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Zondo commission – Zondo hears of Denel board’s mistreatment of execs

The commission of inquiry into state capture heard on Tuesday of the events in 2015 and 2016 surrounding the suspension of Denel’s CEO, CFO and company secretary, allegedly without following proper processes.

Former CFO Fikile Mhlontlo says the board at the time – chaired by attorney Daniel Mantsha – had an ulterior motive for getting rid of himself, CEO Riaz Saloojee, and company secretary Elizabeth Africa in September 2015. They were told that they would be charged with misconduct as they had misled the board and the ministers of finance and public enterprises in their explanation earlier that month of the company’s process in acquiring Land Systems South Africa (LSSA) from BAE Systems. The transaction has been reported in the past to have cost Denel over R800-million in total.

But for the three executives, the sudden change in attitude by the board – to whom they had presented the LSSA process on 10 September – was suspicious. “As far as I’m concerned issues of governance are not handled that way. We can’t have a board that is six weeks in office, has had one presentation, and the next thing it’s making a whole host of allegations,” said Mhlontlo.

The new board, appointed in May of that year, sat for the first time in July. Board members knew little about the company’s business or the personalities that led it, and could not have formed an opinion in such a short time on such a serious matter as a business transaction. The LSSA deal had been bought earlier in the year, prior to the board’s arrival.

“The concern that we had was the new board that had come in, that had been in office roughly six weeks or so, had summarised what we as management had presented to them in the normal course to what might be a prima facie case, and it was very clearly communicated to us all the way that the intent was that we must exit the business.”

The three were told on the evening of 23 September that they were being suspended. The board’s audit and risk committee (ARC) made the decision, they were told, and they had only 24 hours to respond to the news. Mhlontlo told the commission that oddly, a company executive who was not involved in the matter also stayed on until the evening, and when Mhlontlo encountered him outside the board room where the meeting was being held, he told him that Mantsha had told him to stay on as there would be a big announcement later. This executive was Zwelakhe Ntsephe, who would replace Saloojee in an acting capacity thereafter. Saloojee has previously testified over how Ntsephe allegedly lobbied for the Gupta family to get business within Denel, for an expansion into Asia.

While the executives sought legal counsel to represent them and attempt to halt the process of suspension, it became clear when they argued against the short grace period given to them to respond, that the board was not amiable to this.

“The concern that I had with the ARC was the direction the whole issue was about to take, and I was cautioning the ARC to say where there are issues, they are not normally handled in this way. You

come in here, you are board members, over and above being the ARC. If you've got issues, you should be able to channel your issues via the CEO, and the executives have to respond to those questions."

But no amount of reasoning would alter the fate. Evidence leader Paul Kennedy asked Mhlontlo if the executives had an opportunity to look into what could be wrong with the LSSA transaction at the 10 September meeting.

"At that meeting, interactions were verbal, and certainly not minuted, but I indicated to the ARC that there was nothing wrong with that transaction," said Mhlontlo.

He would next encounter members of the ARC when ordered to present reasons why he shouldn't be suspended. Mhlontlo, Saloojee and Africa were called into the meeting separately.

A letter from their joint legal representative, sent to the board on 25 September, asked them to consider appointing an independent arbitrator to oversee the process of a disciplinary enquiry as hinted by the board. "This arose because of the way everything had unfolded and kind of gave the impression that there is a foregone conclusion somewhere to get rid of us, if one takes into account that we were given 24 hours to respond.

"Even our plea for what we deemed as a reasonable time to respond was not accepted, given that we were suspended. But right before we were suspended, we were given an option to take a three-month package. It was quite clear that the process may not be fair."

The offer to take packages only served to bolster the executives' determination to fight their suspension. For the next 11 months, said Mhlontlo, there were only three interactions with Denel over the allegations the three of them faced, which was odd, given the gravity of the allegations. The charge sheet, drafted and given to them in December, was again accompanied by a note from Mantsha to the acting company secretary who replaced Africa, to ask Denel's attorneys to draw up settlements for each of the executives for three months' salary. These documents accidentally found their way into a set of documents eventually shown to the executives months later, in 2016, when the board had again changed its tune and proposed a mediation process.

For Mhlontlo, the letter had a hidden meaning, he said, and an element of eagerness.

The board never conducted a disciplinary process, and Mhlontlo eventually agreed to a new settlement proposal presented to him in August 2016, almost a year after he was suspended – for 24 months' pay. This, he was told, was in light of his contract ending 30 months from the time of the settlement offer. He walked away with just over R8-million, including the salary and an incentive bonus.

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