



DETERMINATION

ESSENTIAL SERVICES COMMITTEE

Case Number: ES 19-20

ESC Panel: Naledi Bisiwe, Aruna Ranchod, Makhubalo Ndaba

Date of Award: 07 September 2020

In the investigation conducted in terms of Section 71, read with section 70(B) (1) (d) of the Labour Relations Act 66, 1995, as amended (the LRA) regarding whether laundry services in privately owned old age homes are essential.

DETERMINATION

1. Introduction

- 1.1 The ESC advertised in Government Gazette No: 43514 on the 10th of July 2020 and the Sunday times on the 5th of July 2020 that it was in the process of conducting this investigation. The ESC invited interested parties who required opportunity to make oral representations to indicate such interest on or before 3 August 2020, for any of the hearings that were scheduled for Johannesburg, Durban, Cape Town, Bloemfontein, and Port Elizabeth.

2. Submissions

On 31 July 2020, the ESC received written notice from **Oasis Care Centre** that it would submit written representations on this investigation. It followed that with a notice that it would make oral submissions at the hearing to be held in Cape Town. On 21 August 2020, Ms Lizzie Brynard-brill, the Manager of the Centre attended the hearing accompanied by Ms Nuraan Price, her HR Generalist.

No other submissions, written or oral, were received by the ESC from any other parties.

Below is a summary of Oasis' written and oral submission.

- 2.1 This is a privately owned old age home that provides 5 different levels of nursing and high care services for its old age residents. It has a total complement of 160 staff in different departments, with 5 of those employees dedicated to the in-house laundry facility within the centre.
- 2.2 The Laundry has a responsibility of ensuring that residents and patients have use of hygienically cleaned clothing, towels, and linens without the risk of cross contamination and / or infections and / or infestations. This area is regarded as a high-risk area due to possible spread of bacteria, viruses, and bug infestation from clothing and linen. As a result, the laundry staff are highly trained on the Department of Health and Department of Social Development health guidelines and protocols and on other correct handling and treatment of clothing and linen to ensure the correct management of the risks of cross contamination and avoid spread of viruses, and are the only ones allowed to sluice soiled clothing and linen.
- 2.3 The laundry layout is set out in zones to ensure correct flow of clothing and linen and this area forms part of the annual inspection carried out by the Departments of Health and Social Development. The outsourcing of laundry for a physical rehab and care facility poses a potential risk for the spread of infection agents which can lead to wide-spread community-based infections and/ or infestations.

3. Analysis of the Submissions

- 3.1. Section 23 of the Constitution of the Republic of South Africa confers on every employee the right to strike. Section 64 of the LRA provides that every employee has the right to strike. These rights are conferred in line with Convention 87 of the International Labour Organization, the ILO.
- 3.2 An **essential service** is defined in section 213 of the LRA to mean *a service the interruption of which endangers the life, personal safety, or health of the whole or any part of the population*. A key aspect of a service being designated as *essential*, is that employees involved in the rendering of that service will be prevented from engaging / taking part in strike action to resolve any workplace issue.
- 3.3 The courts have emphasized that *essential service* should be given a restrictive interpretation. In **SATAWU and others v Moloto NO and another** 2012(11) BLLR 1177(CC) the Court emphasized that

caution be exercised in limiting the right to strike and that a restrictive interpretation of essential service be adopted so as to avoid impermissibly limiting the right to strike.

- 3.4 On 25 February 2015, following a public participation process, the ESC designated as essential the following services in privately owned old age homes, nursing homes and institutions that care for assisted and frail care patients: Nursing, Care-giving, Pharmaceutical, Dispensary, Occupational Therapy, Rehabilitative Support, Physiotherapy, and Catering.
- 3.5 This investigation into laundry services in privately owned old age homes was widely publicized and a road show was taken across the country, with invitation to interested parties to participate by making written or oral submissions and by attending physically at the hearings or through online platform. As pointed out above, only Oasis participated in the hearings.
- 3.6 Oasis has a total of five employees in its laundry department. It has shown that the work of these employees is specialized, requires intensive training, is high risk, regulated and monitored by external bodies. However, no information was provided to show that if these employees were to embark on strike action and thus interrupt the service, it would be difficult or impossible for the Centre to secure replacement labour to perform the service or ensure that the services are provided through external service providers.
- 3.7 The general lack of interest and non-participation of the rest of the institutions involved in the provision of laundry services in privately owned old age homes in this investigation can be read to mean that they are not interested in being designated as essential service. However, the implications of designating this service as essential would have implications not just for Oasis but nationally for all those involved in the rendering of this service.
- 3.8 On the basis of the test applicable for determining whether a service is essential or not, as analyzed above, no sufficient information has been provided to us to show that the interruption of laundry services in privately owned old age homes would endanger the life, personal safety or health of the whole or any part of the population.

4. Designation

- 4.1 Given the submissions made, the ESC hereby designates laundry services in privately owned old age homes as well as nursing homes and institutions that care for assisted and frail care patients, that do not receive any financial assistance or subsidy from the State, as an essential service”.

Signature:



ESC Panellist:

Naledi Bisiwe

Senior Commissioner: CCMA
