

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

**Case No: ES 578**

**In re: Investigation in terms of Section 71(9) of the Labour Relations Act, 66 of 1995:**

**Whether the designation relating to the services provided or supported by the Central Computer Services of the Department of State expenditure viz the persal system, social pension system, the hospital system and the flood control system should be varied.**

**Designation**

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**Introduction**

1. The ESC on its own accord resolved to conduct an investigation into the possible variation of the designation that was made and published by the ESC in 1997. The investigation was occasioned by the fact that the designation as published relates to the Department of government that is no longer in existence. The ESC published a notice of investigation in terms of section 71(9) read with section 70B (1)(d) of the Labour Relations Act 66 of 1995 as amended (LRA).

2. The gazetted terms of reference for the investigation in terms of section 71 were-

“Notice is hereby given in terms of Section 71(9) for an investigation on the possible variation of the following designation rendered by the Committee: On 21 November 1997, under GN R1542 GG 18439, the ESC designated the following services provided or supported by the Central Computer Services of the Department of State Expenditure-

- a) persal system ;
- b) the social pension system;
- c) the hospital systems; and
- d) the flood systems, as essential services.

The variation is occasioned by the fact that the Department of State Expenditure no longer exists, and the Department is now called National Treasury”.

### **Details of the hearings**

3. The hearings were scheduled as per the notice published in the government gazette. Viz-
  - a) 30 January 2023
  - b) 02 February 2023
  - c) 06 February 2023
  - d) 08 February 2023
  - e) 10 February 2023
4. During the proceedings the ESC did not receive oral or written submissions. Thus, there was no interest shown in this matter.

5. As indicated the investigation was triggered by the fact that the Department referred to in the original designation of the service is no longer in existence. The implication of this situation is that the designation is redundant and not implementable. The ESC panel could not just leave the matter and had to conduct further investigation.
6. The ESC engaged with National Treasury and sought assistance in ascertaining who was responsible or in charge of the systems referred to in the designation.
7. The ESC received a written response in terms of which it was confirmed that the personal system resorts with National Treasury as a department. It was further submitted that the other systems listed in the designation do not reside within National Treasury. Further that the social pension systems reside with the Department of Social Development. The hospital systems reside with the Department of Health, and the flood control system resides with the Department of Cooperative Governance and Traditional Affairs.

## **Legal Framework**

8. In this matter the issue that the committee has to determine is whether to vary the designation that the Committee made on 21 November 1997 relating to the services provided or supported by the Central Computer Services of the Department of State Expenditure.
9. An 'essential service' is defined in section 213 of the LRA 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".

10. 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.”
11. 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”.
12. 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”.
13. From the above it is clear that for the purposes of the LRA the interruption envisaged is that which may result from strike action or lockout by the employer.
14. 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)”
15. 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]).

16. 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.

17. In view of the fact that essential services are lifesaving and should not be interrupted it is important that any designation made by the ESC should be relevant, certain and implementable. Retaining a designation that refers to a department that is non-existent may have undesirable consequences, particularly where the service is rendered albeit by a different department.

**Analysis of the information received.**

18. In this matter the ESC conducted an investigation in 1997 and concluded that the services provided or supported by the Central Computer Services of the Department of State Expenditure-

- a) persal system ;
- b) the social pension system;
- c) the hospital systems; and
- d) the flood systems, are essential services.

19. On the information received from National Treasury it is clear that the systems do not reside with one Department. To the extent that the designation refers to the Department of state expenditure it would be difficult if not impossible to

implement the designation. The fact that, for instance, the hospital system reside in the Department of Health would mean that the service itself or those that support the service would not be rendered as the responsibility is with a defunct department.

20. If it was to happen that there is a strike within the department of health and the employees rendering the service or support service of the computer system participated in that strike, the services would be interrupted at a great risk as such interruption would pose danger to the population. The same would apply to the other computer systems referred to above.
21. In circumstances where the designation is left as is, there will be no mechanism or legal basis to find that the interruption is prohibited as the designation relates to the services provided or supported by the Central Computer Services of the Department of State Expenditure. This is an untenable situation that needs to be corrected.
22. The Department of National Treasury also provided other computer systems that were considered important that resided within that department. The panel considered the information and concluded that it cannot expand or add systems that were not investigated in 1997, as this will be contrary to the terms of reference as published in the notice of investigation.
23. Having considered the information presented the panel finds that it is not desirable to link a designation to any department of government, it is sufficient to designate a service and that service should remain essential irrespective of who is rendering the service.
24. Accordingly, the panel finds that there is cause to vary the designation and makes the following Ruling.

## **Ruling /Designation**

25. The designation rendered by the ESC on 21 November 1997, under GN R1542 GG 18439 is hereby varied by deleting the reference to the Department of State Expenditure. The designation should read as follows-

25.1. The services provided or supported by the Central Computer Services viz.

- a) persal system ;
- b) the social pension system
- c) the hospital systems; and
- d) the flood systems,

are designated as essential services.



**Ms. Joyce Nkopane**  
**ESC Panel Chairperson**  
**23 May 2023**