

**IN THE ESSENTIAL SERVICES COMMITTEE
HELD AT JOHANNESBURG**

Case No.: ES 118

In re: Investigation in terms of Section 71 of the Labour Relations Act, 66 of 1995:

Whether Road incident Management & Traffic Services should be designated as essential services.

Designation

Introduction

1. The Essential Services Committee ("the ESC") received a referral from Masiwilange Corridor Construction CC in terms of section 71 of the Labour Relations Act, 66 of 1995 (*the LRA*).
2. In its referral, Masiwilange Corridor Construction CC sought a determination to the effect that the services rendered by its route patrol teams, emergency response teams and TRAC assist standby teams be designated as essential services.
3. A preliminary meeting between the ESC and the parties was held, and the ESC after considering the nature of the submission concluded that the request was reasonable, and took a decision to conduct an investigation in terms of Section 71 read with Section 70(2) (a) of the Labour Relations Act 66 of 1995 as amended (hereinafter referred to as the Act).

4. The gazetted terms of reference for the investigation in terms of section 71 were **"Notice is hereby given in terms of section 71, read with section 70(2) (a) of the Labour Relations Act, 1995 (Act No 66 of 1995 as amended), that the Committee is in the process of conducting an investigation as to whether road incident management & traffic services are essential services."** (see Government Gazette No 41256, Volume 629 Of 2017, dated 17 November 2017), This notice was also published on the Sunday Times newspaper dated 12 November 2017.

Details of Hearings

5. The hearings were scheduled as per the notice published in the government gazette (GN 41256), and also in the Sunday Times of 12 November 2017. In the hearing, the ESC received written submissions from the applicant and the applicant also made oral submissions. There were no opposing submissions received.

Submissions

6. The applicant is a Close Corporation duly registered as such in terms of the laws of the Republic of South Africa. The applicant is contracted by Trans Africa Concessions (Pty) Ltd (TRAC) to provide the following services :
- Daily routine patrols
 - Emergency response standby
 - TRAC assist standby
 - Implement and drive the road incident management systems (RIMS) on behalf of TRAC and South African National Roads Agency (SANRAL) and;
 - Represent TRAC at RIMS at District, Provincial and National level.

7. The functions that the applicant seeks the Committee to designate are route patrols, and this entails ensuring that the roads are cleared of any objects that may cause accidents. Initially secure the scene where incidents occurred. It was submitted that in the event of an accident the team would be the first to respond and secure the scene whilst waiting for other emergency services to arrive. They assist road users with mechanical or other problems and also secure stranded motorists on the road.
8. Further that there are four emergency response teams consisting of eight members each. The teams are on standby and are responsible to respond to emergencies 24 hours a day for 7 days a week. When a call is received from TRAC call centre, the employees are dispatched and they need to be there within 50 minutes. The functions performed by these teams include putting in the necessary signs warning motorists of the hazards that may cause more harm, implementation of the RIMS procedure, setting up the Joint Incident Command Post, managing and or coordinating the scene, ensuring that road capacity is restored as soon as possible and ensuring that the road is cleared of all debris and safe for road users.
9. TRAC assist stand by teams perform almost the same functions as the route patrol teams and are on standby to step in, in the event that the accident team is busy at another scene.
10. The applicant submitted that these service fall within the definition of an essential service, as if they are not rendered there can be loss of life. It was submitted during the hearing that there is a period that is referred to as the golden hour. It was submitted that in the event of an accident if help does not arrive within the first hour people might die. In view of the service levels agreed with TRAC, the applicant has a responsibility to ensure that help is available within that period.
11. Further that its employees are trained in first aid, RIMS, basic fire fighting points men and snake handling. Thus is is not easy to find replacement labour in the event of a strike.

Legal Framework

12. In this matter the issue that the committee has to determine is whether the services that the

applicant is rendering should be designated as essential services? In determining the matter, it is important that one should set out the legal framework.

13. Section 23(2) of the Constitution of the Republic of South Africa, 1996 (*“the Constitution”*) states that... *“Every worker has the right ... (c) to strike.”*
14. Section 36 (1) of the Constitution states inter alia that... *“The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”*.
15. Section 65 (1) (d) (i) of the LRA states that ... *“No person may take part in a strike ... if that person is engaged ... in an essential service”*.
16. An ‘essential service’ is defined in section 213 of the Act as:
 - (a) *a service the interruption of which endangers the life, personal safety or health of the whole or any part of the population;*
 - (b) *the Parliamentary service;*
 - (c) *the South African Police Service”*.
17. The Constitutional Court in *South African Police Service V Police and Prisons Civil Rights Union and Another* (CCT 89/10) said the following:

“In order to ascertain the meaning of essential service, regard must be had to the purpose of the legislation and the context in which the phrase appears. An important purpose of the LRA is to give effect to the right to strike entrenched in section 23(2)(c) of the Constitution. The interpretative process must give effect to this purpose within the other purposes of the LRA as set out in Section 1(a). The provisions in question must thus not be construed in isolation, but in the context of the other provisions in the LRA. For this reason, a restrictive interpretation of essential service must, if possible, be adopted so as to avoid impermissibly limiting the right to strike (footnotes excluded)”

18. It is trite that strike action is an important element of collective bargaining and it is recognised as a primary mechanism through which workers exercise collective power (See ***Ex-Parte Chairperson of the Constitutional Assembly in re: Certification of the Constitution of the Republic of South Africa, 1996 (4) SA744 (CC)*** at paragraph [66]).
19. Having regard to the above, it is clear that our law requires essential services to be restrictively interpreted, and that this means, *inter alia*, the following:
- It is the service which is essential, not the industry or the institution within which the service falls;
 - Only those employees who are truly performing an essential service, may be prohibited from striking; and
 - Essential and non-essential service workers may be found working side by side in the same institution.
20. Before the ESC can designate any service as essential, it must be satisfied that the interruption of the said service is likely to endanger life, personal safety or health of the whole or part of the population.
21. It is further trite that in view of the fact that the right that would be affected by such a designation limits or takes away a fundamental right, such designation must be reasonable and justifiable. Thus if the ESC finds that parts of the service are not essential the Committee is obliged not to designate such services, as such a designation would be unreasonable and unjustifiable.

Analysis of Evidence

22. The applicant in this matter sought designation of road incident management and traffic services rendered by its employees. The applicant in its submissions indicated that it has various teams. In determining whether the services are essential, the panel looked at the functions performed by each team.

23. The route patrol team is said to be responsible for clearing the roads of hazardous objects. Further that they secure accidents scenes before the law enforcement officers arrive at the scene. They also assist motorists who encounter breakdowns. National roads in South Africa experience high volumes of heavy motor vehicles and commercial vehicles that conduct daily business of these key roads. The speed limit generally on these roads is 120 km per hour, accordingly, any objects left attended on the roads may result in accidents and loss of life. It is also a fact that many people who are left stranded on the roads due to mechanical breakdowns of cars are left vulnerable to criminals who may be prowling the area and this can lead to the endangerment of their personal safety. Accordingly, the panel accepts that the service provided by the route patrol teams is an essential service.
24. The applicant also indicated that some of its employees/ teams provide emergency response services. Emergency health services offered by the public sector have already been designated as essential services. South Africa has a high rate of accidents on its roads both provincial and national. It is not always possible for traffic officers and other law enforcement officers, and or emergency services to reach the places of the accident timeously. Thus, the services provided by the emergency response teams are necessary to save lives as they provide a prudent and innovative measures to deal with accidents swiftly and as efficiently as possible. From the evidence it was clear that they are able to respond within the “golden hour”. Further that they manage the scene of the incident ensuring that in the event of an accident other road users are directed with the view of avoiding pile-ups.
25. The panel is of the view that the services performed by the various teams are necessary as a preventative measure to ensure the safety of the road users. Whilst the applicant submitted that it renders these services on the N4 national road. It is trite that the applicable principle is that it is a service that is essential and not an entity or institution. The panel is of the view that the designation if made would apply to all national roads where these kinds of services are rendered irrespective of who is rendering the said service.
26. The ESC having considered the submissions by the applicant makes the following ruling.

Designation

- (a) The service of road traffic incident management is designated as an essential service.

A handwritten signature in black ink, appearing to be 'JN' with a stylized flourish.

Ms. Joyce Nkopane
ESC Panel Chairperson
7 July 2018