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Zondo commission – cabinet, board supported Gama in reinstatement drive

Former Transnet chairperson Mafika Mkwanazi told the commission of inquiry into state capture on Friday that even before he was appointed public enterprises minister in 2010, Malusi Gigaba gave him insight into issues within Transnet that he felt favoured white staff.

During a meeting between the two men in October, shortly before Gigaba was to be moved from his deputy minister position at home affairs to public enterprises, he invited Mkwanazi to join the board, citing unfair practices that did not favour transformation within the parastatal. He also sympathised with Siyabonga Gama for having been dismissed from his position as CEO of Transnet Freight Rail in 2010, calling it an unfair move.

“He was also under the impression that the disciplinary processes were racially biased,” said Mkwanazi, describing Gigaba’s sentiments at the time. Gigaba replaced Barbara Hogan on 1 November 2010, when the latter was fired by former president Jacob Zuma at the end of October.

Mkwanazi’s recollection was that Gigaba may have been among a group of ministers and members of Parliament from whom Gama had lobbied support in a drive to get himself reinstated. Others included ministers Jeff Radebe and Sphiwe Nyanda, while then ANC Youth League president Julius Malema was also vocal about the matter. Common sentiments were that Gama was being removed to scupper his chances of being promoted to the vacant post of GCEO of Transnet.

Evidence leader Anton Myburgh wanted to know how Gigaba got to know about what was happening in Transnet.

“Advocate, you need to understand that state owned entities operate in very strange ways. Within these entities some of these ministers have got sources of information. Particularly these big SOEs like Eskom, Transnet and I don’t know who else,” said Mkwanazi.

“I suspect somebody inside the organisation would have briefed the minister about that, or maybe even outside of the organisation. In that case, I’m assuming it could have been Gama himself.

“You’ll have to understand that some of these ministers and members of Parliament have got companies that I suspect have interest in what is happening in these state-owned entities. Which is why they have an interest in tender opportunities, if I can put it in that way, of whether they exist or not.”

When Mkwanazi’s board took office in December 2010, it was one of the first issues that he became preoccupied with, enlisting the services of Deneys Reitz Attorneys to provide legal advice on the matter. The board wanted Gama’s dismissal reviewed, amid enquiries from the public protector.

From general manager of legal services Siyabulela Mapoma, Mkwanzazi sought a way to “cleanly” facilitate Gama’s reinstatement. Mapoma testified on Tuesday that Mkwanzazi told him that the instruction to reinstate came from above, higher than the minister, which Mapoma presumed to mean Zuma.

Mkwanzazi was at pains to explain the position of the board, which was influenced by the strength of Gama’s defence – that his was not the first and only misconduct case within Transnet, and many did not result in dismissals – in their efforts to reinstate him.

One of the charges on which Gama was fired involved an irregular award of a tender to General Nyanda Security (GNS), a company linked to Nyanda, with whom he had close ties. Gama downplayed the relationship between the two men when asked, but investigators found, through mobile phone records, that the pair had exchanged many calls in the lead-up to the award. Furthermore, the award sought a deviation from normal procurement processes.

But Myburgh questioned the rationale behind using the other 22 cases of misconduct that did not receive punishment as a case to reinstate Gama, while two of his subordinates were dismissed as a result of their role in the GNS award.

Myburgh asked: “It seems to me, Mr Mkwanzazi, that you focused on alleged inconsistencies, instead of consistencies. I mean here are two people whose cases are consistent with that of Mr Gama. Why did you look at it the other way?”

“You are correct, I did focus on inconsistencies because my line of thinking was why is this individual unfairly prejudiced when there are 22 others who should have gone through the same experience, and nothing has happened to them,” Mkwanzazi responded. “We did it the other way round because we were sensing unfairness on the sanction of Gama.”

The practice of applying for condonation for such irregularities was common within Transnet, and many senior managers remained employed despite abusing the process. His board, said Mkwanzazi, wanted to do away with the culture.

Myburgh pressed on: “So why didn’t you just discipline the 22?”

“We did ask Brian Molefe to discipline them as a board. I’m not sure if he disciplined them all,” said Mkwanzazi. Molefe was appointed GCEO of Transnet in 2011.

“If it’s not a defence of the charge, why does it become relevant in whether the sanction that gets imposed on the employee at the end of disciplinary process for misconduct was fair?” asked commission chairperson Deputy Chief Justice Raymond Zondo.

“It’s a ‘what if’. Typically, say Mr Gama had applied for condonation, and say the outcome of that application was that he was going to be disciplined. And the outcome of that disciplinary process is a dismissal, that is fair, Chairman, because he had an opportunity to apply for that condonation.”

Mkwanzazi, however, acknowledged that at the time they embarked on the process, the board was not aware if Gama had applied for a condonation. Gama was reinstated in 2011, and later promoted to GCEO of Transnet in 2015, when Molefe was seconded to Eskom.

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