between three hundred to four hundred hours of flying time to bring individuals to the required level of proficiency. Commercial pilots reach proficiency after about two hundred hours.

There are only about two hundred and twenty air traffic controllers operating in the South African environment. They are spread over a wide range of airports of different sizes and degrees of complexity providing approximately 85% of the coverage of such facilities .

The variation in complexity means that individuals cannot be easily re-deployed from smaller, less complex airports to replace controllers skilled in handling more sophisticated aircraft should replacement labour be sought.

The international conventions to which South Africa is a signatory also require that its air traffic controllers play a role in the location and guidance of aircraft in distress. To this end air traffic controllers take responsibility for an area beyond South Africa stretching as far west as Namibia and midway to South America.

---

They also provide support to the SA Airforce in its role of ensuring the integrity of our air space and through that, the security and welfare of its citizens.

Certain other issues were raised by ATNS, to do with the support of tourism by air traffic controllers. However these relate to economic issues which are outside the definition of essential services in the strict sense which the committee must apply.

No representations were made by the trade unions in the service. However, the recognition agreement between the Guild (the employee organisation) and the ATNS already provides for mediation of disputes, with recourse to arbitration in the event that there is no settlement at mediation.

Case No. 1074 of the International Labour Organisation also has some relevance for this investigation. It dealt with the strike by air traffic controllers in the United States in August 1981 and the subsequent dismissal of the employees and de-certification of the Union PATCO. The committee of the ILO noted that a strike by air traffic controllers would endanger a very large number of aircraft passengers and flying staff and that the exclusion of this particular category of public employee from the right to strike did not constitute a violation of the principles of freedom of association.

Where the action of the government could be criticised was in the lack of adequate protection for workers to compensate them for the limitation of their freedom of association, for example, by impartial and speedy conciliation and arbitration procedures. It found that the US government violated ILO conventions on freedom of association during the August strike in that it did not provide sufficient guarantees to offset the legislative prohibition of the right of federal employees to strike. Such procedures are available in the Labour Relations Act to balance the removal of the right to strike in essential services in South Africa.

○

---

Finally, ATNS could not identify any country which expressly regarded air traffic control as not being an essential service. They inferred, following observation of recent strikes by air traffic controllers in France that the French were more tolerant of such strikes. ATNS also pointed out that as France was located centrally in Europe a large number of alternative airlines and presumably qualified air traffic controllers would be readily available.

A more telling argument possibly lies in the fact that the principal law relating to public service strike action (the law of 31 July 1963 as amended by the law of 19 October 1982) sets certain restrictions on the right to strike for employees in certain industries. In the special case of air traffic controllers they are required to maintain a minimum service in the event of industrial action.

#### **DESIGNATION**

The committee designates the regulation and control of air traffic as an essential service in terms of Section 71(8) of the Labour Relations Act.

#### **SERVICES IN SUPPORT OF THE REGULATION AND CONTROL OF AIR TRAFFIC**

The representations made by the Department of Environmental Affairs and Tourism drew the committee's attention to the central role played by the Weather Bureau in support of international air navigation. The convention on International Civil Aviation of 1944 to which South Africa is a signatory *inter alia* set meteorological standards that must be complied with by all contracting states. These are contained in annexure 3 to the Convention on International Civil Aviation and include meteorological and other reports for aviation such as regular half hour or hourly weather observations and wind, temperature and weather predictions.

ESSENTIAL SERVICES COMMITTEE  
DESIGNATION

5

A network of weather service both national and regional is necessary to provide a weather focusing service of an acceptable standard. Maintenance personnel including computer and the electronic technologists are also necessary for this purpose as well as operators of computers which provide various focusing products. The committee considers that the Weather Bureau is a vital support service for the regulation and control of air traffic and should itself be declared an essential service.

**DESIGNATION**

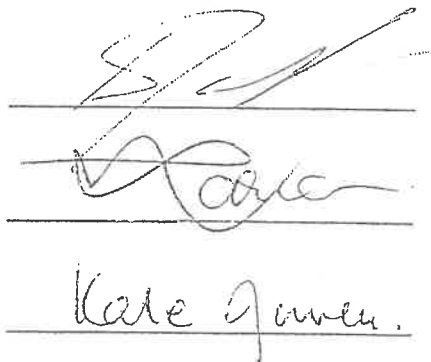
Accordingly the committee designates the Weather Bureau as an essential service in terms of Section 71(8) of the Labour Relations Act.

DATED AT JOHANNESBURG ON THE 10 DAY OF JUNE 1997.

DHAYA PILLAY

SUNIL NARIAN

PROF. KATE JOWELL



The block contains three handwritten signatures, each written on a horizontal line. The first signature is at the top, the second is in the middle, and the third is at the bottom. The third signature is clearly legible as 'Kate Jowell'.