



19 October 2020

Zondo commission – Mkwanzazi stunned by R17m payment to Gama

Former Transnet chairperson Mafika Mkwanzazi saw for the first time on Monday the total amounts paid to Siyabonga Gama after he was reinstated to his position as CEO of Transnet Freight Rail (TFR) in 2011 – although on behalf of Transnet, Mkwanzazi had led the reinstatement negotiations with a demanding Gama. Mkwanzazi concluded his testimony before the commission of inquiry into state capture.

Gama had been dismissed in 2010 on misconduct charges, but the commission heard that the board submitted to several demands from him, after deciding to review the disciplinary process that recommended his axing. Not only did he want his job back, but he also wanted to be compensated for his legal costs in pursuing a case against Transnet with the High Court, and losing.

Transnet paid Gama just over R17-million over a period of four years between 2011 and 2015. By the end of the payments he had been promoted to Transnet GCEO, following Brian Molefe's secondment to Eskom.

Gama's lengthy disciplinary process, started in 2009, found him guilty of misconduct. On the arrival of Mkwanzazi in December 2010, however, the board decided to review the process on the strength of allegations of unfairness from Gama. Until this decision, Transnet had started preparing for an arbitration process through which Gama was to appeal against his dismissal. But it was on the strength of those claims that he was being purged because he was black while his white counterparts were hardly punished, that the board set up the review. Mkwanzazi told the commission that misconduct cases were rife across the Transnet group, but only Gama was singled out for punishment to scupper his chances of moving up to the GCEO position that had been left vacant when Maria Ramos left in 2009.

Mkwanzazi said he was "perplexed" at some of the figures shown to him by evidence leader Anton Myburgh, as he had not been aware of the amounts paid. Transnet, the commission heard from its former legal advisor in the disciplinary process Christopher Todd, paid Gama's costs for the process as well as the legal fees for the litigation, despite the order in the ruling being that Gama should pay costs. Furthermore, he received a back-paid salary of around R6-million for the time that he was not in the company, along with several benefits like leave and bonuses.

Commission chairperson Deputy Chief Justice Raymond Zondo could find nothing to justify the desperation with which the board pursued Gama. Mkwanzazi told him that Gama had been an asset to TFR, so much so that while he was gone, the company had struggled with many challenges under acting CEO Tau Morwe. This necessitated Gama's return.

Former general manager for legal services at Transnet, Siyabulela Mapoma, testified last week that his department facilitated payment towards Gama's lawyers – 75% of the total legal costs incurred

in the litigation – on Mkwazi's instruction. The latter has denied this, and said Mapoma must have misinterpreted his instruction.

Myburgh pressed an evasive Mkwazi: "Did you or did you not instruct Mr Mapoma to pay Mr Gama 75% of the costs that Transnet incurred at the High Court?"

"No chair, I don't know why they are wrongly interpreting it like this," Mkwazi responded. At some point, Mkwazi remarked that he would need an accountant to help him navigate the payment schedule presented to him by Myburgh.

"No, Mr Mkwazi, I don't think you need an accountant to help you. You just need common sense," commented Zondo.

Despite many concessions from Mkwazi over the irrationality of the decision to review Gama's disciplinary process, and to reinstate him, he could not be pushed to admit that he was following instructions. Mkwazi refuted Mapoma's evidence that on asking for his legal guidance on the reinstatement process, he once remarked that he was acting on instruction from "higher up than the minister."

The minister at the time of Gama's reinstatement was Malusi Gigaba, who first met with Mkwazi in October 2010, according to the latter's evidence, to discuss the unfairness of Gama's dismissal. This was before Gigaba's appointment to the portfolio of public enterprises. Furthermore, Gigaba asked Mkwazi – whom he had just offered the chairperson post – to look into the matter once he arrived at Transnet.

But Mkwazi has offered several other justifications for his board's decisions on the matter, refusing to admit that he was indeed acting on an instruction from Gigaba.

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