TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 36  24 JANUARY 2013  PAGES 3861 TO 3968

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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24th January 2013

Marikana Commission of Inquiry

Rustenburg

[PROCEEDINGS ON 24 JANUARY 2013]


You're still under oath. Mr Budlender, I think you said you were going to start cross-examining, unless there's some housekeeping announcements that have to be made first.

MR BUDLENDER SC: Not that I'm aware of, Chair. Thank you, Chair. Mr Gcilitshana, yesterday you told the Commission that on the morning of the 16th of August you attended a briefing at Middlekraal, and I would like to ask you for some more information about that.

MR GCLITSHANA: I said it was at LPD.

MR BUDLENDER SC: LPD, I apologise.

MR GCLITSHANA: Yes.

MR BUDLENDER SC: At what time did it start and how long did it last?

MR GCLITSHANA: I may not have the exact time, simply because this meeting will start at half past 7, sometimes they delay, they don't start exactly at half past 7, and I meant for one, for five minutes or 30 minutes.

MR BUDLENDER SC: What was the purpose of the briefing?

MR GCLITSHANA: The meeting was, every day there were briefing of situation, what, of how the situation, what are the measures that are taken to protect those who are willing to go to work, also the figures of the people who have reported for work.

MR BUDLENDER SC: Who did the briefing?

MR GCLITSHANA: The security personnel will do the briefing, then the HR department will do the briefing on the attendance to work, [inaudible] more of the incident, if there were any incidents.

MR BUDLENDER SC: I realise it's now some months ago, but can you remember who was present at that briefing on the morning of the 16th of August?

MR GCLITSHANA: I don't recall, but what normally Mr Blaau from, Hendrik Blaauw from security will be the person who will lead, facilitate the meeting. Then the HR, as I indicate it will be Jomo Kwadi, Abie Kgotshe from the HR, from the company, the leadership from the Solidarity and UASA. I'm not sure exactly that day, then it will be myself, leadership of Lonmin from different branches.

MR BUDLENDER SC: Was anyone present from the police?

MR GCLITSHANA: I don't recall anyone from the police.

MR BUDLENDER SC: Did members of the police attend those regular morning briefings usually?

MR GCLITSHANA: From the 13th, 13th and 24th January, 13th and 24th police attend those regular morning briefings usually?

MR BUDLENDER SC: Did the police usually attend the Middlekraal briefings?

MR GCLITSHANA: Yes, they would attend.

MR BUDLENDER SC: And who would be the senior police person present at such meetings?

MR GCLITSHANA: No, unfortunately I don't know them. I wouldn't know who was the person who was the senior.

MR BUDLENDER SC: And are you saying that you can't recall whether any police were present on the 15th and the 16th, or what is the position as far as you can recall?

MR GCLITSHANA: I recall the mine security personnel who were there. I remember two guys, Graham StClare and Henry Blaauw from the mine. I don't -

MR BUDLENDER SC: Who?

MR GCLITSHANA: Who?

MR BUDLENDER SC: Can you recall whether any police members were present on either of those two days, the 15th and the 16th?

MR GCLITSHANA: No, I don't recall. I only recall having a meeting with the General Mpembe and General Annandale in the afternoon on the 15th, that meeting that I remember where we had them when we were together with the president, both president of AMCU and NUM.

MR BUDLENDER SC: And if we are talking about the same meeting, then is that the meeting with Generals Mpembe and Annandale to discuss visits by the union presidents to the koppie?

MR GCLITSHANA: That's correct.

MR BUDLENDER SC: Just to come back to the briefing of the 16th of August, you told the Commission that the briefing was about two matters, about the security situation and about attendance at work. Is that correct?

MR GCLITSHANA: Yes, that's what I can recall. In fact the figures that they will be, HR will report figures of people who have reported for work.

MR BUDLENDER SC: What was reported about the security situation at that briefing on the morning of the 16th of August?

MR GCLITSHANA: Which date again?

MR BUDLENDER SC: The 16th, the morning of the 16th.

MR GCLITSHANA: What I recall is that the discussion was about there will be the process of disarming, but that was not in detail.

MR BUDLENDER SC: I'm not sure what you
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mean by that. Were you told that the strikers were going
to be disarmed that day?

MR GCILITSHANA: We were told that after
the visits there was an agreement that the workers will
disarm.

MR BUDLENDE SC: I understand, and were
you told what the police were going to do if the workers
did not hand over their arms?

MR GCILITSHANA: No, we were not told.

MR BUDLENDE SC: Thank you, and then you
also told the Commission yesterday that at 5PM that day you
attended a meeting at the Solidarity offices.

CHAIRPERSON: Sorry, Mr Budlender, have
you finished the meeting at 7:30 in the morning?

MR BUDLENDE SC: Yes.

CHAIRPERSON: Right, could I ask – I’d
like to ask a question too about that. How long did the
meeting last, the briefing meeting?

MR GCILITSHANA: I will not have the
actual, how long it lasted, but normally this meeting will
take 30 to 45 minutes.

CHAIRPERSON: Yes, now you see you handed
in exhibit XX2 contained in the bundle of documents and one
of them, and a substantial part of that bundle of documents
is a series of extracts from the Lonmin logbook, beginning,

as far as I can see, at page 21. Now I just want to turn
to page 31. One sees what was being recorded at the time,
or immediately prior to the meeting, and I take it, it’s a
fair assumption that what was reported at the meeting would
have been what’s been recorded in the logbook. Would you
think that’s a reasonable assumption?

MR GCILITSHANA: No, sorry Commissioner,
I didn’t understand exactly which page.

CHAIRPERSON: Page 31. That’s the Lonmin
logbook.

MR GCILITSHANA: Yes, I could see.

CHAIRPERSON: Now if one looks at page,
we start at page 31 but page 31 begins with an entry made
at 6:50, which is 10 to 7, on the 16th, and there are a
number of entries going down to 7:48, which would have been
an entry made at the time the briefing was taking place and
I’m asking you whether it’s a fair assumption that what you
were told at the briefing would have been more or less what
was being recorded in the logbook at the time.

MR GCILITSHANA: Yes, correct.

CHAIRPERSON: Japie Van Achterberg - I
wonder, Mr Budlender, if you can see the point of interest
to me, whether it wouldn’t be better for you to deal with
that.

MR BUDLENDE SC: Chair, I’m not sure
which of these points is of particular interest to you.

I’m clearly being a bit obtuse –

CHAIRPERSON: Don’t worry. Okay, I’ll
deal with it. “Japie Van Achterberg called and said,” this
is a quote, this is an entry at 6:50, “that Willem Ngoco
from the buses called him, informed him that a group of
people were gathering at EPL bus rank. They’re not getting
on the buses. They’re not sure what the situation is.” It
looks like, “Kallie Milos,” is it? “dispatched Martin
Vorster to go and have a look.” So was it reported that
there was, something was happening at the EPL bus rank,
that people were gathering there and not getting on the
buses?

MR GCILITSHANA: Normally such incident
will be reported. That was the usual operations. Such
incident will be reported. If I may also explain, our
leadership, because they would also do runs and the, at the
mine, they will tell us if there are any areas where there
are concerns of people who are not able to get in the
buses.

CHAIRPERSON: Then the next entry that I
would think would have been the subject of discussion at
the briefing, is the first entry for 7:48, is that “Abie
Kgotle called and said that at EPL hostel bus rank are a
group of people that want to use the buses to go to work,
requesting an escort. Dirk Botes said that mining security
and SAPS are on their way, stopping at SAFIS first, there’s
a group of people gathering at the shaft,” they informed.

Was that something that was discussed or would have been
discussed at the briefing?

MR GCILITSHANA: I won’t be able to be
specific but as I indicated, if there are such incident
they will come on the briefing, then the police will be,
the security, mine security will be directed to those
areas.

CHAIRPERSON: Then the next one, 7:48 as
does Dirk Botes requested that the water cars and the
medics be on standby to assist the SAPS and mining
security, if necessary.” Was that mentioned at the
briefing?

MR GCILITSHANA: I don’t recall this,
because more of the issues of the police were not dealt in
that meeting because the police would say they’ve got their
own area where they discuss their issues.

CHAIRPERSON: So did you at any stage
that morning know or hear that there had been a request
that the water cars and the medics be on standby to assist
the police and the mining security if necessary?

MR GCILITSHANA: No, I don’t recall it.

CHAIRPERSON: Thank you, Mr Budlender,
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25 because at times we will sit in our cars as we wait,

24 MR GCILITSHANA: We got the information
23 the koppie?
22 information during that period as to what was happening at
21 Middlekraal, yes.
20 operations, in their branches.
19 briefing in the morning the leadership make rounds in their
18 MR GCILITSHANA: I mean after the
17 at," but I didn't hear what the word was.
16 correctly what you said. You said "We had a briefing later
15 MR GCILITSHANA: Yes.
14 of any kind as a result of that information?
13 Lonmin staff?
12 MR BUDLENDER SC: That would be the
11 continue.
10 with other activities, therefore that meeting can't
9 MR GCILITSHANA: As I indicated that one,
8 MR BUDLENDER SC: Did you do anything,
7 and surprise.
6 MR GCILITSHANA: To me it was the shock
5 you heard on the radio about the shootings at the koppie?
4 MR GCILITSHANA: What did you do when
3 information from anyone else other than radio reports?
2 MR Gcilitshana, you told us you
1 opening the radio. We got it from the radio.

1 that was the point that I wanted to take up, but you'll
move on now to 5PM that afternoon, I think.

1 opening the radio. Then on the following, that's, it
was explained now on the following day in the briefing
session.

1 as I recall that
2 I don't recall, but - I
3 happen, we hear this thing, and then he confirmed that
4 the case.
5 Did you take any action
6 of any kind as a result of that information?
7 MR GCILITSHANA: Not.
8 MR BUDLENDER SC: Right, then I'd like to
9 move on to one other topic. I want to talk for a moment
10 about the negotiations of September 2012. Now you'll
11 recall your evidence in that regard, those were
12 negotiations between Lonmin and various trade union, AMCU,
13 NUM, Solidarity, UASA, and also as I understand it, the
14 delegation representing the strikers. Is that correct?
15 MR GCILITSHANA: Yes, that's correct.

1 So the second briefing was at 2 o'clock. Where was that?
2 MR GCILITSHANA: It's normally called at
1 opening the radio. We got it from the radio.
2 MR BUDLENDER SC: You didn't receive any
3 information from anyone else other than radio reports?
4 MR GCILITSHANA: Not as I recall that
5 day, because even the 2 o'clock meeting was postponed.
6 MR BUDLENDER SC: Why was the 2 o'clock
7 meeting postponed?
8 MR GCILITSHANA: We were told that the
9 people who were supposed to attend the meeting are busy
10 other activities, therefore that meeting can't
11 continue.
12 MR BUDLENDER SC: That would be the
13 Lonmin staff?
14 MR GCILITSHANA: Yes.
15 MR BUDLENDER SC: Were you told what
16 other activities they were busy with?
17 MR GCILITSHANA: No, they didn't tell us.
18 MR BUDLENDER SC: And then if I
19 understood correctly, you had a meeting at 5 or 5:30 that
20 evening at Middlekraal?
21 MR GCILITSHANA: No, I said I left the
22 area around after 5 o'clock.
23 MR BUDLENDER SC: Okay, I understand.
24 When did you first hear about the shootings on the koppie?
25 MR GCILITSHANA: As I indicated that one,

1 I got it from the radio. Then on the following, that's, it
2 was explained now on the following day in the briefing
3 session.

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22 area around after 5 o'clock.
23 MR BUDLENDER SC: Okay, I understand.
24 When did you first hear about the shootings on the koppie?
25 MR GCILITSHANA: As I indicated that one,
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1 MR BUDLENDER SC: This was a negotiation
2 which took place outside the normal collective bargaining
3 processes and structures?
4 MR GCILITSHANA: Yes.
5 MR BUDLENDER SC: And I take it that NUM
6 and Lonmin agreed to this negotiation outside the normal
7 collective bargaining processes and structures because it
8 was clear that the dispute could not be resolved through
9 the normal collective bargaining processes?
10 MR GCILITSHANA: That's correct. We were
11 trying to resolve the problem.
12 MR BUDLENDER SC: Yes, and the normal
13 collective bargaining processes were not a suitable
14 mechanism for dealing with it because it couldn't be
15 resolved because not everyone was there. Not everyone was
16 involved in those processes?
17 MR GCILITSHANA: Can you repeat your
18 question?
19 MR BUDLENDER SC: Sorry, that was a very
20 clumsy question.
21 CHAIRPERSON: Yes.
22 MR BUDLENDER SC: The reason the normal
23 collective bargaining processes couldn't be used was that
24 not all of the parties to the dispute were adequately
25 represented in the normal collective bargaining processes?

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1 MR GCILITSHANA: Yes, that's correct,
2 because if you could see, we talk of also the chiefs were
3 there, also the Council of Churches was there.
4 MR BUDLENDER SC: It wouldn't assist in
5 September 2012 for NUM and Lonmin to reach an agreement
6 through the normal processes about how the dispute could be
7 resolved because the striking workers were not adequately
8 represented by NUM at that time; they didn't have
9 confidence in NUM.
10 MR GCILITSHANA: It will be difficult for
11 me to say yes or no on that one, but what I agree with you
12 that there was loss of confidence to the NUM.
13 MR BUDLENDER SC: Right, now let's turn
14 back a month earlier to August 2012, before the shootings
15 took place. Now we know, Mr Gcilithshana, that NUM was very
16 worried about the assaults on its members and the murders
17 of some of its members in August 2012.
18 MR GCILITSHANA: That's correct.
19 MR BUDLENDER SC: The striking workers
20 had rejected the attempt by NUM to resolve the dispute when
21 Mr Zokwana visited the area.
22 MR GCILITSHANA: That's correct.
23 MR BUDLENDER SC: The NUM had called on
24 the police to bring an end to the violence.
25 MR GCILITSHANA: I don't recall saying

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1 that the police must, and, but the police must call an end
2 to violence, yes I recall that.
3 MR BUDLENDER SC: Perhaps I didn’t
4 express it well. What the NUM were saying to the police,
5 look here, our members are being assaulted and killed, it's
6 your job to prevent that.
7 MR GCILITSHANA: Yes, and to the
8 violence.
9 MR BUDLENDER SC: And thus far in mid-
10 August 2012, let's say by the 15th of August 2012 the police
11 had not been able to do that because the violence and
12 intimidation had been continuing.
13 MR GCILITSHANA: That's correct.
14 MR BUDLENDER SC: Now I want to ask you
15 this, to consider the following situation. What would the
16 NUM response have been if the police had sat together with
17 NUM and Lonmin, let's say the 15th or 16th of August, and
18 said look here, there's a dispute about the RDO wages, it
19 can't be resolved through the normal collective bargaining
20 processes – I'm sorry, this is a long question. Perhaps I
21 should stop there. What would have happened if on the 15th
22 of August SAPS had got together with Lonmin and the NUM and
23 the police had said the following – there's a dispute
24 around the RDO wages and it seems that it can't be resolved
25 through the normal collective bargaining processes, 10

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1 people have now lost their lives. There's a limit to the
2 extent to which we can prevent this violence through normal
3 policing activities. The rock drill operators have said
4 they will leave the koppie if the management comes and
5 talks to them. We think that you, Lonmin and NUM should
6 agree that this dispute should be negotiated outside the
7 normal collective bargaining processes. Now if the police
8 had said that to NUM and Lonmin on let's say the 15th of
9 August, what would NUM's attitude have been?
10 MR GCILITSHANA: As NUM, as we indicated
11 that even beyond the shootings we agreed to sit down. I
12 believe that we would have agreed to sit down with the
13 company and see how can we resolve the problem, as we were
14 trying.
15 MR BUDLENDER SC: Would you have agreed
16 to an attempt being made to resolve the dispute outside the
17 normal bargaining processes in mid-August 2012?
18 MR GCILITSHANA: That's correct, as a
19 process of trying to resolve the problem.
20 MR BUDLENDER SC: In other words just as
21 you agreed after the shootings, you would have agreed
22 before the shootings?
23 MR GCILITSHANA: Yes.
24 MR BUDLENDER SC: And of course we know
25 that if that had happened and the dispute had been resolved
in mid-August outside the normal bargaining processes, 34 people wouldn't have lost their lives.

 MR GCILITSHANA: I think so. I can't say, I can't be confident saying that would not have happened.

 MR BUDLENDER SC: Before the shootings of the 16th of August, was there any discussion between the police, Lonmin and NUM about the possibility of trying to resolve this matter outside the normal bargaining processes?

 MR GCILITSHANA: I don't recall.

 MR BUDLENDER SC: Are you saying you don't recall that any such discussions took place?

 MR GCILITSHANA: No, I don't recall.

 MR BUDLENDER SC: I take it that if there had been any such discussions you would have remembered them. They would have been very important.

 MR GCILITSHANA: As I indicate, maybe it's because of the timing. I don't recall.

 MR BUDLENDER SC: Mr Gcilithana, there was a fairly ugly dispute going on in this mine and NUM had tried to resolve it and had not been successful.

 MR GCILITSHANA: Yes.

 MR BUDLENDER SC: You would surely remember if there was discussion amongst the parties and with the police about trying other methods to resolve the dispute?

 MR GCILITSHANA: If one can explain, as NUM we were not allowed to go and address the workers. They said they don't want to hear anything from NUM and by then there was no worker delegation that was nominated to come and engage.

 MR BUDLENDER SC: I understand. You don't recall that there was ever any discussion between yourselves, Lonmin and the police about Lonmin engaging with a worker delegation from the strikers to try to resolve the dispute?

 MR GCILITSHANA: I don't recall, Commissioner.

 MR BUDLENDER SC: That happened after the shootings and that process was in fact successful.

 MR GCILITSHANA: That's correct.

 MR BUDLENDER SC: Thank you, Chair, I have no further questions.

 CHAIRPERSON: Mr Semenya, are you ready to cross-examine, and do you wish to do so?

 MR SEMENYA SC: Mr Mathibedi will do it for us, but I'm advised that Mr Burger intends to go in first.

 CHAIRPERSON: Very well. Mr Burger, would you like to cross-examine now?
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25 information that I got.

24 those who have not been re-employed. That's what one, that

23 more overtime that should be worked in Karee, in fight for

22 was a decision that was taken by leaders of AMCU that no

21           MR GCILITSHANA:          As one can recall, there

19 head injuries.” Now what was the cause behind this

18           MR GCILITSHANA:          That's correct.

17 employees were assaulted at different shafts at Karee, one

16 such incidents, on or about the 22nd of April 2012, several

15 violence at Karee Mine continued over this period. Among

14           MR GCILITSHANA:          I believe that people

13 of branch committee that felt that when [inaudible] is

12 levels of mistrust to the NUM at Impala. At Karee, as I

11 this time of turmoil you were in regular contact with your

10           MR BURGER SC:          May we assume that during

9 employed, that were dismissed.

8 should be worked in support of those who were not re-

7 AMCU, and a decision was taken that no more overtime that

6 and the decision at the mass meeting was, a mass meeting by

5 got from the structures was that there was a mass meeting

4 strike AMCU was the majority union at Karee?

3           MR BURGER SC:          And within months of the

2 there was no presence of AMCU as one, as I recall.

1 the suspension, “thousands of employees at Karee Mine

12 where this comes from, and can I read with you again your

11           MR BURGER SC:          I'm not fully

10 understanding that answer. Would you try to assist me and

9 just elaborate?

8           MR GCILITSHANA:          The information that I

7 got from the structures was that there was a mass meeting

6           MR GCILITSHANA:          I will be in contact

5 with the branch. You know what, the structures at the NUM,

4 leadership and the membership of NUM. Correct?

3           MR GCILITSHANA:          Correct.

2           MR BURGER SC:          No, but I assume that you

1 was informed regularly of what was happening at Karee?

22 were informed regularly of what was happening at Karee?

21           MR BURGER SC:          I read on in your

20 interaction with Karee itself.

19           MR GCILITSHANA:          Correct.

18           MR GCILITSHANA:          That's correct.

17 MR GCILITSHANA:          Where did that come from?

16 Who was angry at NUM at that stage and who intimidated?

15 MR GCILITSHANA:          I believe that people

14           MR BURGER SC:          I will be in contact

13 particular, to be kept abreast of what was happening?

12 structures at Lonmin generally, and with Karee in

11           MR GCILITSHANA:          That's correct.

10           MR BURGER SC:          Where did that come from?

9           MR BURGER SC:          It was at that stage that

8           MR GCILITSHANA:          Correct.

7           MR BURGER SC:          And as put to you earlier

6           MR GCILITSHANA:          That's correct.

5           MR BURGER SC:          And as put to you earlier

4           MR BURGER SC:          Where did that come from?

3           MR BURGER SC:          I'm trying to understand

2           MR GCILITSHANA:          Before the strike of May

1 there was no presence of AMCU as one, as I recall.

22           MR GCILITSHANA:          I explained yesterday

21           MR BURGER SC:          We have some objective

20 facts in trying to understand this rivalry between the two

19 unions, but we don't know how to complete those facts.

18           MR BURGER SC:          Please help us. What I would like to understand is what

17 was the membership of NUM as opposed to AMCU before the Mr

16 Steve incident at Karee, and what was it thereafter? What

15 was the membership of NUM majority to AMCU majority was again,

14 those who have not been re-employed. That's what one, that

13           MR BURGER SC:          I will be in contact

12           MR GCILITSHANA:          That's correct.

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20 facts in trying to understand this rivalry between the two

19 unions, but we don't know how to complete those facts.
in 2011, and what is it today? So against that background, would you be able to help us or should I ask that to somebody else?

MR GCILITSHANA: Before the suspension of Steve the membership of NUM was in majority at Karee, but after the workers were reinstated, or re-employed, yes, the membership of NUM - remember that everybody when, were re-employed in new conditions, no-one was still on, belonging to any union. Therefore AMCU made its initiatives to recruit. Then around that time I think as the records we were informed that they are about between 2 000 and 3 000 AMCU, and NUM around 1 000 something.

MR BURGER SC: And Mr Gcilitshana, speaking for Lonmin as a mine, what was the number of the NUM membership prior to the Mr Steve incident, and what was the number, say at the beginning of 2012, either in percentage or in number of members? How did that decrease over the period for NUM?

MR GCILITSHANA: I may not have the correct figures, but we're above, NUM was about 55%. NUM was about 55%. Then around April we were told that NUM is at 45%, about 49-

MR BURGER SC: Which year? April which year?

MR GCILITSHANA: April 2011.

47, you identify three NUM members and office bearers who lost their lives.

MR GCILITSHANA: That's correct.

MR BURGER SC: Paragraph 56, we see another NUM member losing his life in September last year.


MR BURGER SC: And by January 2012?

MR GCILITSHANA: I don't have the actual figures or percentage, but we were informed that at Karee AMCU is in majority.

MR BURGER SC: And today, who is the majority trade union at Lonmin overall?

MR GCILITSHANA: The information that one, that I got is that AMCU is leading in terms of membership, as much as I must also indicate that we are still contesting the verification of that membership.

MR BURGER SC: I accept there may be technical debates. I'm just trying to understand what the flow was. Would that also be true for Impala that AMCU is today the majority trade union at Impala?

MR GCILITSHANA: That's correct.

MR BURGER SC: Would that also be true for Anglo?

MR GCILITSHANA: No, I don't have that information with Anglo.

MR BURGER SC: Let's say with Impala and Lonmin, and in that process they replaced NUM as the majority trade union?
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24
MR BURGER SC: I accept that. Can I get
23
some indication of the quantum, the amount of membership
22
dues arising at Lonmin in any given month? Would it be
21
safe to assume that there are potentially 28 000 members of
20
trade unions at Lonmin, because they have 28 000 employees?
19
MR GCILITSHANA: That is possible.
18
MR BURGER SC: And do I understand it
17
correctly that union dues are deducted by way of a
16
deduction from the monthly payslip of each worker?
15
MR GCILITSHANA: That's correct.
14
MR BURGER SC: Do you know what
13
percentage is deducted of the wage?
12
MR GCILITSHANA: I can talk for NUM, it's
11
1%.
10
MR BURGER SC: 1%?
9
MR GCILITSHANA: Of the basic.
8
MR BURGER SC: The next subject I want to
7
broach with you is the different attitudes expressed by the
6
two main trade unions to the violence which interrupted.
5
Can I start off with NUM? Would it be correct to say, as a
4
general proposition, that throughout the period May 2011
3
right up to August 2012, NUM did its utmost to dissuade
2
workers from unprotected strikes?
1
MR GCILITSHANA: That's correct.

25
MR BURGER SC: Violence?
24
MR GCILITSHANA: That's correct.
23
MR BURGER SC: And that there was a
22
consistent effort to persuade members to go back to work?
21
MR GCILITSHANA: That's correct.
20
MR BURGER SC: In fact, NUM went so far
19
as to call mass meetings to convey that message to its
18
members?
17
MR GCILITSHANA: That's correct.
16
MR BURGER SC: Can I ask you in this
15
context to have a look at the email which we find in your
14
NUM bundle at page 77 - that's XX2, page 77. It comes from
13
Mr Bongo, that is the person who passed away in the
12
interim, is that correct?
11
MR GCILITSHANA: That's correct.
10
MR BURGER SC: And it's sent by certain
9
officials, are those officials at Lonmin?
8
MR GCILITSHANA: It also - it was sent,
7
yes, to comrades in the region, that's the regional office.
6
MR BURGER SC: Is this regional? Is this
5
NUM to NUM?
4
MR GCILITSHANA: Yes, it's regional
3
office and then -
2
MR BURGER SC: I'm sorry.
1
MR GCILITSHANA: And then general

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1
MR GCILITSHANA: That's correct.
2
MR BURGER SC: I was wrong to believe it
3
was sent to Lonmin, it was then by NUM and it's in the
4
context of a court interdict which was obtained by Lonmin
5
in the 10th of August, do you see that? May I have your
6
attention for the first paragraph, “The Lonmin RDOS had
7
meeting on Friday last week, 3rd of August 2012, and
8
Thursday, 9th of August 2012, where they take decision to
9
not go to work, to send memorandum to management. The
10
Western Platinum branch committee have done the following
11
steps, trying to protect the NUM members,” and then just
12
the introduction to the third paragraph, “Some of them
13
ignored all the above steps as they took the decision
14
mentioned above on Thursday. Once we heard this decision,
15
we took decision to wake up at 2:00 to accompany those
16
willing to go to work that they may not be intimidated or
17
assaulted.” Was that the type of information you obtained
18
from Lonmin as to actions taken by NUM to protect workers
19
and to enable them to go back to work?
20
MR GCILITSHANA: I didn’t get your
21
question clearly.
22
MR BURGER SC: Does that correspond with
23
information given through to you, where you were at head
24
office, as what was being done in order to assist members
25
of NUM during this tumultuous time?

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1
MR GCILITSHANA: That's correct.
2
MR BURGER SC: To your knowledge and on
3
the information you received back from your structures at
4
Lonmin, what did AMCU do to calm emotions and to dissuade
5
members from taking part in an unprotected strike?
6
MR GCILITSHANA: I didn’t hear anything,
7
except on the 15th where we were together in a meeting
8
with the generals.
9
MR BURGER SC: We have heard evidence of
10
what was said between the AMCU president and Mr Barnard
11
Mokwena. That’s not what I’m interested in and we have
12
that evidence. I’m interested to know, according to the
13
reports you got from the grassroots at Lonmin, what was
14
being done at membership level by AMCU to put water on the
15
fire?
16
MR GCILITSHANA: I didn’t hear anything,
17
except that there was rumours that - there are suspicions
18
that AMCU might be involved in the strike.
19
MR BURGER SC: In fact, if you have a
20
look at XX2, that’s the NUM bundle at page 76, which is the
21
second page of that email from Mr Russo-Bello at which we
22
looked yesterday, you’ll see this is Friday the 10th of
23
August, and the second paragraph from the top at page 76 he
24
says, “I would like to say, and I’ve indicated as much to
25
Bernard,” that’s Mr Barnard Mokwena, the Human Rights
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25 community; they talk to each other, especially on important

24 that this whole thing reeks of AMCU involvement

23 MR GCILITSHANA: That is possible, yes.

22 and orchestration and is almost a carbon copy of what

21 Impala and their brothers in the surrounding areas working

20 were earning less after that strike than their brothers at

19 caused the RDOs at Lonmin wage-wise to fall behind – they

18 the Commission to understand that what happened in Impala

17 MR GCILITSHANA: That's correct.

16 MR BURGER SC: In fairness, those are

15 questions I should put to Mr Steve when he gives evidence,

14 and we've asked the evidence leaders to obtain his presence

13 here, so let me leave that subject for him. Can I just

12 list with you – and I'm going over to a new subject - the

11 parallels between the Impala January 12 strike and the

10 Lonmin August 12 strike, what was the same, if one looks at

9 them, and if you can just briefly confirm with me firstly

8 RDOs were involved in both these unprotected strikes?

7 MR GCILITSHANA: That's correct, yes.

6 MR BURGER SC: Both strikes were preceded

5 by demands outside collective bargaining structures?

4 MR GCILITSHANA: That's correct.

3 MR BURGER SC: Both strikes were

2 unprotected?

1 MR GCILITSHANA: That's correct.

23 MR GCILITSHANA: Yes, as the report that

22 MR GCILITSHANA: Yes, as the report that

21 yesterday to XX3 and XX4, those statements issued by Lonmin

20 we got.

19 MR BURGER SC: In both strikes the NUM

18 offices were threatened and targeted?

17 MR GCILITSHANA: That's correct.

16 MR BURGER SC: Both strikes resulted in

15 NUM losing membership and AMCU gaining membership?

14 MR GCILITSHANA: That's correct.

13 MR BURGER SC: Mr Gcilitsana, you'll

12 also agree with me, I believe, that the Impala strike had a

11 major effect on the Lonmin strike?

10 MR GCILITSHANA: Yes, I would agree.

9 MR BURGER SC: Okay. In fact, as you

8 testified, what happened in Impala, raised expectations at

7 the RDOs at Lonmin?

6 MR GCILITSHANA: That's correct.

5 MR BURGER SC: And I’m going to come to

4 that in some more detail, but would it be correct then for

3 the Commission to understand that what happened in Impala

2 caused the RDOs at Lonmin wage-wise to fall behind – they

1 were earning less after that strike than their brothers at

21 Impala and their brothers in the surrounding areas working

20 in platinum mines?

19 MR GCILITSHANA: That is possible, yes.

18 MR BURGER SC: And they live in a closed

17 community; they talk to each other, especially on important

16 things like soccer and money?

15 MR GCILITSHANA: Yes, they do.

14 CHAIRPERSON: When we reach the

13 appropriate point in your cross-examination –

12 MR BURGER SC: This is in fact

11 appropriate, Chair.

10 CHAIRPERSON: The Commission will take

9 the tea adjournment.

8 [COMMISSION ADJOURNS COMMISSION RESUMES]

7 CHAIRPERSON: The Commission resumes.

6 You are still under oath. And you are still cross-

5 examining.

4 MR BURGER SC: Thank you, Chair. Mr

3 Gcilitsana, my next subject is to debate with you the

2 interaction between Lonmin and the RDOs during June, July

1 2012, Mr Da Costa, who spoke to the workers’

0 representatives about their concerns. You were aware of

- Lonmin’s policy of not speaking directly to workers but

- only talk wages through collective bargaining structures.

- You were quite aware of that?

22 MR GCILITSHANA: Yes.

21 MR BURGER SC: We don’t have to go there,

20 but it’s in that context that you referred the Commission

19 yesterday to XX3 and XX4, those statements issued by Lonmin

18 Did you have an opportunity of reading paragraphs 3 and 4

17 in particular of the Da Costa first statement?

16 MR GCILITSHANA: Yes.

15 MR BURGER SC: Chair, that statement

14 appears in a bundle containing all the witness statements

13 filed by Lonmin and the first one by Mr Da Costa appears

12 from pages 66 to 89, and I’ve asked Ms Pillay to just for

11 the convenience of the witness, give him a copy of that, so

10 that if I deal with it, we may follow it in that statement.

9 MS BARNES: If I might just mention, it

8 is exhibit OO17.

7 MR BURGER SC: I am indebted to my

6 learned friend.

5 MR GCILITSHANA: Yes, I’ve got the

4 statement.

3 MR BURGER SC: Yes, thank you. Mr
Gcilitshana, I am aware that you were not personally involved in those negotiations, so I can’t ask you whether what Mr Da Costa says is true or not, but what I want to ask you is, having read paragraphs 3 and 4, is there anything in there with which you differ, which does not accord with the reports you received during that period on this issue?

MR GCILITSHANA: Yes, that’s correct.

MR BURGER SC: Do you want to say you agree with what he says, to the extent it’s within your knowledge? Or do you not agree.

MR GCILITSHANA: That will be a bit difficult, because it’s a very long statement that you are referring to, but as I browse through, I understand that he was talking to the issues of collective bargaining and its procedures, that’s what I fully agree with what he explained.

MR BURGER SC: I see. I am going to put to you, after I’ve referred to some of the paragraphs, that Mr Da Costa had no option, he had to talk to these workers, but I can’t put that to you without referring you to what he has done, so I am going to, with the leave of the Chairman, refer you briefly to the history of what he explains, and then pose that question to you. Mr Gcilitshana, do you agree with me that Mr Da Costa had to talk to these people; there had to be a debate between the two of them? Before I pose that question, let me deal with the statement with you. On page 67, in paragraph 3.1, he will tell the Commission that the first time he heard about the demand by the RDOs for a basic wage increase to 12 500 was when a handwritten poster was seen by him in one of the shafts at Marikana. Now you won’t know that, but I am just putting you into his state of mind. May I just, with your assistance, understand that demand. If you go to XX2, which is the NUM bundle, to page 5, and this is with reference to Impala. I just want to get a feel for what R12 500 basic means. Page 5 we have the management brief telling us the salary adjustment for rock drill operators in April 2012 at Impala and we see the rate current was 4 935, and that was increased to 6 540.

MR GCILITSHANA: Yes, I could see.

MR BURGER SC: That gave them a total guaranteed pay of just under R10 000 per month, 9 991.

MR GCILITSHANA: Yes, I could see.

MR BURGER SC: Now I’ve made some calculations, and I’ll explain it to the Commission in due course, assume that I’ve added up correctly. If you take the R10 000 approximately per month, and you assume that workers work on average 22 days per month, that gives them about R450 per month.

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1 Mofokeng that there were different ways of raising their
c1 concerns. By way of example, I indicated to them that the
c2 concerns they had, which they had not yet discussed with
c3 me, could have been raised with their line management and
c4 their respective unions. Makwebine and Mofokeng responded
c5 by stating that because I am the ultimate manager at Karee,
c6 I was the most appropriate person to deal with their
c7 concerns.” You remember he then realises that they want to
c8 talk wages. He says to them, “You can't talk wages away
c9 from your unions,” and they take an important stance, which
c10 now typifies their talking henceforth. They says, “We
c11 don’t want the unions involved.” That he tells us at page
c12 71, if I may read with you paragraph 3.19. “Makwebine and
13 Mofokeng went on to express the view that trade union
14 involvement would only be appropriate if the issue raised
15 was one which affected the entire work force. They stated
16 that the issue they came to see me about affected only RDOs
17 at Karee and for that reason the unions should not be
18 involved.” The next important date is the 2nd of July. In
19 the interim Mr Da Costa has referred the request to Mr
20 Munro, he tells us that at page 73. Mr Munro is the
21 executive vice-president for mining of Lonmin, and he
c22 called back these representatives to give them another
23 opportunity to talk to him. He says in paragraph 3.26, “On
24 2nd July 2012 and at my request, Makwebine and Mofokeng
25 returned to my office. Three additional Lonmin RDOs came
to the meeting with Makwebine and Mofokeng. Also present
3 was Mr Nkisi,” he is a human resources manager at Karee,
c4 and he then identified the other people who attended. They
5 were both members of AMCU at the time, and at 3.27, perhaps
c6 I should allow the interpreter to interpret this portion,
c7 before reading that to you. Page 74, at 3.27, he told us
8 of the discussion he had with the five workers, and he said
9 he conveyed to them that in his view their demands were too
10 high and it wouldn’t be acceded to. But at the foot of
11 that page 74, he advised them that despite his views, he’ll
give them a final answer from management as soon as that is
12 available. An important development for purposes of NUM we
13 find at page 76, paragraph 3.32, where Mr Da Costa says,
14 “During the period 21st June to the 23rd of July 2012, I did
15 not make any direct contact with either NUM or AMCU
16 representatives. Nkisi did however during this period,
17 advise Jerry Ndematse, the branch secretary of NUM, and
18 Madiba Tswanile, the branch secretary of AMCU, that I had
19 been approached by the RDOs for more money. Is that
20 correct as far as NUM is concerned?
22 Chair that he did meet with him.
23 MR BURGER SC: Then in paragraph 34.35 Mr
24 Da Costa explains what he is doing, why he communicates

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1 directly with the RDOs and he gives five reasons. Now
2 you've read the five reasons, I want to ask you two
3 question on that. Have you read the five reasons again?
4 MR GCILITSHANA: Yes, correct.
5 MR BURGER SC: Do you accept that Mr Da
6 Costa honestly held those views as the reasons why he spoke
7 to the RDOs?
8 MR GCILITSHANA: That was upon his
9 observation at that point in time.
10 MR BURGER SC: And can you fault any of
11 the reasons he advances to the Commission for talking to
12 the employees?
13 MR GCILITSHANA: Can I get the question
14 again?
15 MR BURGER SC: Do you disagree with any
16 of those reasons?
17 MR GCILITSHANA: Well, my take on the
18 reasons that he’s making here, is that the issue of not
19 involving unions, that is the area of concern to me,
20 because all the collective issues are done with the unions
21 - recognised unions. And then with the understanding that
22 issues that are involving – substantive issues are
23 involving salaries are normally discussed at a central
24 level. RDOs are not only in Karee – any decision that
25 Karee will take would also have an implication to the

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1 entire Lonmin, because RDOs are based in all the operation.
2 MR BURGER SC: Did Mr Ndimase convey
3 those views to Lonmin when he was told that there were
4 discussions with the RDOs?
5 MR GCILITSHANA: As I got information,
6 Ndimase - from Ndimase is that one, when he was approached,
7 already the process was there and the matter also was
8 already taken up to the senior management, therefore it was
9 very difficult for him to say no or yes, because already
10 the process was ongoing,
11 MR BURGER SC: Does that mean that
12 because the process was already ongoing, no concerns were
13 raised by NUM?
14 MR GCILITSHANA: As I recall from the
15 information is that when Ndimase raised the matter that the
16 company have already started the matter, involving the
17 union at the middle of the process would be more dangerous,
18 because already expectations have been created that the
19 company have started negotiations.
20 MR BURGER SC: Mr Gcilithsha, do you
21 accept that the workers didn’t want to work through NUM at
22 that time at Karee, and I talk in particular of the RDOs?
23 MR GCILITSHANA: Yes.
24 MR BURGER SC: In fact, the NUM
25 structures were all but non-existent at the Karee mine at
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1. that point in time?
2. MR GCILITSHANA: There was a branch in Karee which was launched on the 7th of February.
3. MR BURGER SC: But it wasn't a functional branch, Mr Gcilitsana. NUM had been unseated by AMCU at Karee to a large extent.
4. MR GCILITSHANA: As much as AMCU was in majority, but NUM continued to have members and they continued to have meetings – mass meetings with their members.
5. MR BURGER SC: Mr Da Costa will tell the Commission that NUM, as a trade union, was conspicuous in their absence during this period of discussion with the RDOs. Do you differ from that?
6. MR GCILITSHANA: That could be his opinion, because, as I indicated, that there was a structure that was functioning, as far as I know.
7. CHAIRPERSON: I thought they'd been forcibly evicted from their offices at Karee mine in May already. In paragraph 20 of your statement, page 5 you say, "In May 2012 the keys to the NUM offices at Karee mine were forcibly confiscated from the possession of one of NUM’s branch leaders by a large group of workers." Now, if that's correct, it would mean, I take it, that NUM no longer had a functioning office at Karee mine, because they'd been effectively evicted from their office by the workers and they'd presumably done nothing to get another set of keys. Is that correct?
8. MR GCILITSHANA: If maybe I can explain to the Commissioner, this incident occurred at Four Belt, which is one of the shafts. It was not the branch committee offices, it was one of the shafts as one understands.
9. CHAIRPERSON: Well, the way you put it your statement is the keys to the NUM offices at Karee mine were forcibly confiscated. The keys to the offices, is that not a correct statement, does that require qualification or amendment?
10. MR GCILITSHANA: Yes, that's why I'm qualifying, yes, Chairperson. And the office, even the one at Four Belt, the matter was taken up and the office was operational later.
11. MR BURGER SC: Mr Gcilitsana, the third important date is the next meeting between Mr De Costa and the RDOs, page 77, paragraph 4.1. It says, "On the 23rd of July 2012, the five RDO representatives with whom I had met on the 2nd of July returned to my office. EXCO had not yet, by this date, concluded its deliberations on the matter. The mood at the meeting from the RDO representatives was more aggressive." I advised them that Lonmin would not agree in an increase in the basic salaries of RDOs to R12 500. During the course of our discussion, I could sense the potential for strike action. I then advised the RDO representatives that EXCO would consider paying an RDO allowance and that the amount would be clarified at a later stage. The representatives went out to give feedback to the crowd of approximately 500 people who had marched with them to my office. The RDO representatives had asked me to address the crowd. Lonmin security personnel on the scene were anxious about me doing so and even though I initially refused to address the crowd directly, I then decided to address the crowd.
12. He then ignores the advice of security and he does go out and he addressed the crowd, and the reaction, he explains to us in 4.3: “After I spoke,” he says, “various questions were posed to me from individuals within the crowd. I was asked, what do we do tomorrow? I replied the RDOs should return to work. I was then asked: how do we return to work, when you've not given us what we want? I stated that if the RDOs did not return to work, this amount to an illegal strike.” The decision by EXCO is explained to us at page 79 and at paragraph 4.6 Mr Da Costa says, “During my conversation with Munroe at senior management I informed him that I told the RDOs of an RDO allowance. Munroe was satisfied with this.”

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1. Now, can I just put this to you, I’m told and this was evidence before the Commission, that an RDO allowance is a market allowance, it’s not negotiated, but it’s an allowance given in the prerogative of management, is that correct?
2. MR GCILITSHANA: If I can explain the norm in Lonmin? Normally, we would have task teams that work in different issues that may be have been outstanding, including bonuses, because I believe bonuses are part – and allowances, when there is a need to review, there will be a task team that normally would be appointed, composed of trade union and management, that would look on those allowances and see how effective can be implemented and communicated.
3. MR BURGER SC: Mr Gcilitsana, this allowance was decided upon unilaterally by Lonmin.
4. MR GCILITSHANA: That’s correct.
5. MR BURGER SC: This was not a function of a negotiation between employees and employer?
6. MR GCILITSHANA: Yes, there was no negotiations, but, as I indicated, that the norm – normally, when even the bonuses are increased, there will be a task team that will work on there, how that process is going to be undertaken.
7. MR BURGER SC: In fact, we know this
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MR GCILITSHANA:  Yes, we heard that.

MR BURGER SC:  At page 79 of Mr Da Costa's statement in 4.7 he says, "Prior to EXCO signing the decision, I made arrangements to meet with the trade unions at Lonmin. On the 28th of July and after receiving approval by EXCO, I met with representatives of UASA and Solidarity. Did you know that those meetings took place?"

MR GCILITSHANA:  Mr Elliot Moloi's position at NUM at the time?

MR BURGER SC:  What was Mr Elliot Moloi's position at NUM at the time?

MR GCILITSHANA:  He was the deputy regional chairperson of the NUM, the position that he still holds.

MR BURGER SC:  And may we accept that Mr Moloi was not adverse to the idea, but pointed out Mr Da Costa that Lonmin was going outside the wage negotiation protocol?

MR GCILITSHANA:  Yes, I could say.

MR BURGER SC:  I've suggested earlier to you that at this point in time and before the allowance was decided upon, the RDOs at Lonmin was lagging behind in wages, compared to their colleagues at the surrounding platinum mines, and you accept that, I think?

MR GCILITSHANA:  I agree.

MR BURGER SC:  In fact market research was done, as we can see from the NUM bundle, XX2, at page 69. The allowances were not guesses; the allowances followed as result of what is described there as a comprehensive marketing analysis on singlehanded RDO market allowances.

MR GCILITSHANA:  Yes, I could see.

MR BURGER SC:  And in that communication, which may I ask you, did this come to your attention at the time?

MR GCILITSHANA:  As I indicated even yesterday that I don't recall receiving the communication, but I did get information from our structures, but it might happen, I indicated that at times the communication will be sent directly to the general secretary.

MR BURGER SC:  Well, may we assume on probability that the NUM structures at Lonmin received this communication?

MR GCILITSHANA:  Yes, because they are in the system, in the email system of the company.

MR BURGER SC:  And do you accept the correctness of what Lonmin says in those two middle paragraphs on page 69, which I will now read to you. "The company has a two-year wage agreement. According to this agreement the company will pay wage increases ranging from 8% to 10% in October 2012. Wage negotiations will therefore only take place in 2013."

MR GCILITSHANA:  Yes, I agree.

MR BURGER SC:  The second one, "The implementation of the abovementioned allowances does not constitute the reopening of the wage negotiations. Any demands for any part of the business will therefore not be tolerated."

MR GCILITSHANA:  I believe that anything that have to deal with money is a substantive matter that could be dealt with, as I indicated initially, that at the bargaining forum at a central level.

MR BURGER SC:  Mr Gcilitshana, these workers didn't want that. They didn't want to negotiate through the unions. Is that what you, make that suggestion?

MR GCILITSHANA:  I don't dispute that, but what I'm telling you, I'm telling the process normally how -

MR BURGER SC:  We understand the process. I'm dealing with the realities - at this point in time, and in order to give clarity to the people involved, if you page over at page 70, Lonmin then poses a number of questions which may be asked, and they give the answers for the benefit of the employees. Question 1, "Why is the allowance being paid?" The answer, "Following a market analysis on RDO allowances, the need to pay the allowance was determined in order to attract and retain singlehanded RDOs, given market development." You accept the truth of that statement and that answer?

MR GCILITSHANA:  Yes, I agree.

MR BURGER SC:  RDOs being a scarce skill, you told the Commission.

MR GCILITSHANA:  That's correct.

MR BURGER SC:  If you don't pay them market related rates, they'll go and work for the competitor who does that.

MR GCILITSHANA:  That's correct.

MR BURGER SC:  I also put to you if Mr Da Costa had not spoken to these people, there would have been an unprotected strike.

MR GCILITSHANA:  I can't say yes or no, but there was a threat.

MR BURGER SC:  On probabilities.
MR BURGER SC: Let’s be realistic. On 2 probability there would have been an unprotected strike if 3 he refused to speak to them.

MR GCILITSHANA: Yes, that’s why I’m 4 saying that it will be – ja, it’s a threat.

MR BURGER SC: An unprotected strike 5 would probably have been accompanied by violence and 6 intimidation.

MR GCILITSHANA: That’s correct.

MR BURGER SC: So it’s quite wrong if 9 there is ever a suggestion that because Mr Da Costa spoke 10 to the workers, there followed intimidation and violence.

MR GCILITSHANA: That’s correct.

MR BURGER SC: It will be difficult to 13 say because I wouldn’t know whether those workers would 14 really go to strike or not. It will be a bit difficult.

As you say that will be possible that they will go to the 17 strike and there will be this violence, they will, that is 18 possible.

MR BURGER SC: I’ve promised to ask you 20 that question. I’m going to ask it now. We’ve done and 21 looked at all the evidence and this is the simple question, 22 simple proposition. Mr Da Costa really had no option; he 23 had to talk to the workers.

MR GCILITSHANA: Yes.

MR BURGER SC: I’m going to now deal with 30 your statement, paragraph 38 and following. I just want to 31 understand some of the detailed facts there. You’ll 32 remember your section here, which we find at page 11 of 33 XX1, deals with the unprotected strike and the role of NUM, 34 and in paragraph 39 you tell us about Friday, the 10th of 35 August 2012, and in the second sentence you say, “NUM has 36 since then consistently maintained its opposition to that 37 strike.” May I confirm with you, that was also the 38 attitude adopted by Lonmin?

MR GCILITSHANA: That’s correct.

MR BURGER SC: And Lonmin and NUM adopted 41 that attitude because the strike was illegal.

MR GCILITSHANA: That’s correct.

MR BURGER SC: As from the 10th of August 44 it was in contempt of an order by the Labour Court.

MR GCILITSHANA: That’s correct.

MR BURGER SC: It was soon accompanied by 48 violence and criminal activity.

MR GCILITSHANA: Yes, as I, that was 49 reported, yes.

MR BURGER SC: The striking workers were 52 aggressive and were carrying dangerous weapons.

MR GCILITSHANA: That’s correct.

MR BURGER SC: Both NUM and Lonmin had 55 adopted the attitude that one does not negotiate with 56 workers in those circumstances.

MR GCILITSHANA: That’s correct.

MR BURGER SC: And would it be correct to 59 suggest to you that after that march on the Friday, the 10th 60 of August, there was an endeavour by the striking workers 61 to prevent operations at the mine proceeding on Saturday, 62 the 11th of August?

MR GCILITSHANA: Yes, that’s what had 65 been reported, yes.

MR BURGER SC: NUM in fact went out of 68 its way to assist workers who wanted to go to work, to be 69 able to do so.

MR GCILITSHANA: Yes, that’s correct.

MR BURGER SC: It is that conflict which 72 led to the march on the NUM offices on the Saturday.

MR GCILITSHANA: Yes, I suspect that.

MR BURGER SC: And that march was already 75 not a peaceful one.

MR GCILITSHANA: That’s correct.

MR BURGER SC: That’s the version that 82 you’ve given us on page 12, for example in paragraph 41 and 83 42. Mr Gcilitshana, do you think it’s coincidence that it 84 would typically be NUM members who would be assaulted 85 during this period? Is that just by chance, or is there a 88
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MR BURGER SC: It may be then of limited assistance, let me ask you and see whether you can help us. If you have a look at exhibit L, which is the police overview of events, the historical makeup, if you have a look at 194, that's slide 194 –

MR GCILITSHANA: Yes, I've got it.

MR BURGER SC: You've got it. That's an aerial view of what we've referred to as scene 1 and that is where the first shooting took place, near that kraal where we have the right arrow.

MR GCILITSHANA: Yes, I could see.

MR BURGER SC: Where is the informal settlement on this photograph?

MR GCILITSHANA: I think that will be on the right-hand side of the photo.

MR BURGER SC: Would you understand why the workers, if we believe for the moment that they followed the red arrow, why they were going in the direction of the red arrow if they were trying to go to the informal settlement?

MR GCILITSHANA: I won't know the reason, but the way I look at the arrow, it was going opposite.

MR BURGER SC: That's what's puzzling me, but you can't help us on that. In your statement you referred to a time-bomb. That's what's puzzling me.

MR GCILITSHANA: When I spoke of time bomb, I won't know the reason, I won't know the reason.

MR BURGER SC: That's what's puzzling me, but you can't help us on that. In your statement you referred to a time-bomb. That's what's puzzling me.

MR GCILITSHANA: I think that will be on the right-hand side of the photo.

MR BURGER SC: Would you understand why the workers, if we believe for the moment that they followed the red arrow, why they were going in the direction of the red arrow if they were trying to go to the informal settlement?

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MR GCILITSHANA: I have no details of
MR BURGER SC: Would that happen on the
MR GCILITSHANA: Yes, as I recall it, ja.
MR BURGER SC: 16th of August, as you recollect it?
MR GCILITSHANA: No, we didn’t have time
MR BURGER SC: Would that happen on the
MR GCILITSHANA: Yes, as I recall it, ja.
MR BURGER SC: And what would happen on
MR GCILITSHANA: I can’t recall properly

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were not allowed to take a severance package, those RDOs
remained taking because they were told that their job is
very much – the role that they’re playing, as RDOs, is very
much important. That remained at the back of their minds
that their skill also is essential. Therefore, if it’s
essential, they can be paid better.

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MR BURGER SC: Then just finally on your
evidence-in-chief, or to my learned friend, the evidence
leader really, the negotiations in September last year,
after the incident now, you’ve told us that that was
outside normal structures, is it correct that the CCMA was
involved?

MR GCILITSHANA: That’s correct.

MR BURGER SC: And all the parties there
had agreed that they would talk to each other?

MR GCILITSHANA: That’s correct.

MR BURGER SC: It was clearly as a result
of 44 people having lost their lives.

MR GCILITSHANA: That’s correct.

MR BURGER SC: There was a very different
atmosphere in September, if one compares that to the
atmosphere, for example, on the 15th of August?

MR GCILITSHANA: Yes.

MR BURGER SC: Then finally, If I may
just give you a few very brief comments by Mr Da Costa on
your statement, Mr Gcilitshana, if you go back to XX1,
paragraph 14, this is the Karee problem in the middle of
2011 and in 14 you’ve said, “In response, Lonmin dismissed
approximately 11 000 of the striking employees. Pursuant
to negotiations between NUM and Lonmin management, the
majority of these employees were reemployed.” Mr Da Costa
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1. the LPD offices on the morning of the 16th you went to
   Middlekraal, is that correct?
2. MR GCILITSHANA: Yes.
3. MS BARNES: Could you just explain where
   at Middlekraal you were?
4. MR GCILITSHANA: We requested space at
   the Solidarity offices, that's where we were.
5. MS BARNES: So you spent the entire day
   in the Solidarity offices at Middlekraal, is that correct?
6. MR GCILITSHANA: It will be in and out.
7. As I indicated, that we do our own debriefing and comrades
   went to the shafts where they are operating and came back
   for feedback.
8. MS BARNES: And you referred at some
   stage to sitting in your vehicle and hearing news on the
   radio, when did that take place?
9. MR GCILITSHANA: As you know that on the
   SA Radio there will be hourly news. At that time, because
   of knowing that this strike is being broadcasted, you will
   go and listen exactly what is happening at that point in
   time.
10. MS BARNES: The question is when on the
    16th were you sitting in your vehicle? Was at the end of
    the day on the 16th, or was it during the day?
11. MR GCILITSHANA: It was during the day.
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1. MS BARNES: If the employees had been re-instanted, as opposed to be re-employed, you would’ve taken the issue out as NUM with Lonmin management and would’ve negotiated for people to remain NUM members and for their stop orders to remain. Is that correct?
2. MR GCILITSHANA: That is correct.
3. MS BARNES: Chair, I see it’s almost 1 o’clock. I’m about to go into a fairly lengthy topic.
4. Perhaps this could be a convenient time?
5. CHAIRPERSON: The commission will adjourn until 2 o’clock.

[COMMISSION ADJOURNS COMMISSION RESUMES]

[14:10] CHAIRPERSON: I’m sorry, we were involved in a meeting which took longer than we thought. I apologise that we’re resuming late. You’re still under oath, Sir, and Ms Barnes, you were moving on to a new point.

1. MS BARNES: Thank you, Chairperson. Sir, is it correct that NUM as a trade union is committed to collective bargaining?
2. MR GCILITSHANA: That’s correct.
3. MS BARNES: And critical for collective bargaining is negotiations, negotiation in good faith between the parties. Isn’t that correct?
4. MR GCILITSHANA: That’s correct.

1. MR GCILITSHANA: It is not automatically, as I indicated that you engage with the company. If the company agrees, it’s yes, they will be, but if the company does not agree to re-instate the membership, it does not agree.
2. CHAIRPERSON: It sounds to me as if the position is this. If the company agrees to re-instate them, then in effect the old contract stands, the stop order they signed in favour of the trade union stands, everything carries on as before. If you can’t persuade you union - can’t persuade the company to re-instate them, and the company re-employs them, then you’re back to the starting point and each employee, once he rejoins, has to sign a new stop order in favour of the trade union of his choice, if he’s a member of a trade union. Is that correct?
3. MR GCILITSHANA: The company will agree on re-instatement, then the issue of membership is another line of negotiation, whether they would be re-instated with their membership, or not. That is another line that also union have to pursue.

1. MS BARNES: And you gave evidence yesterday about what happened at Impala Platinum, and we’ll get to that in a little more detail in due course, but at this stage it isn’t correct to say that what management at Impala Platinum did is they made a unilateral change to a negotiated agreement? Is that correct?
2. MR GCILITSHANA: That’s correct.
3. MS BARNES: And you indicated that as NUM with Lonmin management and would’ve negotiated for people to remain NUM members and for their stop orders to remain. Is that correct?
4. MR GCILITSHANA: That is correct.
5. MS BARNES: Chair, I see it’s almost 1 o’clock. I’m about to go into a fairly lengthy topic.
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3. MS BARNES: And critical for collective bargaining is negotiations, negotiation in good faith between the parties. Isn’t that correct?
4. MR GCILITSHANA: That’s correct.

1. MS BARNES: And NUM is committed to negotiating in good faith in the workplace, correct?
2. MR GCILITSHANA: That’s correct.
3. MS BARNES: Now NUM negotiates for better wages and better terms and conditions for its members. Is that correct?
4. MR GCILITSHANA: That’s correct.
5. MS BARNES: In addition to that, if there were to be a conflict or a dispute in the workplace, NUM would use negotiation in an effort to resolve such a conflict or dispute. Is that correct?
6. MR GCILITSHANA: That’s correct.
7. MS BARNES: And where negotiation have resulted in an agreement between two parties, it is not correct for one party to change that agreement unilaterally. Is that correct?
8. MR GCILITSHANA: That’s how it works, yes.
9. MS BARNES: In fact, in the collective bargaining environment in South Africa it is highly unusual for a party that has negotiated an agreement with another party, to make a change to such an agreement unilaterally. Isn’t that correct?
10. MR GCILITSHANA: That’s correct.
11. MS BARNES: And you indicated that as NUM with Lonmin management and would’ve negotiated for people to remain NUM members and for their stop orders to remain. Is that correct?
12. MR GCILITSHANA: That is correct.
13. MS BARNES: Yes, I said we were outraged. Is that correct?
14. MS BARNES: Of course not. It’s about the unilateral change that I was referring to, correct?
15. MS BARNES: If there is a difficulty with the unilateral change that I was referring to, correct?
16. MR GCILITSHANA: That’s correct.
17. MS BARNES: If you were very unhappy about that. In fact, in response to a question from the chairperson you said that NUM was in fact outraged. Is that correct?
18. MR GCILITSHANA: Yes, I said we were unhappy about the processes, but not about workers getting money.
19. MS BARNES: Of course not. It’s about the unilateral change that I was referring to, correct?
20. MR GCILITSHANA: That’s correct.
21. MS BARNES: If there is a difficulty with an agreement and it needs to be amended, then what needs to happen is that both parties need to sit down and renegotiate the agreement and reach agreement on the changes. Is that correct?
22. MR GCILITSHANA: In the collective agreement there will be always a dispute resolution that is part of the agreement, therefore any party that has got a problem, they will go to, through the process of the
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<th>Page 3934</th>
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<td>1 dispute resolution.</td>
<td>1 the miners. Is that right?</td>
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<td>2 MS BARNES: Yes, the agreement will</td>
<td>2 MR GCILITSHANA: That's correct.</td>
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<td>3 generally indicate how difficulties are to be dealt with,</td>
<td>3 MS BARNES: And you testified that during</td>
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<td>4 and we'll get to this agreement a little later, but isn't</td>
<td>4 the strike there was a widespread and extreme anti-NUM</td>
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<td>5 it correct that management at Impala Platinum ought to have</td>
<td>5 sentiment. Is that correct?</td>
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<td>6 followed the procedures laid down in the agreement in the</td>
<td>6 MR GCILITSHANA: That's correct.</td>
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<td>7 event that they sought to make a change?</td>
<td>7 MS BARNES: So much so that the NUM</td>
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<td>8 MR GCILITSHANA: That's correct.</td>
<td>8 offices had to be closed and the leadership had to be</td>
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<td>9 MS BARNES: And so we're going to, as I</td>
<td>9 removed from the premises. Is that correct?</td>
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<td>10 said, come to what happened at Implats in some detail a</td>
<td>10 MR GCILITSHANA: Yes.</td>
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<td>11 little later, but you indicated that - well, you told us</td>
<td>11 MS BARNES: I'm going to put it to you</td>
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<td>12 yesterday what had happened there, in general terms, in</td>
<td>12 that there was in fact an additional trigger for the</td>
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<td>13 late 2011 and 2012. Is that correct?</td>
<td>13 Implats strike and that was this, it was that Impala</td>
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<td>14 MR GCILITSHANA: Correct.</td>
<td>14 management during the salary negotiations at Implats,</td>
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<td>15 MS BARNES: You indicated that you got</td>
<td>15 proposed that RDOs at Implats be given a salary adjustment,</td>
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<td>16 this information from the chief negotiator for NUM at</td>
<td>16 and NUM rejected that proposal. Are you aware of that?</td>
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<td>17 Implats. Is that correct? Whom you know.</td>
<td>17 MR GCILITSHANA: I'm not fully aware of</td>
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<td>18 MR GCILITSHANA: Yes.</td>
<td>18 that. I heard about that, after the strike, that there was</td>
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<td>19 MS BARNES: So you would have got this</td>
<td>19 that proposal.</td>
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<td>20 information from that gentleman while the events at Impala</td>
<td>20 MR GCILITSHANA: I won't agree or</td>
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<td>21 were unfolding. Would that be correct?</td>
<td>21 disagree with you.</td>
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<td>22 MR GCILITSHANA: Yes.</td>
<td>22 MS BARNES: Well, perhaps before I ask</td>
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<td>23 MS BARNES: Now you testified yesterday</td>
<td>23 the next question, I can introduce as an exhibit an</td>
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<td>24 that the trigger for the Implats strike was management's</td>
<td>24 article, it's an article by a Mr Gavin Hartford -</td>
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<td>25 decision, unilateral decision to give an 18% increase to</td>
<td>25 CHAIRPERSON: I take it you've got copies</td>
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<td>26 decision, unilateral decision to give an 18% increase to</td>
<td>27 for us?</td>
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<td>27</td>
<td>28 Article 11. Proposed that RDOs at Implats be given a salary adjustment</td>
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<td>28 CHAIRPERSON: The reason I ask, that if</td>
<td>29 CHAIRPERSON: My attorney is going to take</td>
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<td>29</td>
<td>30 care of that. Perhaps Ms Pillay can give us the exhibit</td>
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<td>30 that there was in fact an additional trigger for the</td>
<td>31 number.</td>
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<td>31 MS BARNES: Chair, I'm afraid I'm not</td>
<td>32 CHAIRPERSON: XX7. Where does this</td>
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<td>32 entirely sure where this article was published. We are</td>
<td>33 article come from?</td>
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<td>33 planning to call Mr Gavin Hartford as a witness in phase 2,</td>
<td>34 CHAIRPERSON: - object to that. Article</td>
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<td>34 so I'm sure he will tell us. He will then be able to</td>
<td>35 by Gavin Hartford. You get useful experience as article</td>
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<td>35 confirm the contents of this article.</td>
<td>36 clerks. Exhibit -</td>
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<td>36</td>
<td>37 MS BARNES: Yes, Chair, in some detail a</td>
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<td>37 CHAIRPERSON: The reason I ask, that if</td>
<td>38 MS BARNES: My attorney is going to take</td>
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<td>41 Chair, it would be XX7.</td>
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<td>42 CHAIRPERSON: XX7. Where does this</td>
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<td>40 CHAIRPERSON: Okay, is that the Implats</td>
<td>43 article come from?</td>
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<td>41</td>
<td>44 CHAIRPERSON: The reason I ask, that if</td>
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<td>42 trigger strike?</td>
<td>45 MS BARNES: Chair, I'm afraid I'm not</td>
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<td>43 MS BARNES: That's correct. and if the</td>
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<td>44 witness could have a look at the second paragraph, perhaps</td>
<td>47 by Gavin Hartford. You get useful experience as article</td>
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<td>45 it will be best if I might, with the Commission's leave,</td>
<td>48 clerks. Exhibit -</td>
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<td>46 read that paragraph into the record and I can then ask the</td>
<td>49 MS BARNES: Yes, Chair, in some detail a</td>
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<td>47 witness to comment on it. So this is now Mr Hartford,</td>
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<td>48 you'll see at the end of the first paragraph he poses the</td>
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<td>49 question, how did the strike come about, and he's referring</td>
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<td>50 there to the Lonmin strike, and one of the causal effects</td>
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1. according to Mr Hartford is Implats triggers strike, and he then goes on to paragraph 2 to explain what happened, and he says, “Bargaining wages at Implats in 2011 was protracted, commencing in late April and finally being concluded in October last year when a two-year collective agreement was signed.” Perhaps I can let the interpreter interpret up to there. “During the 2011 negotiations Implats management had recommended additional adjustments to RDOs, but this was rejects by NUM negotiators who preferred uniform increases across all employee bands, irrespective of job function. After the conclusion of the wage negotiation, within a month of signing the collective agreement the management decided, after a consultation with NUM, to unilateral adjust miners’ - minus the first line supervision of mining work teams allocated to every face panel and not typically NUM members within the bargaining unit – wages by a total of 18% to stem a high labour turnover of miners, in particular to competitive companies. This adjustment was implemented in January 2012, mid-way into the currency of the first year of the newly signed collective agreement. This unilateral adjustment to miners’ pay packets, after consultation with the NUM during the currency of a collective agreement, was a highly unusual and ill-considered act that sent a very clear message to every mining work team that the company, notwithstanding the settlement of the wage agreement, had additional cash to spare for certain categories of workers within the bargaining unit.”

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4. Then I will read just portions of the next paragraph. “It is not at all unlikely that the RDOs would have heard that the NUM negotiators were resistant to any differentiated increase that benefited RDOs directly, during wage negotiations.” Mr Hartford then goes on to talk - and I don’t need to read it all out - about the fact that the NUM chair people of both the south and the north branch happen to be miners, and you gave evidence about that yesterday, so we’re all in agreement as to that fact. So I’m going to move on to further down that paragraph. “There is no doubt that they,” they being a reference to the RDOs, “would have left the mine for the Christmas shutdown, deeply aggrieved by a perception of unfair treatment they had suffered at the hands of the management and the NUM leadership. On the hills of Lusikisiki and Flagstaff they planned to take the law into their own hands when they return to work in January. Not unsurprisingly, the strike committee elected by the workers at the commencement of the industrial action was composed entirely of amaPondo, with the exception of one woman, and equally unsurprisingly management reported that commencing at 14 Shaft and all the shafts thereafter, the industrial action

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1. of the 12th of January had only two demands - R 9 000 net pay, which was equivalent to the miners’ net pay after the 18% adjustment, and the second demand, no negotiations with NUM.” Now you told us yesterday in your evidence, Sir, about the first trigger, that was management’s action at Impala, but you didn’t tell us about the second trigger, and that was NUM’s attitude in the negotiations. Is that correct?

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1. NUM were consulted to - consulted about and agreed to the increase in the miners' wages.

3. CHAIRPERSON: That was the point that I wanted covered, because it seemed to me that that’s the foundation of the cross-examination to follow, and if he doesn’t accept that, maybe because he doesn’t know, then the cross-examination following thereon would have to be reserved for another witness who can deal with the point.

9. MS BARNES: The specific question would be, the reference in this article to the fact that there was consultations with NUM in relation to the adjustment that was given to miners, are you aware of that?

13. MR GCILITSHANA: No, there’s a difference between consultation and negotiation. I’m not aware, I won’t agree or disagree with you whether NUM was consulted.

16. MS BARNES: So you don’t dispute that NUM was consulted?

18. MR GCILITSHANA: As I indicated, that I won’t agree or disagree with you.

20. CHAIRPERSON: Ms Barnes, I don’t have to tell you as a trained lawyer, that there’s a difference between after consultation and in consultation, and what he said here is after consultation.

24. MS BARNES: But the second specific question that I need to ask you, Sir, is whether you were
aware of the fact that NUM rejected the proposal by Impala.

Platinum management to give RDOs a salary adjustment.

MR TIP SC: I object to that, Mr Chair,
even this article, which at this stage of course is
entirely hearsay, does not say that NUM rejected a salary
adjustment, it says that NUM preferred salary increase to
be across the board and that it, in that context, didn’t
agree to an additional payment to RDOs. It doesn’t say
that it rejected an adjustment of RDO salaries.

CHAIRPERSON: What does it say is that
NUM negotiators were resistant to a differentiated increase
to benefit RDOs, and then the further point is made by
way of innuendo almost, that the NUM negotiators, were
almost, to a person, the most skilled employees and the
chairperson to both the North and South branches were both
miners who would benefit from the additional increase.

Now, that’s the thrust of it, so - yes, no I understand,
you’re referring to the passage in the second paragraph,
what I read to you was the passage in the fourth, which
does it a little bit further, but perhaps Ms Barnes
can take a step and then two steps forward, and then
reformulate her question in a way that will pass muster
even with you.

MS BARNES: Perhaps you can tell us, Sir,
whether you were aware of the fact that Impala Platinum

management proposed during the salary negotiations at
Impala that RDOs speak of an adjustment.

MR GCILITSHANA: No.

MS BARNES: I take it then that you
wouldn’t have been aware of NUM’s attitude to such a
proposal?

MR GCILITSHANA: Normally, the branch
would sit down and check whether that will be the right
ingo, they want to do or not the right thing to do, then they will
take decision, on the probability of balances. Then they
will take a view on the matter.

CHAIRPERSON: Would you mind if I
intervened at this stage and asked a question on this
point? You told us that you were aware of the fact that
the workers were angry with NUM at Impala. They felt that
NUM had let them down. They felt, according to your
evidence, that NUM had been a party to misleading them,
telling them that the company couldn’t afford the increase
they asked for, whereas in fact the company could, because
a short time after the agreement, the increase was given to
the miners. You remember the evidence you gave? So you
were aware of the fact that the workers at Impala were
angry with NUM?

MR GCILITSHANA: That’s correct.

CHAIRPERSON: So that information you
must have got from the NUM people at Impala?

MR GCILITSHANA: That’s correct.

MS BARNES: Now, what Ms Barnes is
suggesting to you is that there was another reason why the
workers at Impala were angry with NUM, and that reason was
the reason that’s set out in the paragraphs that were read
to you. Now, do I understand you to say that this is the
first time that you ever heard the suggestion that was
the reason or a reason, perhaps an additional reason, why
the workers at Impala were angry with NUM?

MR GCILITSHANA: As I indicated that, to
me, it’s for the first time. I didn’t recall getting that
information before. As I indicated that we normally share
notes, it might have been shared, but I don’t recall it
now.

MS BARNES: In addition to the article
that I have referred to now, Sir, these matters were also
widely referred to in the press. Are you telling this
Commission that you also didn’t see reference to this fact
in the press at the time?

MR TIP SC: Mr Chair, I just object to
that. This is now a broad allegation that there were
reports of a similar kind in the media. There is not one
specific detail about what media and where.

CHAIRPERSON: Well okay, what she’s
putting is, did you not see reports within the press?

MR TIP SC: Yes.

CHAIRPERSON: And the answer is obviously
going to be no. If she can then show that there were
reports, then the witness may have difficulty. If of
course she can’t show it, then the point will fall away,
but I think we can let her carry on for the moment. If
there are real double questions that’s cause for prejudice,
you can alert me to it and I’ll consider the objection, but
I think we can let her carry on for the time being.

MR GCILITSHANA: I don’t recall.

MS BARNES: Chair, I do have an article,
a press article that I’d like to hand up at this stage.

CHAIRPERSON: To Mr Tip’s objection.

MS BARNES: Chair, happily I do know that
this was reported in the Mining News, it’s an article by
Carol Paton. Sorry, Chair, I didn’t get that?

CHAIRPERSON: Oh, it is XX8. You told me
the name of the journal, but I didn’t write it down.

What’s it?

MS BARNES: It’s the Mining News, and
it’s the September/October 2012 edition and the article is
by the journalist Carol Paton.

CHAIRPERSON: Now, can you tell us, Sir,
do you read the Mining News?
two statements I want your comment on. The first is the -
and the first column, the first paragraph beginning on that
column, “Impala management, says executive director, Paul
Dunne, had suggested to NUM that rock drill operators who
have the hardest job of all underground machine operators,
be given a differential increase, but he union had
refused.” I think you dealt with that. Do you say it’s
not true that the union refused, or did you not know
whether the union had refused that a differential increase
be given to rock drill operators?

MR GCILITSHANA: No, I don’t recall it
happened.

CHAIRPERSON: See, the next point that I
want to ask you about is in the middle column, about
halfway down, there’s a quotation from a statement
allegedly made by the NUM general secretary, Mr Baleni. Do
you see that?


CHAIRPERSON: It starts, “One reason for
the vulnerability, says NUM General Secretary Frans Baleni,
is that NUM’s negotiating strategy has been to raise the
wages of lowest paid workers at the expense of
differentiation between skill categories.” Now is that
correct? I take it you don’t know whether Mr Baleni said
that, but is it correct that NUM’s negotiating strategy has
been to raise the wages of lowest paid workers at the
expense of differentiation between skill categories?

MR GCILITSHANA: That’s correct.

CHAIRPERSON: If that was NUM’s policy,
then one can quite understand why NUM would have refused
that a differential increase be given to the rock drill
operators, who had the hardest job of all underground
machine operators.

MR GCILITSHANA: As much as I’m not the
author of the statement, my understanding -

CHAIRPERSON: No, no, I wasn’t interested
in the statement. I wanted to know whether that was the
policy, which is report Mr Baleni is alleged to have said
it was the policy, and I asked you whether it was the
policy and you conceded that it was, or confirmed that it
was. Now if that is the policy, then we go back to the
situation at Impala and one can then understand why, if it
is so, NUM refused to allow, or refused to agree to the
rock drill operators being given a differential increase,
because that would have been in line with the policy that
you say has been the policy of NUM. Or don’t I understand
the position correctly?

MR GCILITSHANA: I won’t know why the
comrade at that level could not agree. I must indicate
that the issue of closing the gap, as I understand the

suggested to NUM that rock drill operators who have the
hardest job of all underground – or the hardest job of all
underground machine operators, rather, be given a
differential increase, but the union had refused. We
recognised that we were out of set with the rest of the
industry both in job grading and in pay. We wanted to give
the rock drill operators a higher increment, but the
suggestion never found its way into the final agreement,
said Dunne.”

So do you still maintain that this is for the
first time today you hear about this issue at the Implats
salary negotiations?

MR GCILITSHANA: I don’t recall getting
this information.

MS BARNES: If it is correct that this
happened, it would explain the widespread and extreme anti-
NUM sentiments at Impala, wouldn’t it?

MR GCILITSHANA: It could be possible
that it could be contributing factor.

MS BARNES: Now, I’m going to move onto
another topic. In your evidence-in-chief you – Yes?

CHAIRPERSON: The article, I’d like to
ask a couple of questions about it if I may. Page 2 of the
article – well, it’s actually, it’s the second page of the
article, it’s actually page 35 of the article. There are
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1. statement, it’s more of the categories because more, the
2. officials are more paid than the lower categories. That’s
3. why those who are at lower level, normally the agreement
4. that we have seen, you have got your 10% in lower
5. categories, your 8%, 9%, 8% on upper categories.
6. MS BARNES: Now in your evidence-in-
7. chief, Sir, you explained how NUM’s negotiating process
8. works and how it goes about obtaining its mandates.
9. Correct?
10. MR GCILITSHANA: Yes, that’s correct.
11. MS BARNES: And you said the shop
12. stewards’ councils are convened, together with their
13. constituencies, and it’s there that the workers’ demands
14. are obtained. Do I have that right?
15. MR GCILITSHANA: That’s correct.
16. MS BARNES: And then there are mass
17. meetings held at which the mandate is refined and
18. confirmed. Is that correct?
19. MR GCILITSHANA: That’s correct.
20. MS BARNES: Now those shop stewards’
21. councils are NUM members, correct?
22. MR GCILITSHANA: Yes.
23. MS BARNES: And the constituencies too
24. would be the NUM members, correct?
25. MR GCILITSHANA: Yes.

Page 3950

1. MS BARNES: Also when mass meetings are
2. held, those are mass meetings of NUM members. Is that
3. correct?
4. MR GCILITSHANA: The mass meetings are
5. meant for NUM members, but even those non-NUM members, they
6. do attend, because you don’t check the payslip of a person
7. on membership when they attend a mass meeting.
8. MS BARNES: So it’s not verified that the
9. people attending the mass meetings are in fact NUM members.
10. Is that what you’re saying?
11. MR GCILITSHANA: Can you repeat it again?
12. MS BARNES: You don’t verify that
13. everybody at a mass meeting is actually a NUM member;
14. that’s unnecessary, correct?
15. MR GCILITSHANA: Yes, we don’t verify.
16. MS BARNES: But NUM doesn’t have any
17. separate processes for consulting with people that are not
18. NUM members, but that form part of the bargaining unit. Is
19. that correct?
20. MR GCILITSHANA: No, it won’t take -
21. we’ll talk to those, with our members.
22. MS BARNES: Chairperson, I see it’s 3
23. o’clock. Would this be a convenient time?
24. CHAIRPERSON: If it’s a convenient stage
25. in your cross-examination -

Page 3951

1. MS BARNES: It is.
2. CHAIRPERSON: - we’ll take the tea
3. adjournment.
4. [COMMISSION ADJOURNS COMMISSION RESUMES]
5. [15:19] CHAIRPERSON: The commission resumes, we
6. came back a little bit later than we originally had
7. intended because a statement has been forthcoming from
8. Lonmin and was given to Ms Barnes and she was given an
9. opportunity to read it before continuing with her cross-
10. examination. You are still oath, sir. Ms Barnes, I take
11. it you have still got questions to ask?
12. MS BARNES: Yes, I do, Chair thank you.
13. Now sir, isn’t it correct that two year wage agreements
14. were a common feature in the relationship between NUM and
15. Lonmin?
16. MR GCILITSHANA: That’s correct.
17. MS BARNES: And although the time period
18. of the agreement is two years and the wage increases are
19. set out over a two year period, you agree with me that it
20. is possible in terms of, it was possible in terms of those
21. agreements generally to amend them by agreement between the
22. parties if necessary?
23. MR GCILITSHANA: Yes, it is possible.
24. MS BARNES: The important point is that
25. it would have, the parties would have to sit down together

Page 3952

1. and they would have to reach agreement and then that would
2. have to be recorded in writing and signed by both parties,
3. in this case NUM and Lonmin, would that be correct?
4. MR GCILITSHANA: Yes, that will be done.
5. MS BARNES: And isn’t this correct that
6. this had happened on occasion in the past in Lonmin where
7. two year wage agreements were amended by the parties?
8. MR GCILITSHANA: I can recall on the, I
9. can’t recall the year because of the inflation rate, the
10. inflation was at 12% whereas the agreement lesser than
11. that. There was that time, that was agreed upon.
12. MS BARNES: Yes, that accords with my
13. instructions. The two year agreement provided for an
14. increase which I think was 9% and inflation went into
15. double digits in respect of the second year and so the
16. party sat down and they amended the agreement to increase
17. the percentage, is that correct?
18. MR GCILITSHANA: That’s correct.
19. MS BARNES: And just to be absolutely
20. clear in the agreement at issue in this case, it appears in
21. the NUM bundle of documents which is Exhibit XX2, if you
22. could go to page 13 and that’s the beginning of the
23. agreement, the wage agreement. That was applicable during
24. the relevant time, is that correct?
25. MR GCILITSHANA: This is 2011, 2012
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MS BARNES: Yes, that was until 2013?

MR GCILITSHANA: Yes.

MS BARNES: And if you go to page 19 it's the last page of the agreement, if you could read paragraph 12.4 into the record please or clause 12.4 into the record?

Thank you.

MR GCILITSHANA: "No addition to or variation, consensual, cancellation or notation of this agreement or it's breach of termination shall be of any force or effect unless reduced to writing and signed by all parties or their duly authorised representatives".

MS BARNES: Is it correct that it was in terms of such a clause or a similar clause that the agreement that we referred to just now was amended in the past?

MR GCILITSHANA: That's correct.

MS BARNES: And isn't it correct that that was exactly what was eventually done in September 2012, this agreement was amended in terms of an addendum which gave an increase to the rock drillers, is that correct?

MR GCILITSHANA: That's correct.

MS BARNES: Now you testified in your evidence-in-chief that NUM takes great care to ensure that workers demands are not out of kilter with industry and market norms and standards, is that correct?

MR GCILITSHANA: That's correct.

MS BARNES: And this is important for a credible collective bargaining process?

MR GCILITSHANA: That's correct.

MS BARNES: It's also important not to create unrealistic expectations in the minds of workers and your members, is that correct?

MR GCILITSHANA: That's correct.

MS BARNES: And you explained that NUM has annual bargaining conferences which deal with this issue each year, is that correct?

MR GCILITSHANA: That's correct, on the year of negotiations as we talk of normally two year agreements.

MS BARNES: Now just to check that I understand your evidence correctly, the rock drillers demand that they be rolled up from grade 4 to grade 7. That demand existed in 2009, is that right?

MR GCILITSHANA: That's correct.

MS BARNES: And NUM attempted to achieve that for the rock drillers at that set of the negotiations in 2009 and was unsuccessful, is that correct?

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MR GCILITSHANA: That's correct, we could not agree to category 7 at least there was an addition to RDO's who are at category 4 to others, operators who are at category 4.

MS BARNES: Was this an issue before 2009 or did this demand, this RDO demand exist before 2009?

MR GCILITSHANA: Yes, as I recollect.

MS BARNES: Can you tell us in which year the demand first arose in a wage negotiation?

MR GCILITSHANA: It started on the wage negotiations of 2009 with Lonmin, as I recall.

MS BARNES: And the rock drillers demand, was this a subject at the annual bargaining conference of NUM in the relevant year? Would it have been 2009, the conference?

MR GCILITSHANA: It is possible that we did, because we deal with a lot of issues. As I recall there have been discussions internally of how do we handle issues of the RDO's about their wages.

MS BARNES: And it would have been, if that demand had been considered to be unreasonable at that annual bargaining conference, it would have been altered is that correct? Or steps would have been taken to adjust it, is that correct?

MR GCILITSHANA: Yes, the demand will be put forward, yes.

MS BARNES: Sorry sir, I didn't get your answer.

MR GCILITSHANA: I'm saying that the demand will be put forward for negotiations.

MS BARNES: No Sir, the question relates to the annual bargaining conference where you say that NUM looks at demands and checks that they are not out of kilter with the market. Now this RDO demand has been around for a long time. The same demand since 2009. What I'm saying to you, is that it isn't correct that if it was NUM's view that that demand was unreasonable that would have been communicated to the workers, is that correct?

MR GCILITSHANA: That's correct.

CHAIRPERSON: Would it not have been covered by clause 12.3 of the agreement, at page 19, Exhibit XX2? It correctly ruins the point you just made but it might well have been -

MS BARNES: I beg your pardon, Chair, that was clause?

CHAIRPERSON: 12.3 on page 19.

MS BARNES: Yes, I see that, Chair. I'm making a slightly different point. During the 2011 negotiations and if I can take you to your statement in this regard, if you will just give me a moment to find
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that. Well perhaps I need to go back one step, you tested that in addition to the annual bargaining conference that is held annually in the year of wage negotiations demands also go through NUM's market research department in order to vet them, to make sure that they are not completely out of kilter with market norms, is that right?

MR GCILITSHANA: That's correct.

MS BARNES: Because you say in your statement on page 7 at paragraph 28, you say in this case NUM's demands passed muster and then the General-Secretary submitted them to Lonmin in 2011?

MR GCILITSHANA: That's correct.

MS BARNES: So in other words NUM, you were entirely satisfied as NUM that the rock driller's demand that they be rolled up from grade 4 to grade 7 was an entirely reasonable and market related demand, is that correct?

MR GCILITSHANA: That's correct.

MS BARNES: Even the salary increase that they would get, would amount to approximately R2 000 as you indicated earlier today, correct?

MR GCILITSHANA: The 2 000 I meant when they will be moved from category 4 to category 7. That's correct, if that is then the understanding.

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MS BARNES: Indeed, that would be the effect of that, of that upgrading. So it follows that rock drillers were being dramatically underpaid and had been dramatically underpaid for some years, is that correct?

MR GCILITSHANA: Yes.

MS BARNES: And that is why you said at that final negotiation meeting with Lonmin in 2011 that if this was not addressed it would be a time bomb, is that correct?

MR GCILITSHANA: As I cited before that it was more what the RDO's, some of them were not allowed to leave during the VSP because of the scarcity of their skill and also the hard work that they do.

MS BARNES: And that's why you persisted in two rounds of negotiations with the demands that they be rolled up three categories effectively?

MR GCILITSHANA: That is correct.

MS BARNES: Now since you weren't able to achieve the upgrading that you sought for the rock drillers, the time bomb as I think you conceded yesterday continued to tick in December 2011, is that correct?

MR GCILITSHANA: I did knew that it was a ticking, it remained after the settlement. Yes, it exploded.

MS BARNES: It eventually exploded didn't it, sorry what was your answer?

[15:39] MR GCILITSHANA: What I'm saying is that we, as much as we said that it's going to be a time bomb, we didn't know that it is going to happen, but it happened at the, in December.

MS BARNES: Now we know that the NUM branch at Karee Mine at Lonmin had been dissolved in May 2011. Is that correct?

MR GCILITSHANA: That's correct.

MS BARNES: And that after that there were a minority of NUM members, when people joined unions later in the year there was a minority of NUM members at that Karee Mine, correct?

MR GCILITSHANA: That's correct.

MS BARNES: Which meant that the majority of the workers at the Karee Mine were not part of the NUM consultations, or the NUM mandate in relation to wages. Is that correct?

MR GCILITSHANA: I won't say yes or no, simply because I indicated that we would normally agree with the company to send buses to Karee and people would all take the transport to the stadium to Wonderkop when we address the mass meeting on wages to hear. Wages generally, majority of people have interest on wages; the stadiums are always full when we negotiate wages.

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MS BARNES: Yes, but we've earlier agreed that the NUM processes are, essentially cover NUM members.

We've gone through that earlier, correct?

MR GCILITSHANA: That's correct.

MS BARNES: So do you agree with me that we have a ticking time-bomb in respect of RDO wages, and in respect of the Karee Mine we have that ticking time-bomb in a context in which the employees there are not part of the bargaining process? Is that correct?

MR GCILITSHANA: As we indicated that there were people from Karee who have been attending the mass meetings, because they did come with the buses.

MS BARNES: But you can't confidently tell this Commission that the employees at Karee all attended the NUM processes, can you?

MR GCILITSHANA: Not all the employees, correct.

MS BARNES: Now in addition to the fact that RDOs are underpaid, and in addition to this unrepresented group at Karee, we then have the events at Implats. Is that correct?

MR GCILITSHANA: I won't agree that it was because of the Karee situation that had an impact in Karee - in Impala, because the issue of, issues of RDOs started at Impala.
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MS BARNES: Yes, and I think you've misunderstood me. The first fact is that we have RDOs that are underpaid. The second fact is that we have employees at Karee that are not represented by a union that can bargain for them. Agreed?

MR GCILITSHANA: The agreement is a central agreement. It's negotiated for all Lonmin employees, regardless whether it's in Karee, it's in Western Platinum, or LPD.

MS BARNES: I do understand. I agree with you, Sir, they are part of the bargaining unit. The point I'm making is that they're not necessarily part of the consultative processes.

MR GCILITSHANA: Yes, in the official meetings there have been no representative from Karee.

MS BARNES: So that is the situation in December 2011, and then in January 2012 we have an unprotected strike at Implats, which you became aware of as it was unfolding, you said earlier. Is that still right?

MR GCILITSHANA: That's correct.

MS BARNES: And the strike at Implats was characterised by distrust of management and distrust of NUM. Is that right?

MR GCILITSHANA: That's correct.

MS BARNES: There was violence and intimidation, which left I think 60 people injured and four dead. Is that correct?

MR GCILITSHANA: That's what, the report that we got, yes.

MS BARNES: Workers, or RDOs specifically, took matters into their own hands and ultimately they secured a very significant increase for themselves at Implats. Isn't that correct?

MR GCILITSHANA: Yes.

MS BARNES: You've admitted in your evidence that all of this, or rather obviously created expectations at Lonmin. Isn't that correct?

MR GCILITSHANA: Yes.

MS BARNES: Sir, as chief negotiator for NUM at Lonmin, is if you had a time-bomb in December 2011, what did you have in April 2012?

MR GCILITSHANA: We had our discussions internally on how do we handle the issue, these issues, as I indicated, having seen that we could not succeed in the process of negotiations, knowing that people who are negotiating, they get source mandate from their seniors. Our discussions internally was how do we engage the captains of the industry so that we can sensitize them about this issue, since we don't get joy in the negotiations.

MS BARNES: So you agree with me that you were on notice in a sense; after what happened at Implats you knew that it was very likely that a similar thing was going to happen at Lonmin. Isn't that right?

MR GCILITSHANA: Yes, the fact that it could happen in other mines, like also in Anglo Platinum, there was that, also attempt, but NUM was engaged in the award process.

MS BARNES: Shouldn't you, Sir, have approached Lonmin at that stage and said, "Look, we need to reopen this agreement; we know that RDOs at Lonmin have been, and are underpaid. They've been underpaid since 2009. We've seen what's happened at Implats. We cannot let that happen here. Let's sit down and revisit this agreement and reach agreement with regard to an amendment."

MR GCILITSHANA: That's why I said we had discussions internally. Our approach was to discuss with the captains of industry, because we could not reach it at the negotiations, for two positive negotiating terms.

MS BARNES: Did you approach Lonmin and say let's amend the agreement in order to give rock drillers a decent increase? Did you do that?

MR GCILITSHANA: No.
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<td>MR GCILITSHANA:</td>
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<td>That is possible but the</td>
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<td>information that I got is that - took decision before that</td>
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<td>then it was communicated on a later date.</td>
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<td>MS BARNES:</td>
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<td>So we are really dealing with</td>
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<td>a period of about 6 weeks from the date of the 1st March to</td>
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<td>the date on which Lonmin made the offer to the RDOS. Do</td>
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<td>MR GCILITSHANA:</td>
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<td>12</td>
<td>Yes.</td>
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<td>MS BARNES:</td>
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<td>In your statement, if you</td>
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<td>could just look at your statement at page 11 paragraph 34</td>
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<td>MR GCILITSHANA:</td>
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<td>As I said that it is</td>
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<td>possible because I was not party to this exercise.</td>
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<td>It seems highly improbably</td>
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<td>that all the -</td>
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<td>MR TIP SC:</td>
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<td>Mr Chair, sorry, forgive me</td>
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<td>for interrupting but in fairness these questions ought to</td>
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<td>be put on the basis that has regard, properly has regard to</td>
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<td>what the witness has said about the dates that are referred</td>
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<td>occurrence books against those dates.</td>
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<td>Exhibit XX2 you will see at the top of the page there is a</td>
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<td>logbook entry, 21st July at 10 o'clock. “RDOS first illegal</td>
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<td>march to the general office at Karee.” It may be that the</td>
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<td>earlier march to which Mr Da Costa refers in his statement</td>
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<td>couldn’t really have been characterised as an illegal</td>
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<td>march. But it does appear from the logbook, of course you</td>
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<td>will say the logbook could be wrong, does appear from the</td>
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<td>logbook that there was a march which is stigmatised as</td>
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<td>illegal on the 21st July. So it may be that the witness</td>
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<td>isn’t quite as wrong as you suggest he is. But I see it is</td>
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<td>go into the matter and refreshed, return to the charge on</td>
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<td>the morrow at 9:30. I am in your hands, you tell me what</td>
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<td>MS BARNES:</td>
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<td>This would be a convenient</td>
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<td>time, Chair, thank you.</td>
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<td>CHAIRPERSON:</td>
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<td>The commission will adjourn</td>
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<td>until 09:30 tomorrow morning.</td>
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24th January 2013

Marikana Commission of Inquiry

Rustenburg

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