

**Commission for Conciliation, Mediation
and Arbitration**

28 Harrison Street, Cnr Main Street, Johannesburg
Private Bag X096, Marshalltown, 2107
Telephone: (011) 377-6698, Telefax: (011) 834 -7386

ESSENTIAL SERVICES COMMITTEE



30 June 2014

TO:

National Union of Mineworkers

P O Box 2424

Johannesburg, 2000

By telefax: 011 833 0367

By email: Jmojau@num.org.za or orimahloko@num.org.za

National Union of Metalworkers of South Africa

P O Box 260483

Excom, 2023

By telefax: 011 833 6408

By email: dumisa@numsa.org.za or khalidh@numsa.org.za

South African Building and Allied Workers Organisation

P O Box 2499

Vereeniging, 2930

By telefax: 011 455 1310

By email: sabawo@telkomsa.net or shabalalass@telkomsa.net

Solidarity

P O Box 11760

Centurion, 0046

By telefax: 012 664 1302

By email: danet@solidariteit.co.za

CC:

Staff U Need

PO Box 1888

Bedfordview, 2008

By telefax: 011 579 7788

By email: marie@stafuneed.co.za

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

Case Number: ES20

In the matter between:

Staff u Need

Applicant

and

National Union for Mineworkers (NUM)

1st Respondent

National Union of Metalworkers of South African (NUMSA)

2nd Respondent

South African Building and Allied Workers Union (SABAWO)

3rd Respondent

Solidarity

4th Respondent

DETERMINATION

Background

1. On 05 September 2013, the Applicant referred a Section 73(1)(b) dispute. On 22 November 2013, the ESC convened a meeting with all the parties in this matter. Mr. Sifiso Khumalo presided over the meeting. All the parties except the 2nd Respondent attended this meeting.
2. In the said meeting, the Applicant confirmed with the Respondents that its dispute was referred in terms of Section 73 of the Labour Relations Act 66 of 1995 (as amended), and that it relied on the fact that the work that the Respondent's members are doing was covered by the ESKOM determination (GN 1216 in Gazette 18276). In this meeting the parties resolved that:
 - (a) The Respondents will send their written request for further particulars to the Applicant via the ESC by the 5th of December 2013.

- (b) The Applicant will respond to that request by the 24th of January 2014 and that will also be done via the ESC, and
 - (c) The hearing will be convened by the end of February 2014 and any other exchange of documents will take place two weeks before the date of the hearing.
- 3. The Respondents did not submit any request for further particulars and following numerous communications to the Respondents, the ESC finally decided to set the matter down for the 10 April 2014 for hearing, given the fact that the ESC has to deal with the matter as one of urgency.
- 4. On the hearing of 10 April 2014, only SABAWO attended, despite all parties, except NUMSA, being duly notified. Based on the fact that NUMSA was not notified, the ESC postponed the matter to the 30 April 2014. On 11 April 2014, the ESC sent out notices of the hearing of 30 April 2014 to all parties and followed this by telephonic confirmation.
- 5. In the meeting of the 10 April 2014 the Applicant was requested to submit heads of arguments, to set out its case for the Respondents.
- 6. On 16 April 2014, the Applicant duly submitted its heads of arguments to the ESC and the Respondents.
- 7. On the hearing of the 30 April 2014, only the 1st Respondent appeared and the other parties failed to appear despite being duly notified. The parties in attendance indicated that they did not wish to lead any evidence unless directed by the ESC. The Applicant indicated that it stands by its submissions unless directed by the ESC to address it on a particular issue.
- 8. The hearing agreed that in fairness to the parties who have failed to attend the hearing of the 30 April and to the NUM representative that attended and advised that he had not fully brought himself to speed with the matter, that the parties would be given a further time to respond to the submissions made by the Applicant on 16 April 2014, and the annexures submitted on 30 April 2014.
- 9. On 30 April 2014, the ESC forwarded to the Respondents, the Applicant's submissions and Heads of Arguments and requested Respondents to respond if they wished to by 12 May 2014 and the Applicant to reply by 16 May 2014, where after the matter would be disposed of on the papers submitted.
- 10. On 12 May 2014, the ESC received a response from Cheadle Thompson and Haysom Inc Attorneys (CTH), acting on behalf of the 1st Respondent. In summary the response was that the 1st Respondent did not oppose the Applicant's referral to the ESC and consequently the 1st Respondent would not file any heads of arguments. Upon receipt of this correspondence, the chairperson of the ESC contacted CTH to confirm with them that it was not heads of arguments they were expected to file but opposing arguments if any and indeed this was confirmed.

Analysis

11. The Applicant is a temporary employment service provider as defined in section 198 of the Labour Relations Act 66 of 1995. Roshcon is a subsidiary of Eskom Holdings SOC Limited and SUN contracts resources to Roshcon at all the Eskom Power Stations.
12. The crux of the Applicant's case is that its employees who are the Respondents members and who are the Applicant's labour contracted to Eskom are rendering a service which is covered by the ESKOM determination (GN 1216 in Gazette 18276), as the work they do is part of the generation, distribution and transmission of power as covered by the GN 1216 Determination.
13. The service that is in dispute relates to services provided as Bulk Material Services (BMS)
14. The BMS services which the Applicant renders to Eskom through the members of the Respondent involves:
 - a. Coal truck transportation management from the coal mines to the power station
 - b. Coal stock yard management
 - c. Coal conveyor operation and maintenance
 - d. Ash and coal handling
 - e. Operation and maintenance of bulk water schemes (primary water supply to Eskom's power stations)
 - f. Water treatment plant operations Complete electrical maintenance
15. The Applicant argued that the above services are part of generation, distribution and transmission of power as covered by the GN 1216 Determination and the fact that they are rendered by a temporary employment service and not by Eskom employees makes no difference, as the service remains covered by the GN 1216 Determination.
16. The above argument was not opposed. The responsibility of the ESC is to determine if indeed the service rendered by the Applicant is part of the service that is already declared in terms of the GN1216 Determination.
17. On the submissions placed before us, and the fact that such submissions are unopposed, the ESC is of the view that the services rendered by the Applicant, and before us as being in dispute between the parties, are indeed covered by the GN 1216 Determination

Determination

18. The BMS services rendered by the Applicant to Eskom are covered by the GN 1216 Determination, and consequently the employees rendering such services are rendering essential services.
19. The Applicant's application succeeds.

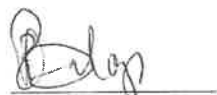
Signed on this 27th day of June 2014



Luvuyo Bono
Chairperson
Essential Services Committee



Sifiso Khumalo
Member
Essential Services Committee



Ruben Baloyi
Member
Essential Services Committee

Mayroonisha Dirksen

From: MayroonishaD@CCMA.org.za
Sent: 30 June 2014 10:44 AM
To: Mayroonisha Dirksen
Subject: Job Notification: Partial Success

The following job encountered some errors. Review the information below and retry the job. If the problem continues contact the administrator.

----- Original Job Details -----

Device Name: HP LaserJet M4555 MFP
User: LOCAL\mayroonisha dirksen
Date: 30/Jun/2014 10:37:48 (0200 GMT)
Scanned Pages: 5

---- Destination ----

0118330367 No Answer
0118336408 Success
0114551310 Busy
0126641302 Success
0115797788 No Answer

----- Additional Details -----

Job	Date/Time	Type	Identification	Duration	Pages	Result
904	30/Jun/2014 10:19:17	Send	0118330367	1:09	0	No Answer
905	30/Jun/2014 10:20:46	Send	0118336408	1:21	5	Success
906	30/Jun/2014 10:42:49	Send	0114551310	0:45	0	Busy
906	30/Jun/2014 10:23:22	Send	0126641302	1:13	5	Success
906	30/Jun/2014 10:24:46	Send	0115797788	1:07	0	No Answer

)
try 086 2466211

Mayroonisha Dirksen

From: Mayroonisha Dirksen
Sent: 30 June 2014 11:32 AM
To: 'Jmojau@num.org.za'; 'orimahloko@num.org.za'; 'dumisa@numsa.org.za';
'khalidh@numsa.org.za'; 'sabawo@telkomsa.net'; 'shabalalass@telkomsa.net';
'danet@solidariteit.co.za'; 'marie@stafuneed.co.za'
Subject: Determination.
Attachments: Staff U need Determination (Final).pdf

Dear all

Please find attached determination.

Kind regards

Mayroon Dirksen

LCMA National Office

T: 011 377 6908

Fax: 086 569 1710

Mayroonisha Dirksen

From: Domain Postmaster Address <postmaster@ccma.org.za>
Sent: 30 June 2014 11:34 AM
To: Mayroonisha Dirksen
Subject: [Postmaster] Email Delivery Failure

This is a delivery failure notification message indicating that an email you addressed to email address :
-- jmojau@num.org.za

could not be delivered. The problem appears to be :
-- Recipient email address is possibly incorrect

Additional information follows :

-- 550 Invalid Recipient -

http://kb.mimecast.com/Mimecast_Knowledge_Base/Administration_Console/Monitoring/Mimecast_SMTP_Error_Codes#550

This condition occurred after 1 attempt(s) to deliver over a period of 0 hour(s).

If you sent the email to multiple recipients, you will receive one of these messages for each one which failed delivery, otherwise they have been sent.

Mayroonisha Dirksen

From: Domain Postmaster Address <postmaster@ccma.org.za>
Sent: 30 June 2014 11:35 AM
To: Mayroonisha Dirksen
Subject: [Postmaster] Email Delivery Failure

This is a delivery failure notification message indicating that an email you addressed to email address :
-- orimahloko@num.org.za

could not be delivered. The problem appears to be :
-- Recipient email address is possibly incorrect

Additional information follows :

-- 550 Invalid Recipient -

[http://kb.mimecast.com/Mimecast Knowledge Base/Administration Console/Monitoring/Mimecast SMTP Error Codes#550](http://kb.mimecast.com/Mimecast_Knowledge_Base/Administration_Console/Monitoring/Mimecast_SMTP_Error_Codes#550)

This condition occurred after 1 attempt(s) to deliver over a period of 0 hour(s).

If you sent the email to multiple recipients, you will receive one of these messages for each one which failed delivery, otherwise they have been sent.

Mayroonisha Dirksen

From: Domain Postmaster Address <postmaster@ccma.org.za>
Sent: 30 June 2014 11:34 AM
To: Mayroonisha Dirksen
Subject: [Postmaster] Email Delivery Failure

This is a delivery failure notification message indicating that an email you addressed to email address :
-- dumisa@numsa.org.za

could not be delivered. The problem appears to be :
-- Recipient email address is possibly incorrect

Additional information follows :

-- 550 Invalid Recipient -

http://kb.mimecast.com/Mimecast_Knowledge_Base/Administration_Console/Monitoring/Mimecast_SMTP_Error_Codes#550

This condition occurred after 1 attempt(s) to deliver over a period of 0 hour(s).

If you sent the email to multiple recipients, you will receive one of these messages for each one which failed delivery, otherwise they have been sent.

Mayroonisha Dirksen

From: Domain Postmaster Address <postmaster@ccma.org.za>
Sent: 30 June 2014 11:34 AM
To: Mayroonisha Dirksen
Subject: [Postmaster] Email Delivery Failure

This is a delivery failure notification message indicating that an email you addressed to email address :
-- sabawo@telkomsa.net

could not be delivered. The problem appears to be :
-- Recipient email address is possibly incorrect

Additional information follows :
-- 550 #5.1.0 Address rejected.

. his condition occurred after 1 attempt(s) to deliver over a period of 0 hour(s).

If you sent the email to multiple recipients, you will receive one of these messages for each one which failed delivery, otherwise they have been sent.

Mayroonisha Dirksen

From: Domain Postmaster Address <postmaster@ccma.org.za>
Sent: 30 June 2014 11:34 AM
To: Mayroonisha Dirksen
Subject: [Postmaster] Email Delivery Failure

This is a delivery failure notification message indicating that an email you addressed to email address :
-- shabalalass@telkomsa.net

could not be delivered. The problem appears to be :
-- Recipient email address is possibly incorrect

Additional information follows :
-- 550 #5.1.0 Address rejected.

, his condition occurred after 1 attempt(s) to deliver over a period of 0 hour(s).

If you sent the email to multiple recipients, you will receive one of these messages for each one which failed delivery, otherwise they have been sent.

Mayroonisha Dirksen

From: Domain Postmaster Address <postmaster@ccma.org.za>
Sent: 30 June 2014 12:35 PM
To: Mayroonisha Dirksen
Subject: [Postmaster] Email Delivery Warning

This message is a warning that an email you are trying to send has not yet been delivered. You do not have to do anything yet as the email is still queued for delivery.

An email you addressed to email address :
-- marie@stafuneed.co.za

has not yet been delivered. The problem appears to be :
-- Recipient email address is possibly incorrect

Additional information follows :
-- Domain has no MX records or is invalid

This condition occurred after 6 attempt(s) to deliver over a period of 1 hour(s).

You will receive a rejection notice after a maximum of 2 days if the email cannot be delivered. If you sent the email to multiple recipients you will receive one of these messages for each one which is still undelivered, otherwise they have been sent.

Mayroonisha Dirksen

From: Danet Terblanche <danet@solidariteit.co.za>
To: Mayroonisha Dirksen
Sent: 30 June 2014 03:22 PM
Subject: Not read: Determination

Your message

To:
Subject: Determination
Sent: Monday, June 30, 2014 3:21:01 PM (UTC+02:00) Harare, Pretoria

was deleted without being read on Monday, June 30, 2014 3:21:42 PM (UTC+02:00) Harare, Pretoria.

Mayroonisha Dirksen

From: Marie Viljoen <Marie@staffuneeed.co.za>
Sent: 30 June 2014 01:39 PM
To: Mayroonisha Dirksen
Subject: RE: Determination

powered by rocketseed.mail



Dear Mayroonisha

I hereby confirm receipt of mentioned document

Thanks!

Kind regards

Marie Viljoen
Support Services Manager - Support Services

Tel: 011 579 7700 • Direct: 011 579 7730 • Cel: 083 411 6786 • Fax : 086 246 6211
Email : marie@staffuneeed.co.za • Web: www.staffuneeed.co.za

Staff U Need a Division of Adcorp Staffing Solutions
4th Floor Corporate Park Building, 4/6 Skeen Boulevard, Bedfordview, 2008



[View Disclaimer](#)



A division of Adcorp Staffing Solutions (Pty) Ltd

From: Mayroonisha Dirksen [<mailto:MayroonishaD@CCMA.org.za>]
Sent: 30 June 2014 01:22 PM
To: Marie Viljoen
Subject: Determination

Dear Marie

Please find attached determination.

Kind regards
Mayroon Dirksen
CCMA National Office
T: 011 377 6908
Fax: 086 569 1710

From: Mayroonisha Dirksen

Sent: 30 June 2014 11:32 AM

To: 'Jmojau@num.org.za'; 'orimahloko@num.org.za'; 'dumisa@numsa.org.za'; 'khalidh@numsa.org.za'; 'sabawo@telkomsa.net'; 'shabalalass@telkomsa.net'; 'danet@solidariteit.co.za'; 'marie@stafuneed.co.za'

Subject: Determination

Dear all

Please find attached determination.

Kind regards

Mayroon Dirksen

CCMA National Office

T: 011 377 6908

Fax: 086 569 1710

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Mayroonisha Dirksen

From: MayroonishaD@CCMA.org.za
Sent: 31 July 2014 11:17 AM
To: Mayroonisha Dirksen
Subject: Job Notification: Success

The following job has been successfully delivered to the specified destinations or intermediate server.

----- Original Job Details -----

Device Name: HP LaserJet M4555 MFP
User: LOCAL\mayroonisha dirksen
Date: 31/Jul/2014 11:16:32 (0200 GMT)
Scanned Pages: 14

- Destination -----

0126641101 Success

----- Additional Details -----

Job	Date/Time	Type	Identification	Duration	Pages	Result
1178	31/Jul/2014 11:13:52	Send	0126641101	2:28	14	Success

Solidarity as requested by
Adelle.