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Zondo commission – Nyanda scored twice with Transnet, despite unlawful contract

Transnet not only paid R95-million to a company owned by former cabinet minister Sipiwe Nyanda in an unlawful contract, but it dished out a further R20-million settlement after the company claimed reputational damage following a lawsuit to recover the money. The commission of inquiry into state capture heard this on Wednesday from Bowman Gilfillan partner and Transnet attorney Christopher Todd.

General Nyanda Security (GNS) was awarded the contract to provide security services for Transnet Freight Rail (TFR) in December 2007 on a confinement basis. The initial cost of the contract was R18-million for a five-month period to April 2008, but it was twice extended and had been in place for 25 months in 2009 when the decision to terminate was made.

TFR CEO Siyabonga Gama approved the confinement, although it was above his delegation of authority of R10-million. The contract was one of the grounds on which he was later suspended and taken on a disciplinary process. Gama claimed to the disciplinary committee that an official handed him the contract to sign, assuring him that all was above board and he did not need to scrutinise it, only to learn later that it was a “fraud” and a “scam.”

He also denied knowing Nyanda personally, saying that he only knew him as a public figure. But when confronted with evidence in the form of phone records that revealed that the two had been in frequent contact in the period leading up to the signing of the contract, he reneged on his claim. Gama admitted that he had given his legal representative incorrect information and apologised to the disciplinary committee.

Although the result of the disciplinary process was dismissal, Gama fought this and was later reinstated under unusual circumstances in 2011, after a new board of Transnet decided to review his dismissal. In previous evidence the then board chairman Mafika Mkwanazi told the commission that the instruction to pursue a review of the dismissal had come from incoming public enterprises minister Malusi Gigaba.

In the period that Gama was away, the GNS contract had been reviewed, and the company was found to have not adhered to obligations of its contract. During a meeting with Transnet and Todd at which the work of GNS was to be analysed, GNS representatives first revealed that the company had sub-contracted to other service providers, but refused to share their details. Todd said this was not allowed in terms of the agreement with TFR.

On this basis, the contract was terminated and Transnet decided to sue GNS to recover monies paid to the company. By this time, GNS had changed its name to Abalozi Risk Advisory Services, and had launched a counter lawsuit against Transnet for what it deemed reputational damage and loss of work. Abalozi wanted around R400-million for what it claimed it lost in other potential government work.

Newly appointed Transnet GCEO Brian Molefe requested a meeting with Todd in 2011 to understand the details of the case, revealing that he was being put under pressure by someone who wanted the litigation to go away. Todd said he could only surmise that the person in question was Nyanda.

Upon Gama's return to TFR in the same year, the litigation process was reviewed and motivation given to the Transnet board for the parastatal to withdraw its lawsuit. But a long, drawn-out process ensued where the board wanted to be convinced on the merits of the withdrawal, and was presented with a report from the legal department explaining that TFR had received value for money in the contract, despite lesser incidents of cases such as cable theft, among other things.

Oddly, said Todd, the report back to the board did not include details of work done on the ground or records of actual personnel carrying out security duties, despite this being the basis for the termination and lawsuit. Gama and other executives held a meeting with the risk and audit committee of the board in November 2013, and a conclusion reached that Transnet would indeed withdraw its litigation.

This surprised commission chairperson Deputy Chief Justice Raymond Zondo. "It's strange that an entity can pay R95-million to a service provider without being made to say we know that the service was rendered," he remarked.

Abalozi too withdrew its counter claim, and a settlement process began. The company's initial demand was for R60-million to be paid towards its legal costs as well as to its directors, whom it said had suffered reputational harm. It later went down to R40-million, and was eventually settled at R20-million in 2015.

Todd believes that Transnet had strong grounds to recover all or a substantial portion of the R95.5-million, but the lack of support from within the organisation did not inspire confidence. "We had flagged the problem of having an executive which was chipping away or undermining the case rather than supporting it, which presents litigation risk."

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