

**Commission for Conciliation, Mediation
and Arbitration**

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ESSENTIAL SERVICES COMMITTEE



11 January 2022

To: South African Weather Services (SAWS)

ATT: Zoleka Makongolo

Per Email: zoleka.makongolo@weathersa.co.za

AND TO: NUPSAW

ATT: Joe Matsapola

Per Email: Joe.Matsapola@weathersa.co.za

AND TO: NEHAWU

ATT: Stephen Shongwe

Per Email: stephen.shongwe@weathersa.co.za

AND TO: PSA

ATT: Coleen de Villiers

Per Email: Coleen.deVilliers@weathersa.co.za

Re: ES484// South African Weather Services v NUPSAW, NEHAWU & PSA

Find herewith the designation.

Yours faithfully

Zamangwevu Moshani

Essential Services Manager

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

Case No.: ES484

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

Whether weather services in support of marine and disaster management 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 the services under this investigation being raised on other investigations like the Ports and Marine services investigation.
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 of November 2021). The advert indicated that there would be a briefing session for all interest parties

on the 25th of November 2021. At the 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 National Union of Public Service and Allied Workers (NUPSAW) and the South African Weather Service (SAWS) at the time of the investigation had been negotiating a Minimum Service Agreement (MSA) for the services that were designated as essential before this hearing. On 8 December 2021, SAWS advised the ESC of other unions which are organising at SAWS. These unions being the National Education Health and Allied Workers Union (NEHAWU) and the Public Servants Association (PSA).
4. Due to the late notification of the said unions, the two unions' non-compliance with Regulation 2(2) was condoned and they were allowed time to prepare a response to the submissions made by SAWS.

Details of Hearings

5. The hearings were scheduled as per the notice published in the government gazette. In the hearings the ESC received written submissions from SAWS only.

Submissions

6. SAWS argued that scientific studies have shown that most of the disasters in the world are weather related. South Africa is no exception. The term disaster is defined as a

serious disruption to the functioning of a community resulting in widespread adverse impact on human, economy, and the environment.

7. The key role of disaster management structures is to ensure preparedness, mitigation, and prevention of disasters in order to save lives and property. The key functions of disaster management structures are heavily dependent on the services provided by the South African Weather Service. SAWS disseminates weather information and warnings to the general public and disaster management structures, who are mandated by the Disaster Management Act, 57 of 2002, as amended in 2015, to disseminate lifesaving information to the communities at risk, and act accordingly to prevent loss of life and damage to property and evacuate people where necessary.
8. The severe weather warnings issued by SAWS are in the form of impact-based warnings. General weather forecasts available on internet and social media platforms does not have information pertaining to the expected impacts and the likelihood of those impact happening while the SAWS warnings carry this vital and critical information and are tailored to incorporate the vulnerabilities of the public as well as specific incidents such as large gathering or events. These warnings also contain information pertaining to recommended instructions to avoid loss of life and property.
9. The ocean drives the weather and climate of South Africa. In addition, inclement weather over the ocean can result in devastating waves and storm surge, risking lives, livelihoods, and infrastructure along South Africa's coastline. Shipping routes around Southern Africa are also known to be incredibly dangerous if warnings are not heeded correctly.
10. The provision of weather-related services over the marine sector impacts not only shipping routes, but also the efficiency and safety of port operations, commercial and

subsistence fishing activities, and recreational activities around South Africa's coastline. Weather hazards such as rip currents, heavy rain, very rough seas, strong winds, storm surge pose a serious risk safety of life and these weather hazards require continuous monitoring by SAWS to issue weather forecasts with lead time of up to three days and severe weather warnings where necessary. The information is essential for proper planning by key stakeholders in the marine sector.

11. SAWS also argued the role of the said services during the Tropical Cyclone Eloise in January 2021.
12. In conclusion, SAWS argued that as the sole provider of the said services if the services are interrupted, there would be an endangerment to the life, health and personal safety of the population.
13. The unions did not oppose the submissions made by SAWS. NEHAWU made a request that the process of concluding a Minimum Service Agreement be expedited.

Legal Framework

14. In this matter the issue that the ESC has to determine is whether the weather services in support of marine and disaster management services should be designated as essential services.
15. In determining the matter, it is important that one should set out the legal framework.
16. 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."

17. 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".
18. 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".
19. 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".
20. 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)"

21. 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]).
22. 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.
23. 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

24. The submissions made by SAWS were not disputed, in fact there was a general consensus on them.
25. SAWS arguments that it disseminates weather information and warnings to the general public and disaster management structures, who are mandated to disseminate lifesaving information to the communities at risk, and act accordingly to prevent loss of life and damage to property and evacuate people where necessary is critical in deciding

this matter, as this information is both lifesaving and pivotal to the health and personal safety of the population.

26. Again, it was undisputed that the severe weather warnings issued by SAWS are in the form of impact-based warnings. General weather forecasts available on internet and social media platforms does not have information pertaining to the expected impacts and the likelihood of those impact happening while the SAWS warnings carry this vital and critical information and are tailored to incorporate the vulnerabilities of the public as well as specific incidents such as large gathering or events.
27. The panel is convinced that indeed if inclement weather over the ocean can result in devastating waves and storm surge, risking lives, livelihoods, and infrastructure along South Africa's coastline, then an interruption of this service will endanger the life, and possibly the personal safety of the population.
28. As argued by SAWS, the provision of weather-related services over the marine sector impacts not only shipping routes, but also the efficiency and safety of port operations, commercial and subsistence fishing activities, and recreational activities around South Africa's coastline. Weather hazards such as rip currents, heavy rain, very rough seas, strong winds, storm surge pose a serious risk safety of life and these weather hazards require continuous monitoring by SAWS to issue weather forecasts with lead time of up to three days and severe weather warnings where necessary. The information is essential for proper planning by key stakeholders in the marine sector.

Designation

1. On the submissions made, the panel is convinced that the interruption of weather services in support of marine and disaster management services would endanger the life, or health, or personal safety of the population or part thereof;
2. The panel therefore designates weather services in support of marine and disaster management services as essential services.
3. The parties are hereby ordered to include these services in the current negotiations of their Minimum Service Agreement and include NEHAWU and PSA in the said negotiations. Such MSA must be finalized no later than 15 March 2022.



Adv. L Bono

ESC Panel Chairperson

30 December 2021