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Zondo commission: Brian Molefe appears before Zondo: part two

When Brian Molefe approved a payment of R20-million of Transnet's money in 2011 to a security company owned by former cabinet minister Siphwe Nyanda, he had not fully applied his mind. The payment was in respect of a legal settlement, after Transnet had sued Abalozi Risk Management for work not done, and in was in turn sued by the company for reputational damage.

Molefe admitted that the settlement was a management decision, and was not instituted by a court of law. Abalozi had initially sued Transnet for R95-million after the parastatal terminated its contract with the company following an investigation that revealed no evidence of security personnel having been appointed in terms of its contract. The contract was also one of the grounds on which Transnet Freight Rail (TFR) CEO Siyabonga Gama was suspended, and later dismissed in 2009.

He was found to have approved the appointment of Abalozi, which traded as General Nyanda Security at the time, for a security contract to the value of R18-million over five months between December 2007 and April 2008. The value was above Gama's delegation of authority of R10-million, according to previous testimony from TFR legal adviser Chris Todd.

After Gama had left TFR, an independent investigation found that although there had been value in the service, due to a decrease in theft of assets, there had been no evidence of "warm bodies" for which Abalozi could account. One of the first issues Molefe dealt with after joining Transnet as GCEO in February 2011 was Gama's re-instatement, already in negotiation phase, and the rehashing of the terms of the charges against him. Transnet was in the process of suing Abalozi to retrieve monies paid to it, by this time amounting to R95-million because of several term extensions.

Abalozi counter-sued for R95-million in what it termed loss of income from the termination, but later reduced the demand to R40-million in settlement negotiations with Transnet. It was Transnet that made the final offer of R20-million for legal costs incurred, because it emerged in investigations that information had been withheld from the initial investigators.

"I was informed that Abalozi had been blacklisted and then I asked, what process was followed to blacklist them, and no process had been followed at all and I do know that before anyone is blacklisted there has to be a process and the person has to be heard and everything must be recorded," said Molefe.

He blamed this mishap on Transnet's legal unit.

"In all the years I've been in legal practice, I have never seen a settlement agreement like this. Normally each party pays for their own legal costs. Or one party pays for a certain part of the costs. Generally, these amounts never exceed R1-million," was the reaction from commission chairperson Deputy Chief Justice Raymond Zondo.

Molefe was asked to furnish the commission with a supplementary affidavit detailing how the decision to pay the money came about.

On the issue of Gama's reinstatement and Transnet's decision to pay legal fees he incurred when he applied to interdict his suspension in 2009, Molefe said it was a matter he knew little of when he joined. He asked for a memorandum to apprise him of the matter, and was told that 75% of Gama's legal fees were to be paid by Transnet.

"I don't know if there was expectation that I should do anything about it or challenge it or say I don't approve, but it was done at the board level and this was a memo from Mr Mapoma who's a General Manager Group Legal Services and he was talking about tax costs and 75% and so on."

His position at the time was that the board had already approved the terms of the agreement with Gama, and Molefe saw this as a decision above his delegation of authority.

"If the board has entered into an agreement that a certain payment will be made, I do not see why I would be standing in the way of the payment being made."

Myburgh then moved to the in-camera testimonies of Witness One and Witness Three, former drivers of Transnet who on occasion would drive Molefe. Their identities were hidden as per an order by Zondo, after they cited security threats.

For the most part, Molefe denied the allegations made by the two, which included him being driven to the Gupta home in Saxonwold, Johannesburg on numerous occasions. He also denied Witness One's statement that he saw Molefe leave the residence with a bag, presumably with money inside, on some of the occasions.

"His observations that he saw me with a bag may be true, but I would deny that it had money in it or that the bag I was carrying, when I went to the meeting and came back from the meeting came back with money. I will deny that."

As a parting shot, Molefe referred to a likely vendetta that the commission's secretary, Professor Itumeleng Mosala, may have against him. It is the only motive, he said, that he could think of, for how Mosala mistreated his engagements with the commission.

"Professor Mosala was part of a consortium of Westinghouse that was bidding for a nuclear project at Eskom. Westinghouse is an American nuclear company that was bidding for work at Koeberg and they lost that deal before I arrived at Eskom.

"When I arrived at Eskom, he approached me numerous times to intervene in their favour. Eventually Westinghouse went to court... and I think since that time Professor Mosala has got something to grind with me because of the way I interpreted the subpoenas and the notices as they came one after another, not responding to our correspondence when we asked about what matter we are coming to talk about."

He did not wish to lay a formal complaint against Mosala, however.

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