

IN THE ESSENTIAL SERVICES COMMITTEE

(Held at Johannesburg)

ES15

In the matter between:

Kriel Colliery

Applicant

and

National Union of Mineworkers

Respondent

Determination

1. Introduction

- 1.1 This is an application in terms of section 75 of the Labour Relations Act, 66 of 1995 ("the LRA").
- 1.2 The Applicant, Kriel Colliery, seeks a determination that its dewatering and pumping services at the mine be designated as a maintenance service.
- 1.3 Section 75(1) of the LRA provides that *"a service is a maintenance service if the interruption of that service has the effect of the material physical destruction to any working area, plant or machinery."*
- 1.4 The Applicant was represented by Mr D. Woodhouse of Mervyn Taback Inc. attorneys. There was no appearance on behalf of the Respondent.

- 1.5 The matter was set down for hearing before the Essential Services Committee (“the ESC”) on 24 July 2015. The ESC Panel comprised Advocate L. Bono (Chairperson), Mr J. Koen and Ms. C. Slabbert.

2. Background

- 2.1 The Applicant filed a referral in terms of section 75(1) with the ESC on 12 August 2013. This was done subsequent to several meetings being held with the Respondent during 2013 in an attempt to conclude a collective agreement (as provided for in section 75(2) of the LRA).
- 2.2 On 29 January 2014 the ESC Panel met with representatives of both the Applicant and the Respondent at the mine (“the parties”). This meeting was held pursuant to the present referral as well as a referral in terms of section 71 of the LRA (wherein the Applicant sought a designation to declare certain services at the mine essential). The latter referral has been dispensed with by the ESC and it is not dealt with further herein.
- 2.3 After the aforesaid meeting, an inspection *in loco* was conducted. The ESC Panel observed *inter alia* the dewatering and pumping services at the mine.
- 2.4 On 4 April 2014 the Applicant served and filed a written submission in support of its referral. The Applicant requested the ESC to keep the matter in abeyance pending the finalisation of the referral in terms of section 71 of the LRA, which was agreed to by the ESC.
- 2.5 The Respondent did not file a statement of opposition. The ESC sent a number of correspondences to the NUM enquiring whether it opposed the application. These correspondences were sent to both the Kriel branch office and to the national office of the union. The notice of set down was also served on the Respondent. Despite the aforesaid, the union did not file opposing papers nor did they appear at the hearing of the matter.

3. The Applicant's Case

- 3.1 In 1969, Anglo American's coal division was awarded the tender to supply coal to Eskom's new power station erected at Kriel ("the Power Station"). The Colliery was consequently established in 1975 for this purpose. The Colliery conducts both open cast ("OC") and underground ("UG") mining operations.
- 3.2 The Colliery produced 8 096 900 tonnes of coal in 2012. In 2012, the operational life of the Colliery was estimated at 13 years. The Colliery employs just over 1 000 people.
- 3.3 The Applicant views dewatering and pumping services ("the Services") as vital to the proper functioning of its operations, protection of its infrastructure and machinery, as well as the safety of its employees.
- 3.4 The Applicant submits that it would face material damage if key personnel responsible for the Services were not on hand to take control of their functions due to then participating in industrial action. A direct link would exist between the employee's failure to perform the Services and any material destruction which may unfold in the event of industrial action taking place.
- 3.5 Prior to launching a formal application to the ESC in terms of section 75 of the LRA, the Applicant attempted to designate its dewatering and pumping services as maintenance services in a collective agreement between the Applicant and the NUM, the result of which was unsuccessful.
- 3.6 In terms of Section 75(2) of the LRA, if there is no collective agreement relating to the provision of a maintenance service, an employer may apply in writing to the ESC for a determination that the whole or a part of the employer's business or service is a maintenance service.

- 3.7 The Application submitted that it has attempted to conclude an agreement with the NUM regarding the provision of dewatering and pumping services as maintenance services in a collective agreement. Due to the failure to reach agreement in this respect, the Applicant had to approach the ESC in terms of section 75(3) of the LRA for a determination.
- 3.8 The primary purpose of the dewatering and pumping services is to ensure that the accumulation of water is adequately managed, and that the risk to both the safety of the employees, as well as the working place and machinery of the Applicant, is properly mitigated.
- 3.9 The Colliery currently employs 16 employees who form part of the dewatering and pumping service crew ("the Pump Crew"). Of the 16 employees, 14 are employed as Mining Operators and 2 are employed as Senior Mining Operators: Team Leaders.
- 3.10 The Pump Crew's shift patterns are arranged on a seasonal basis. During the dry season, the crew will operate a one day shift rotation. During the rainy season, the crew will operate a two shift rotation (one during the day and one during the night), ensuring the presence of the crew in case of an emergency. The rainy season within the geographical area that the Colliery is situated in, spans from August to May.
- 3.11 The Pump Crew's duties include the following (but is not limited to):
- 3.11.1 As the Colliery's pit is located close to the Rietspruit stream diversion, there is continuous drainage of water from the stream, which runs adjacent to the Colliery into the Colliery's pit. This drainage is not seasonal and takes place throughout the year. If the excess water flow is not continuously pumped out of the pit, the pit will be flooded within 24 hours. The Pump Crew consequently pumps this water out of the pit on a constant basis, as failure to do so would result in loss of production, damage to the working area as well as damage to equipment and machinery;

- 3.11.2 The Pump Crew is responsible for the continuous monitoring of all operational pumps and pipes on the Colliery. Failure to do so may lead to leaks in the pipes going undetected, the result of which may cause destruction to working areas, equipment or machinery;
 - 3.11.3 The Pump Crew is responsible for the running of all diesel pumps utilised on the Colliery. These pumps need to be refuelled every time the Pump Crew changes shift. The diesel pumps are used to pump the water out of areas where it has accumulated;
 - 3.11.4 The Pump Crew is responsible for moving pumps and pipeline on a daily basis. These pumps and pipelines need to be moved on a daily basis. When there is a deep accumulation of water, it can only be pumped from the deepest portion;
 - 3.11.5 The Pump Crew is further responsible for any pumping of water which needs to take place due to an emergency; and
 - 3.11.6 The Pump Crew therefore serves vital preventative and emergency functions within the Colliery. If the Pump Crew had to embark on industrial action, the interruption in the carrying out of services assigned to them would destroy the Colliery's working area and/or machinery.
- 3.12 The Colliery comprises both Underground ("UG") and Opencast ("OC") mining operations. The UG operations produce an average of 15 600 tons of coal per day, while the OC operations produce an average of 13 400 tons of coal per day.
- 3.13 The OC operations take place on a four shift rotation basis. Coal is transported to the Tip where it is crushed. Conveyor belts then transport the coal to the Colliery plant, and then to Eskom's power station.

- 3.14 The UG operation takes place through mechanized board and pillar mining. There are five production sections running on a three shift basis. A typical section consists of 1 continuous miner, 4 shuttle cars, 1 roof bolter and 1 feeder breaker. Coal is then transported via a conveyor belt system to the surface plant. Both men and material are transported by a diesel fleet consisting of busses, LDV's, LHD's, tractors and MPV's.
- 3.15 The potential dangers associated with water accumulation in the context of mining operations have been extensively researched. Copies of research papers were made available and considered by the ESC (the Committee does not deem it necessary to quote the research papers herein as they are on record) .
- 3.16 In a Baseline Risk Assessment ("BRA") conducted at the Colliery, Climatic and Natural Events were rated second in the top ten hazards at the Colliery.
- 3.17 Due to their nature, mining operations are at the mercy of the elements. Both UG and OC operations are vulnerable to the sudden accumulation of water. This risk may be caused from numerous different factors, such as:
- 3.17.1 Excessive rain - in the BRA, the scale of this hazard was measured. It was found that during thunderstorms, up to 50 millilitres of rain may fall within 30 minutes. This is an extremely high amount and has the potential to cause flash floods;
 - 3.17.2 Damaged infrastructure that is designed to ensure that water is contained;
 - 3.17.3 Water draining from spoils in the opencast operation; and
 - 3.17.4 Trapped water from underground, which has the potential to find its way into the workings.

- 3.18 In August 2012, Anglo American conducted a Bowtie Analyses. The intention of the Bowtie analyses was to evaluate the problems associated with underground water inrush, as water had been classified as a major hazard. The primary purpose of the Bowtie study was to “interrogate all possible causes and recovery measures for water inrush”. The objective of the study was to “scrutinize the control effectiveness related to identified preventative and recovery controls.”
- 3.19 The Bowtie Analyses identified the following possible causes of underground water inrush: unknown underground workings, unknown boreholes, integrity of seals and walls, accessibility of seals, less than adequate design of pump capacities, excessive water entering a known water body, diversion of natural water course flow, off-line cutting, damaged or misaligned laser brackets, wrong installation or survey station, and geological conditions.
- 3.20 The study analysis the consequences of an underground water inrush and identified these as follows: the sudden inrush of water into underground working, flooding of equipment, trapping employees underground, multiple fatalities/injuries to workers, the environmental and ventilation impact, having to lower people into a flooded shaft with a cage, and flooding of adjacent farmers’ property.
- 3.21 The Bowtie Analyses further set out the preventative and recovery measures adopted by Anglo American in the event of an underground water inrush, however, focus should be placed on the potential for a sudden accumulation of water that would require the immediate response of those persons forming part of the dewatering and pumping services.
- 3.22 Both the BRA and the Bowtie Analyses have identified the sudden accumulation of water in either the UG or OC operations at the Colliery as a potential hazard to the safety of its employees, as well as to the working area, factory or machinery of the Applicant.

- 3.23 In August 2013, the Applicant drew up and accepted a Mandatory Code of Practice for Emergency Preparedness and Response (“COP”). The COP was drawn up in accordance with Guideline Reference Number DMR 16/3/2/1-A5 issued by the Chief Inspector of Mines. The COP is mandatory in terms of sections 9(2) and (3) of the Mine Health and Safety Act, 29 of 1996 (‘MHSA’). The Applicant is therefore legally obliged to adhere to the provisions of the COP.
- 3.24 The COP defines an ‘emergency’ as “as abnormal occurrence that can pose a threat to the safety or health of employees, customers, local communities, or which can cause damage to assets or the environment”. The COP aims to ensure emergencies are prevented and in the event that an emergency was to take place, be dealt with in the fastest possible manner, and causing the least amount of damage to the Colliery’s infrastructure and machinery. The Pump Crew is a vital service for the realisation of this obligation, in the event the emergency in question related to the accumulation or possible accumulation of water at the working area of the Colliery.
- 3.25 The COP further gives effect to Section 11 of the MHSA, which requires employers to identify hazards, assess health and safety risks to which employees may be exposed while they are at work, and record the significant hazards identified and risks assessed. The employer must determine how significant risks identified in the risk assessment process must be dealt with, having regard to the requirements of Sections 11(2) and (3) of the MHSA. As far as reasonably practicable, attempts should first be made to eliminate the risk, to control the risk at source, to minimize the risks and thereafter, insofar as the risk remains, to provide personal protective equipment and institute a programme to monitor the risk.
- 3.26 The COP places an obligation on the Applicant to take “preventative control measures and procedures to prevent possible emergencies”. In listing categories where such preventative control measures need to be adhered to, the Applicant has drafted documents setting out systems regulating emergencies in a number of situations,

including: seal surface, boreholes, seal underground boreholes, water monitoring, and to prevent surface flooding emergencies.

3.27 The COP requires the Applicant to take preventative measures in order to ensure that emergencies do not take place. Amongst the preventative measures that the Applicant is required to take are measures that falls directly within the scope of the dewatering and pumping services. If this service did not perform its preventative functions, not only would the potential of destruction to the working area and machinery arise, but the Applicant would be in violation of its obligations in terms of its COP.

3.28 Water accumulation may be severely harmful and prejudicial to the working area and/or machinery of the Colliery, particularly if the members of the dewatering and pumping teams are participants in industrial action, and not readily available to avert the consequences thereof.

3.29 Flooding of either the UG or OC operations at the Colliery could cause undesirable interruptions to the normal operations at the Colliery.

3.30 The function of the Pump Crew includes the deterrence of the following consequences:

3.30.1 The management of water, which poses a safety risk to the infrastructure of the operation. If water levels are not kept at an absolute minimum, it may result in the collapse of infrastructure, not only causing destruction to the Colliery's operations but also creating substantial risk of harm to any employees who may be operating in or around such infrastructure; and

3.30.2 The deterrence of unmanageable levels of water accumulating around the loading areas of the operations. This has the potential to severely prejudice the delivery of coal from the Colliery to the Power Station, having an extremely adverse effect on the Power Station's ability to function, consequently limiting

the amount of power the Power Station is able to provide to the national electricity grid.

- 3.31 If dewatering or pumping services are delayed in any way, the potential for the total submerging of machinery is considerably greater, rendering the ability to make use of the machinery impossible. The machinery utilised by the Colliery is central to its operations. If machinery such as drag lines, shovels or trucks are damaged or destroyed, the Colliery would be brought to a standstill for a substantial period of time. Examples of costs and waiting periods of some of the UG and OC machinery are as follows:

	Underground	
Machinery/Equipment	Cost	Replacement waiting period
1 x HM37 CM (New)	R 40.2 million	9 months
1 x HM37 CM (Rebuild)	R 28 million	5 months
Substation (refurbish)	R 1.5 million	1 month
Substation (replace)	R 4 million	4 months
Conveyor (Trunk)	R 0.35 million	2 weeks

	Opencast	
Machinery/Equipment	Cost	Replacement waiting period

Dragline	R 30 million	5 months
EX3600 Shovel	R 62.4 million	12 months
EH3500 Truck	R 36.3 million	12 months

- 3.32 It is therefore necessary to continuously pump water out of the working areas to prevent destruction of the working area or machinery. The Pump Crews are vital to this, and without the performance of their services during industrial action, the potential consequences listed earlier may result.

4. The Respondent's Case

As stated above, the Respondent did not oppose the relief sought by the Applicant.

5. Analysis of evidence and submissions

- 5.1 On the uncontested evidence and the inspections *in loco* conducted, the ESC is convinced that:

5.1.1 The primary purpose of the dewatering and pumping services is vital and is an operation, that if not conducted, may cause material damage to machinery;

5.1.2 Refueling the pumps everytime the pump crew changes shift, and moving the pumps on a daily basis are necessary exercises to ensure that the machinery is not exposed to material damage;

5.1.3 If the Pump Crew had to embark on industrial action, the interruption in the carrying out of services assigned to them would destroy the Colliery's working area and/or machinery;

5.1.4 The Applicant would face material damage if key personnel responsible for the above services were not on hand to take control of their functions due to participation in industrial action.

6 Conclusion

6.1 In determining the existence of a maintenance service, the ESC's point of reference is section 75(1) of the LRA which provides that *"A service is a maintenance service if the interruption of that service has the effect of material physical destruction to any working area, plant or machinery"*

6.2 In reviewing the submissions of the Applicant it is evident that an interruption in the dewatering and pumping service would result in the physical destruction of the working area and the machinery.

7. Determination

7.1 The ESC makes the following determination:

The dewatering and pumping services at Kriel Colliery are declared maintenance services in terms of section 75 (1) of the LRA.



L Bono

28 August 2015