

**Commission for Conciliation, Mediation
and Arbitration**

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ESSENTIAL SERVICES COMMITTEE



IN THE ESSENTIAL SERVICES COMMITTEE

HELD AT JOHANNESBURG

In the matter between:

Case Number: ES40

Amanzi Control CC

Applicant

and

SACWU

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, Amanzi Control CC, seeks a determination that its industrial cleaning services in respect of the boiler and turbine house at the Majuba Power Station 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."*

2. DETAILS OF THE HEARING AND REPRESENTATION

- 2.1 The matter was set down for hearing on 28 January 2016. The ESC Panel comprised Ms. J Nkopane (Deputy Chairperson of the ESC), Mr. R Nolutshungu and Mr. J Koen. The matter was heard at the Majuba Power Station, in the Volksrust area.
- 2.2 The Applicant was represented by Mr. J Preiss, a Dispute Resolution Specialist employed by the Consolidated Employers Organisation, assisted by Mr. M Uys, an employee of the Applicant.
- 2.3 The Respondent, SACWU and its members, was represented by Mr. T Mhlongo, assisted by Mr. M Nene and Mr. J Mbokani.
- 2.4 The Essential Services Committee ("ESC") Panel convened a meeting with the parties on 3 September 2015 at the CCMA offices in Witbank. The purpose of the meeting was to clarify the nature of the dispute between the parties as well as to assess what has been done by the parties to try and conclude a collective agreement (as provided for in section 75 (2) of the LRA).
- 2.5 The ESC Panel, having satisfied itself that the parties were not able to conclude a collective agreement relating to the provision of a maintenance service, adjourned the matter for an inspection *in loco* on 16 November 2015 and for hearing on 17 November 2015.
- 2.6 The ESC Panel took note that the Applicant in this instance was Amanzi Control CC and not Eskom. It has made application, in writing, to the ESC for a determination that the whole or a part of the employer's business or service be declared a maintenance service.

- 2.7 Both parties were directed to file statements of case within set time frames, which were agreed upon between the ESC and the parties. This was also confirmed in writing by the ESC. Despite this, only the Applicant filed a statement of case.
- 2.8 Notwithstanding the agreed to arrangement as set out in paragraph 2.5 above, only the inspection *in loco* was conducted on 16 November 2015. Due to a number of factors the hearing, scheduled for 17 November 2015, was postponed to 28 January 2016. It was also agreed that the Applicant would place the observations made during the inspection *in loco* on record when its witness, Mr Uys, testifies under oath.
- 2.9 It is worth mentioning that the Applicant initially referred the matter in terms of Section 73 of the LRA, using Form 7.11. The Applicant did, however, correct this by using Form 4.3 upon receipt of advice from the Commission for Conciliation, Mediation and Arbitration (CCMA) through the Commissioner assigned to handle the matter in the first instance.

3. ISSUE TO BE DECIDED

The issue to be decided is whether the services, as referred by the Applicant, fall within the definition of a maintenance service, as defined in Section 75 (1) of the LRA.

4. BACKGROUND

The Applicant is a close corporation contracted by Eskom at its Majuba Power Station to perform the industrial cleaning of the boiler and turbine house.

- 4.1 The contract between the Applicant and Eskom entails that the Applicant is responsible for the housekeeping on the plant in the form of the cleaning and removal of coal, pulverised fuel, dust, ash and foreign materials.
- 4.2 The Applicant employs approximately 215 employees, with 180 employees working directly on the boiler and turbine house.
- 4.3 The Respondent is the South African Chemical Workers Union (SACWU), a trade union duly registered in terms of Section 96 of the LRA.

5. APPLICANT'S EVIDENCE

5.1 First Witness for the Applicant: Mr Marinus Uys

- 5.1.1 Mr. Marinus Uys was the first witness called to testify on behalf of the Applicant. He testified that he is an employee of the Applicant in the position of Site Manager for the Boiler and Turbine contract. He has been in this position for three (3) years.
- 5.1.2 Regarding the role of Amanzi Control CC, he testified that the Applicant is responsible for the industrial cleaning of the boiler and the turbine house, which entails the continuous removal of coal, pulverised fuel, dust, ash and foreign materials.
- 5.1.3 This service, referred to in paragraph 5.1.2 above, requires a 24 hour presence on site. Mr Uys added that should the cleaning not take place due to an interruption in the service, the consequences would be a possible outbreak of fire because pulverised fuel is highly flammable. This may also cause damage and plant deterioration. Furthermore it is a possible health and safety threat to Eskom's employees as well as the Applicant's employees who work on the boiler and turbine house. Pulverised fuel also builds up quickly. Cleaning is therefore required daily and continuously.
- 5.1.4 Mr Uys pointed out various machine components and/or mechanical components of the plant that would be damaged if there was an interruption of the service. The further risk in not conducting industrial cleaning is that the maintenance team from Eskom would not be in a position to conduct its own maintenance, which would in itself lead to additional risks of the deterioration of the plant. For example, Mr Uys indicated that if the pulverised fuel went into the oil systems, it would lead to bearing failure or the shaft can overheat. Furthermore the boiler has pipes running into it. The steam within these pipes are 800 degrees Celsius. If there is a small leak in a pipe and it is not detected, the steam will simply cut into another pipe and the new leak will start cutting other pipes. It will lead to a chain reaction that could destroy all the pipes in the boiler.
- 5.1.5 Mr. Uys also testified to further risks beyond the ambit of the plant, which if no cleaning is conducted, could extend to the contamination of the nearby dam, thereby giving rise to massive environmental implications.
- 5.1.6 Mr. Uys also pointed the ESC Panel to various images and/or pictures in the bundle of documents in relation to the inspection *in loco* conducted on 16 November 2015.
- 5.1.7 Mr Uys also testified that the Applicant uses two shift system and the two shifts are on duty 24 hours a day.

- 5.1.8 The most recent assessment report commissioned by the plant insurer was also referred to in evidence by Mr. Uys. This report indicated that certain risks were identified with the industrial cleaning service as a result of industrial action by the employees of the Applicant.
- 5.1.9 The applicable regulations governing the work of the Applicant were also pointed out, including the Fossil Fuel Firing Regulations, which require adherence to the maintenance of safety standards and to prevent damages and destruction to plant and machinery. The Applicant is contractually required to adhere to these regulations as an Eskom contractor.
- 5.1.10 Both the Applicant and Eskom regard industrial cleaning as an integral part of the operation and protection of infrastructure and machinery and to avoid the breakdown or destruction of the Power Station.
- 5.1.11 It must be taken into account that the ESC, in 1997, designated the generation, transmission and distribution of power as an essential service. Furthermore Majuba Power Station has also been declared as a National Key Point.
- 5.2 Second Witness for the Applicant: Mr Bongani Mabatsane
- 5.2.1 Mr Mabatsane is employed as a Boiler Maintenance Manager at Eskom. He testified that it is his responsibility to supervise employees as well as contractors from a boiler maintenance point of view.
- 5.2.2 His testimony in the main centred on the risks to the Power Station if spillage on the boiler was not cleaned. This includes, for example, that Eskom would have failed to adhere to cleanliness standards and that Eskom may become uninsured.
- 5.2.3 Furthermore there would be the potential of pulverised fuel dust exploding as it is a fire source in its own right. It can ignite when it comes into contact with an igniter. There are a number of heat sources around the pulverised fuel, and if the boiler is not cleaned, it may cause serious risks.
- 5.2.4 Mr Mabatsane testified under cross examination that pulverised fuel is highly flammable as it is coal that has been grinded or milled into a powder.
- 5.3 This concluded the Applicant's case.
6. **RESPONDENT'S EVIDENCE**
- 6.1 The Respondent failed to file a statement of case, and it elected not to call any witness to give evidence in support of its case.
- 6.2 It did, however, file heads of argument. The Respondent argues in these heads of argument that the fact that employees are on standby over weekends, and after hours, rather than being on site, is indicative that there could be interruptions to the service without the consequences as spelt out by the Applicant.
- 6.3 Furthermore, because Eskom outsourced this function to a sub-contractor, it is indicative that Eskom does not regard the service as a strategic activity.
- 6.4 The Respondent also averred that the service provided by the Applicant is not much more than domestic cleaning.
7. **ANALYSIS OF SUBMISSIONS**
- 7.1 Section 75(1) of the LRA defines a maintenance service as: *"a service if the interruption of that service has the effect of material physical destruction to any working area, plant or machinery"*.
- 7.2 An interruption of a service that may lead to financial loss to the employer (or even product or stock loss) will not be regarded as a maintenance service.
- 7.3 The Applicant led sufficient relevant evidence of the effect on the plant, machinery and the working area at the Power Station if employees of the Applicant were to embark on industrial action.
- 7.4 The Respondent failed to submit a statement of case and chose not to lead any evidence. The ESC thus had to rely on the Applicant's evidence to establish what the effect of industrial action would have on the plant, machinery and working area.

- 7.5 After considering the evidence, the ESC Panel finds that the industrial cleaning services rendered by the Applicant on the boiler and turbine house of the Amajuba Power Station, which service, if interrupted, will have the effect of the material, physical destruction to a working area. The Applicant made out a proper case that the service that it provides falls within the definition of a maintenance service as defined in Section 75(1) of the LRA.
- 7.6 The Respondent argued that the cleaning services provided by the Applicant fall within the general categorisation of cleaning as opposed to industrial cleaning. Industrial cleaning, however, is cleaning of a specialised nature. This was confirmed in the evidence led by both the Applicant's witnesses as well as by the documentary evidence submitted by the Applicant in the bundle of documents. This evidence was not rebutted.
- 7.7 With regards to the working hours, the contract between Eskom and the Applicant is clear that the service must be continuously delivered. The Respondent's contention that the employees do not work around the clock is a moot point as the essence of the dispute is about the interruption of a service and its material effect on the plant and machinery within a contextual environment, and not about the efficacy of working hours or a shift system.
- 7.8 On the submissions made, it is clear that the services rendered by the Applicant do fall within the definition of a maintenance service as provided for in Section 75 (1) of the LRA.

8. **DETERMINATION**

- 8.1 The ESC makes the following determination:

The industrial cleaning services of the boiler and turbine house rendered by Applicant at Eskom's Majuba Power Station is declared a maintenance service in terms of section 75 (1) of the LRA.

Signed on this 12 March 2016



JOYCE NKOPANE
Deputy Chairperson
Essential Services Committee