



10 May 2019

Zondo Commission – unbundling payments meant Molefe did not have to get board approval

Confinements – which are a means used to deviate from open tender processes in public entities – became so popular at Transnet that on one occasion former group CEO Brian Molefe approved four of them within as many days, to consultancy firm McKinsey, at a collective value of R619-million.

This is the evidence of Peter Volmink, the executive manager for governance at the state-owned freight and rail management company, who concluded his testimony before the commission of inquiry into state capture on Friday.

Volmink told the inquiry that although Molefe had the authority to approve confinements, this was limited to contracts up to the value of R250-million. The four confinements in question, which he approved between 31 March and 3 April 2014, were not only to the same service provider, McKinsey, for what seemed to be the same type of work, but seemed to be a way of avoiding escalation to the board for approval.

The conclusion one can draw from this, said Volmink, was that there was an unbundling of payments – which meant that although the full value of the funds went to McKinsey, the payments were split into four to avoid scrutiny.

On reviewing confinements made during the period in question, Volmink noticed that the total value of the payments to McKinsey was R619-million, but when broken up, each one falls under the R250-million threshold that Molefe could approve. Each payment related to an element of the broad scope of McKinsey's work, including coal, iron ore and manganese management contracts. In essence, the rational way to conclude the process would have been to make one payment.

"You can't break up a transaction to smaller value components, to bring it to a lower of delegation, when in fact when you take it at the cumulative value, it should go to a higher of delegation," said Volmink, adding that it is considered an ethics breach to unbundle a transaction to avoid higher levels of authority and scrutiny.

"It seemed to me at face value that this amounted to an unbundling of these contracts, to fall within the delegated authority of the GCEO."

Commission chair, Deputy Chief Justice Raymond Zondo said although it will be determined if indeed the intention of the four separate payments was to unbundle them, he notes that at face value Volmink's assertion may be supported by the fact that two of the confinements were approved on the same day.

"The rules around 'parcelling' at Transnet say that when the full scope of work [of a contractor] is known at a point in time, requirements may not be deliberately split into parts or items of lesser value in order to keep the transaction within a particular delegation of authority level or threshold..." The conduct, he added, is considered parcelling and goes against the rules of procurement.

The concept of confinement, explained Volmink, has great potential for abuse, so changes were made in the Transnet procurement rule book with the arrival of the new board for confinements to be motivated by whichever division is considered the end user of the product or service being outsourced.

Furthermore, to avoid multiple uses of the confinement approach, Volmink told the inquiry, there are strict National Treasury prescripts that require a state-owned entity to first satisfy itself, through a gap analysis, that it does indeed need the services of external consultants. This, he said, is to support the principle of cost saving.

Useful links:

[Zondo Commission website](#)

Corruption Watch's [Zondo Commission update page](#)

[Transnet](#)