

**Commission for Conciliation, Mediation
and Arbitration**

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ESSENTIAL SERVICES COMMITTEE



To: Afriboom Cleaning Services (Pty) Ltd

13 January 2022

ATT: Ruan Pottas

Per Email: ruan@afriboom.co.za; keith@leeandmcadam.co.za

AND TO: National Department of Health (NDOH)

ATT: Charles Mabula

Per Email: mabulac@gmail.com; mabula@health.gov.za

AND TO: ICHAWU

ATT: Dale Fish

Per Email: ichawu96@gmail.com

Re: ES483// Afriboom Cleaning Services & NDOH v ICHAWU

Find herewith the designation.

Yours faithfully

Zamangwevu Moshani

Essential Services Manager

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

Case No.: ES483

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

**Whether cleaning services in public health should be designated as
essential services**

Designation

Introduction

1. The Essential Services Committee ("the ESC") in terms of Section 70B(1)(d) decided, on its own initiative to institute the above investigation. This was as a consequence of cleaning services in private health being designated by the ESC as essential services.
2. The ESC published the notice of investigations in the government gazette (on the 12th of November 2021 and also notified all interested parties by email on 15th November

2021). The advert indicated that there would be a briefing session for all interest parties on the 25th of November 2021. At briefing session, a brief overview of the services to be investigated was outlined and parties were reminded to comply with the ESC Regulations including indicating their intention to make submissions at the hearings as outlined in the notice. Parties had to make their intention no later than the 3rd of December 2021.

3. The ESC received submissions from Lee and McAdam Attorneys acting on behalf of Afriboom Cleaning. The Independent Commercial Hospitality & Allied Workers Union (ICHAWU) sent a notice that it would be participating in the hearings and it would make submissions accordingly.
4. At the hearing of the 10 December 2021, the National Department of Health (NDOH) sought to make representations, but because it had not complied with the ESC Regulations, the panel advised it, that it would have to apply for condonation. Such Condonation application was made and a ruling delivered on the hearing of the 13 December 2021 condoning the NDOH's non-compliance with the ESC Regulations.

Details of Hearings

5. The hearings were scheduled as per the notice published in the government gazette from the 10 – 15 December 2021. At the hearings the ESC received written submissions from Afriboom; ICHAWU and the NDOH.

Submissions

6. Afriboom argued that it carries on the business of contract cleaning on a national scale at both private and public hospitals. Further that cleaning is the cornerstone of a functional health service rendering so as to ensure appropriate levels of hygiene. Also that there is no material difference between the service being rendered in private or public health.
7. The NDOH submitted that Healthcare associated infections emanate from three critical risk groups: 1) patient factors; 2) environmental factors and 3) factors associated with characteristics of the infectious agent. Infections with multidrug-resistant organisms have become a significant issue globally due to increased morbidity, mortality, and the financial burden of health care. The environmental surfaces surrounding patients are usually contaminated by multidrug-resistant organisms and thereby increase the pressure of colonization and risk of infection. Research has proven that healthcare associated infections are prevented by enhanced environmental cleaning. Hence, the role of cleaning employees is a critical one in mitigating environmental risks that contribute to Healthcare Associated Infections.
8. According to the NDOH, the purpose of the cleaning service is to provide a clean and hygienic healthcare environment, to prevent and protect against healthcare associated infections by provision of a governance response by risk mitigation of the environmental bioburden, as well to contribute to the aesthetic environment that plays a critical role in the patients' journey of care.
9. NDOH further submitted that Cleaning personnel play a critical role in environmental decontamination in the healthcare environment. Healthcare-associated infections (HAI) are a significant burden globally, with millions of patients affected each year. These

infections affect both high- and limited-resource healthcare settings, but in limited-resource settings, rates are approximately twice as high (15 out of every 100 patients versus 7 out of every 100 patients). Furthermore, infection rates within certain patient populations, including surgical patients, patients in intensive-care units (ICU) and neonatal units, are significantly higher in limited resource settings.

10. Environmental cleaning is a vital process for isolation and terminal cleaning. Terminal cleaning refers to cleaning that occurs on discharge or transfer or death of a patient with an infectious agent. This remains a critical step prior to admission of patients into that room or cubicle. The housekeeping function of cleaners ensure prompt removal of waste within the health facility patient domains, enabling both safety and the aesthetics of the environment.
11. In conclusion the NDOH submitted that without the cleaning service, there will be significant impact on increased healthcare associated infections due to an unhygienic environment with a harmful bioburden to patients, visitors and healthcare workers. The impact of this service interruption will have devastating impact on efficient service delivery as there would be resultant delays in new admissions being admitted to the ward and being allocated in a ward/cubicle or bed. This will further result in a consequential negative chain reaction in clinical services being rendered and patient outcomes.
12. ICHAWU submitted that when the ESC designated public health services in 1998 it omitted cleaning because the interruption of the service would not endanger life, personal safety or health. To this day the union disputes that the interruption of the service would not endanger life, personal safety or health. Designating cleaning as an essential service would limit the right to strike of the employees rendering the service.

The right to strike is the most important weapon available to employees engaged in collective bargaining;

Legal Framework

13. In this matter the issue that the ESC has to determine is whether cleaning services in public health should be designated as essential services.
14. In determining the matter, it is important that one should set out the legal framework.
15. 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."
16. 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".
17. 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".
18. 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".

19. The *Constitutional Court in South African Police Service v Police and Prisons Civil Rights Union and Another [2011] 9 BLLR 831 (CC)* 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)”

20. 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-Part Chairperson of the Constitutional Assembly in re: Certification of the Constitution of the Republic of South Africa, 1996 (4) SA744 (CC)* at paragraph [66]).
21. 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.
22. 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. 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

23. The following submissions were not disputed:

- a. The environmental surfaces surrounding patients are usually contaminated by multidrug-resistant organisms and thereby increase the pressure of colonization and risk of infection. Research has proven that healthcare associated infections are prevented by enhanced environmental cleaning.
- b. The purpose of the cleaning service is to provide a clean and hygienic healthcare environment, to prevent and protect against healthcare associated infections by provision of a governance response by risk mitigation of the environmental bioburden, as well to contribute to the aesthetic environment that plays a critical role in the patients' journey of care.
- c. Cleaning personnel play a critical role in environmental decontamination in the healthcare environment. Healthcare-associated infections (HAI) are a significant burden globally, with millions of patients affected each year. These infections affect both high- and limited-resource healthcare settings. Infection rates within certain patient populations, including surgical patients, patients in intensive-care units (ICU) and neonatal units, are significantly higher in limited resource settings.

d. Environmental cleaning is a vital process for isolation and terminal cleaning. This remains a critical step prior to admission of patients into that room or cubicle. The housekeeping function of cleaners ensure prompt removal of waste within the health facility patient domains, enabling both safety and the aesthetics of the environment.

24. ICHAWU opposed the argument by Afriboom that there is no difference between cleaning services in public and private health. ICHAWU argued that in 1998, the ESC deliberately omitted designating cleaning services in public health as the interruption of the service will not endanger the life, personal safety and health of the population.
25. This panel cannot second guess the reasons for the 1998 decision not to include cleaning in the public health services designated as essential, what this panel's responsibility is, is to decide on the submissions made before it, whether the interruption of this service will endanger the life, personal safety or health of the population.
26. The undisputed submissions as stated above on par 23, clearly prove that if cleaning services are interrupted in public hospitals, there will be an increase in infections which will result in the endangerment of life and health. Also, the increase in infections has no distinction on whether the hospital is a private or public institution. Lastly, it is trite that whether a service is outsourced or insourced makes no difference on whether such a service should be designated or not.

Designation

27. The panel therefore designates cleaning services in public health as essential.
28. Afriboom and ICHAWU are hereby ordered to negotiate and conclude a Minimum Service Agreement in respect of the public hospitals in which Afriboom is rendering cleaning services, by 15 March 2022.
29. The Minimum Service Agreement in respect of other public hospitals is not limited to cleaning, it includes other essential services rendered by public hospitals and will therefore be concluded as part of the ESC process dealing with Minimum Service Agreements in the public sector.



Adv. L Bono
ESC Panel Chairperson
30 December 2021