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 37  25 JANUARY 2013  PAGES 3969 TO 4081

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

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Chairperson: Thank you, Chairperson.

Chairperson: Yes, I understand you're junior to Mr Bizos, who's not able to be with us today.

Chairperson: The evidence before us, Mr Tip said. Have you got any comments?

Chairperson: You did tell us yesterday it was published in the Mining News. I noticed that in the article itself the abbreviation IM appears. What does that stand for?

Chairperson: I'm not entirely sure, Chairperson. I'll have to -

Chairperson: Right, when you give us all the publication details of the article, you'll deal with that as well.

Chairperson: I will.

Ms Barnes: I do, thank you, Chairperson.

Mr Tip SC: Mr Chair, forgive me, just

Mr Hanabe was interpreting, and he apologises for that.

Ms Barnes: Ms Barnes, you understand you have some further questions for the witness.

Ms Barnes: I will.

Chairperson: The Commission resumes.

Chairperson: It looks to me as if IM is an acronym for the journal in which the copy that you gave us appeared, but anyway, that's something that will be sorted out -

Ms Barnes: We will clear that up. So I just wanted to place that on record to the extent that I'm able to at this stage, and I assume, Sir, that you having said that you didn't see the article, you didn't see it anywhere, even though I'm putting it to you now that it was in fact rather more widely published than just the Mining News magazine. Is that correct?

Mr GCILITSHANA: Okay, I understand.

Chairperson: The question is, do you read the Business Day normally?

Mr GCILITSHANA: No, I don't read it normally.

Chairperson: Do you read the Mail & Guardian every week?

Mr GCILITSHANA: No.

Chairperson: At times when anything that is referred to, as I indicate that normally there is, we have got a specific media department that handles issues of media. They handle those things. If maybe it's direct, sometimes they will handle it with the general secretary.
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CHAIRPERSON: Yes, I understand your question with dealing with publication, but the question I think that Ms Barnes is interested in, is the question of articles being brought to your attention, or you yourself reading the Mail & Guardian regularly at least in respect of articles that deal with your field, which is industrial relations, mining, more specifically NUM. Now do you read articles in the Mail & Guardian which refer to the NUM?

MR GCILITSHANA: Unless there's issue that have been sensitised, I'm not an always reader of those newspapers, unless it's referring to us.

MS BARNES: Now when we left off yesterday, Sir, we were dealing with the question of the dates on which various events had taken place, and I'd like to at this stage refer to a document, it's in the Lonmin bundle of documents, but I don't think it's yet been introduced as an exhibit. So it would need to be introduced as an exhibit, and I do have four copies of the document for the commissioners and for the witness. The remainder of the parties would be able to access the document in the Lonmin bundle at pages 266 and 267.

CHAIRPERSON: It would be exhibit XX9, Ms Pillay?

MS BARNES: That's correct, Chair.

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CHAIRPERSON: How does one describe this document?

MS BARNES: This is a memorandum, a Lonmin memorandum entitled, well, dated the 10th of August 2012 –

CHAIRPERSON: That's all we need surely as a description.

MS BARNES: That would suffice.

CHAIRPERSON: Well, you've given us the date. It's called “Sequence of events RDO Legal.”

MS BARNES: Indeed.

CHAIRPERSON: Which presumably summarises the contents.

MS BARNES: Thank you, Chair. Do you have the document in front of you, Sir?

MR GCILITSHANA: Yes, correct.

MS BARNES: You will see that the first paragraph of the memorandum states as follows, “Management first became aware of the rock drill operators' concerns on the 21st of June 2012 when a group of RDOs at Karee Mine illegally marched to management to demand that their basic rate be increased from R5 400 to R12 500.” Do you see that?

MR GCILITSHANA: Yes, I could see.

MS BARNES: So that date of the 21st of June 2012 accords with what Mr Da Costa states in his statement. Is that correct?

MR GCILITSHANA: Yes, that's correct.

MS BARNES: The point really, Sir, is that there do appear to be some discrepancies with the dates, and I don't want to get bogged down in them. Hopefully they will become clear in the fullness of time, but the real point at this stage is that the events which are referred to in Mr Da Costa's statement did not take place over a period of just three days. Isn't that correct?

MR GCILITSHANA: That could be possible.

As I indicated even to Mr Burger that since I was not involved in the process, I may not have the exact date.

CHAIRPERSON: Ms Barnes, I imagine the date, or the dates will become quite clear when the Lonmin witnesses testify. I don't know if we need to spend more time on this –

MS BARNES: I wasn't planning to, Chair.

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CHAIRPERSON: That's a point you can raise in re-examination, if you want to. Don't interrupt the cross-examiner - perfectly permissible question.

MR MOTAU SC: Chairperson, may we just raise a point that the evidence should be put in its proper context because the witness had testified that it was because of the fact that the employees did not want to be represented by NUM. So let that be made clear.

CHAIRPERSON: That's a point you can raise in re-examination, if you want to. Don't interrupt the cross-examiner - perfectly permissible question.

MR MOTAU SC: Sorry, the chairperson will remember this is not our witness.

CHAIRPERSON: Look, she's asked the question; there was nothing wrong with her question. If the context needs to be added, you can do that in re-
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<td>examination. That's what re-examination is for. Oh, it's</td>
<td><strong>MR GCILITSHANA:</strong> Yes, I'm on it.</td>
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<td>not your witness, I beg your pardon. Anyway, counsel who</td>
<td><strong>MS BARNES:</strong> Okay, now I just need to</td>
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<td>led this witness can deal with his re-examination. Please</td>
<td>understand your version in relation to these events. I'm</td>
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<td>proceed, Ms Barnes.</td>
<td>going to read to you paragraph 3.32 and the following</td>
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<td><strong>MS BARNES:</strong> Thank you, Chair. Now Sir,</td>
<td><strong>paragraph.</strong> “During the period 21 June 2012 to 23 July**</td>
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<td>as I understand your answers to Mr Burger's questions</td>
<td><strong>2012, I did not make any direct contact with NUM or AMCU</strong></td>
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<td>yesterday, questions, all questions of, all substantive</td>
<td><strong>representatives.”</strong> That is now Mr Da Costa speaking.</td>
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<td>questions involving money, including allowances, must be</td>
<td><strong>“Nkisi,” and who is Mr Nkisi? Do you know who he is?</strong></td>
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<td>dealt with by the parties acting together, NUM and Lonmin</td>
<td><strong>MR GCILITSHANA:</strong> Yes, I know him.</td>
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<td>acting together in negotiations. Is that correct?</td>
<td><strong>MS BARNES:</strong> What is his position?</td>
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<td><strong>MR GCILITSHANA:</strong> Yes, with the parties</td>
<td><strong>MR GCILITSHANA:</strong> He's in the HR in Lonmin</td>
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<td><strong>MS BARNES:</strong> And you referred to task</td>
<td><strong>at Karee.</strong></td>
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<td>teams in your evidence yesterday, and you said that when</td>
<td><strong>CHAIRPERSON:</strong> He's described in paragraph <strong>3.26 on page 8</strong></td>
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<td>it's considered that bonuses or allowances may need to be</td>
<td>as the human resources manager at Karee.</td>
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<td>increased or altered, then a task team is set up to look at</td>
<td><strong>MS BARNES:</strong> Thank you, Chairperson.</td>
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<td>those matters. Is that correct?</td>
<td><strong>“Nkisi did, however, during this period advise Jerry</strong></td>
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<td><strong>MR GCILITSHANA:</strong> Yes.</td>
<td><strong>Ndamase, the branch secretary of NUM, and Madibe Tswanile,</strong></td>
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<td><strong>MS BARNES:</strong> Sorry, the answer was?</td>
<td><strong>the branch secretary of AMCU, that I had been approached by</strong></td>
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<td><strong>MR GCILITSHANA:</strong> Yes.</td>
<td><strong>the RDOs for more money. According to Nkisi, Ndamase and</strong></td>
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<td><strong>MS BARNES:</strong> And NUM would be represented</td>
<td><strong>Tswanile were both non-committal and advised him that the</strong></td>
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<td>on those task teams. Is that correct?</td>
<td><strong>RDOs were Lonmin’s problem and that Lonmin should therefore</strong></td>
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<td><strong>MR GCILITSHANA:</strong> Correct.</td>
<td><strong>address the issues raised by the RDOs.”</strong></td>
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<td><strong>MS BARNES:</strong> So at the very least what</td>
<td><strong>CHAIRPERSON:</strong> I think you should also <strong>read 3.34.</strong></td>
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<td>should have happened here before Lonmin offered allowance</td>
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<td>to rock drill operators, is that a task team should have</td>
<td><strong>MS BARNES:</strong> I will read paragraph 3.34 as</td>
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<td>been set up, on which NUM was represented, in order to</td>
<td><strong>well. “Importantly, neither Ndamase, nor Tswanile, told</strong></td>
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<td>consider and decide upon the matter. Is that correct?</td>
<td><strong>Nkisi that Lonmin should not communicate with RDOs, nor did</strong></td>
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<td><strong>MR GCILITSHANA:</strong> I might believe that</td>
<td><strong>they insist or maintain that such communications should be</strong></td>
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<td>Lonmin should have called the stakeholders that are</td>
<td><strong>channelled through NUM or AMCU.” Now you indicated in your</strong></td>
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<td>involved in the agreement and put the proposal forward of</td>
<td><strong>answers to Mr Burger’s questions yesterday that you were</strong></td>
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<td>intended allowance, therefore that's when it's agreed</td>
<td><strong>aware that Ndamase had spoken to Lonmin HR personnel. Is</strong></td>
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<td>that there must be a, on the process, then the task teams</td>
<td><strong>that correct?</strong></td>
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<td>will be established.</td>
<td><strong>[09:54] MR GCILITSHANA:</strong> That's correct. I think <strong>vice versa, it’s the management delegation that approached</strong></td>
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<td><strong>MS BARNES:</strong> And your evidence is that</td>
<td><strong>Ndamase, not Ndamase going to management.</strong></td>
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<td>none of that was done in this case and Lonmin simply acted</td>
<td><strong>MS BARNES:</strong> Sorry could you repeat that, <strong>please?</strong></td>
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<td>unilaterally. Is that correct?</td>
<td><strong>MR GCILITSHANA:</strong> What I’m explaining is <strong>that it’s not Ndamase who went to management, to talk to</strong></td>
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<td><strong>MR GCILITSHANA:</strong> Yes.</td>
<td><strong>the management. It’s management that called Ndamase.</strong></td>
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<td><strong>MS BARNES:</strong> Now in relation to the</td>
<td><strong>That’s what I wanted to explain.</strong></td>
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<td>unilateral action by Implats, which triggered the Implats</td>
<td><strong>MS BARNES:</strong> Yes, I think they - <strong>CHAIRPERSON:</strong> Maybe they took the**</td>
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<td>strike, you said that NUM was outraged by that. Is that</td>
<td><strong>initiative. The fact is they were in communication.</strong></td>
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<td>correct?</td>
<td><strong>MR GCILITSHANA:</strong> Yes.</td>
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<td><strong>MR GCILITSHANA:</strong> That's correct.</td>
<td><strong>MS BARNES:</strong> Now was it reported to you</td>
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<td><strong>MS BARNES:</strong> I take it then that NUM would</td>
<td><strong>that Ndamase had said to Lonmin the RDOs are your problem,</strong></td>
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<td>have been similarly outraged about Lonmin’s unilateral</td>
<td><strong>Lonmin, and you can do whatever you like with them? Is</strong></td>
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<td>action in this case. Is that correct?</td>
<td><strong>that what was reported to you?</strong></td>
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<td><strong>MR GCILITSHANA:</strong> That’s correct.</td>
<td><strong>MS BARNES:</strong> <strong>Right, if I can take you now</strong></td>
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<td><strong>MS BARNES:</strong> Right, if I can take you now</td>
<td><strong>to exhibit OO17, it’s Mr Da Costa’s statement, and if you</strong></td>
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<td>could go to page 76 of that, it’s 76 at the top of the</td>
<td><strong>could go to page 76 of that, it’s 76 at the top of the</strong></td>
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Rustenburg

25 negotiations, we have failed, we said that internally we
24 internally; because we have tried two terms of
23 this matter was a matter that was also discussed
22           MR GCILITSHANA:          Then I indicated that
21 to comment on that?
20 understand why there wasn't an objection.  Would you like
19 general, and Lonmin in particular, it's difficult to
18 unilateral action like this on the part of management in
17 that it's difficult to understand if NUM was outraged by
16           MS BARNES:          Well, I put it to you, Sir,
15 concerned that he hadn't objected, and if he hadn't
14 Lonmin have stepped in and taken the matter up and
13 say they have done it well without NUM, or vice versa.
12 approached Lonmin and said you cannot do this, it's
11 unacceptable, this must be negotiated?
10 me that he said that.
9           MS BARNES:          But Sir, wouldn't you be
8 concerned that he hadn't objected, and if he hadn't
7 approached Lonmin and said you cannot do this, it's
6 unacceptable, this must be negotiated?
5 MR GCILITSHANA:          As a chief negotiator,
4 as I understand this thing came at a later stage. When it
3 come to us, on the 3rd of August we had a session with
2 Lonmin management to check, gather information of exactly
1 what is happening.  That's what we initiated.

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<td>MR GCILITSHANA: What Ndamase reported to me is that he was consulted whilst the process was already</td>
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<td>in the process. That's why he said Lonmin, if they handle</td>
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<td>that issue they must handle it because that was, NUM was</td>
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<td>not involved from the initial stage.</td>
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<td>MS BARNES: Did Ndamase not object to Lonmin and say you can't do this unilaterally, it has to be</td>
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<td>something that's negotiated with NUM?</td>
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<td>MR GCILITSHANA: I don't recall telling me that he has said that.</td>
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<td>MS BARNES: But Sir, wouldn't you be</td>
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<td>concerned that he hadn't objected, and if he hadn't</td>
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<td>MR GCILITSHANA: As a chief negotiator,</td>
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<td>as I understand this thing came at a later stage. When it</td>
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<td>come to us, on the 3rd of August we had a session with</td>
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<td>Lonmin management to check, gather information of exactly</td>
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<td>what is happening. That's what we initiated.</td>
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<td>MS BARNES: Yes, we'll get to what</td>
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<td>22 happened at a later stage shortly, but at this stage when</td>
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<td>Ndamase reports to you, the matter has not yet been</td>
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<td>decided; the action has not yet been taken by Lonmin.</td>
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<td>Isn't that correct?</td>
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<td>MR GCILITSHANA: Yes, at that time we</td>
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<td>didn't take initiative, at that time.</td>
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<td>MS BARNES: Do you have an explanation</td>
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<td>for why you didn't make an objection or an intervention in this regard?</td>
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<td>MR GCILITSHANA: Because the sensitive</td>
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<td>matter, it's a sensitive matter, it's about finances. Once</td>
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<td>you get in the middle you don't know whether the operators</td>
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<td>will do it alone successfully when you get, and they would</td>
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<td>fail. When they say they will blame the union that NUM</td>
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<td>have not done well for them, but if they succeed they will</td>
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<td>say they have done it well without NUM, or vice versa.</td>
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<td>Then it was already in the process, that's why it was</td>
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<td>difficult for us as NUM to get in at that point in time.</td>
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<td>MS BARNES: Well, I put it to you, Sir,</td>
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<td>that it's difficult to understand if NUM was outraged by</td>
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<td>unilateral action like this on the part of management in</td>
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<td>general, and Lonmin in particular, it's difficult to</td>
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<td>understand why there wasn't an objection. Would you like</td>
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<td>to comment on that?</td>
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<td>MR GCILITSHANA: Then I indicated that</td>
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<td>this matter was a matter that was also discussed</td>
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<td>internally; because we have tried two terms of</td>
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<td>negotiations, we have failed, we said that internally we</td>
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<td>must engage senior managers or, or captains of the industry</td>
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<td>on the matter because it was not going to affect Lonmin, or</td>
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<td>it is not Lonmin issue or Impala issue now, the way it</td>
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<td>happened at that point in time.</td>
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<td>MS BARNES: Sir, when you refer to</td>
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<td>captains of industry, who are you referring to</td>
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<td>specifically?</td>
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<td>MR GCILITSHANA: I refer to, it's either</td>
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<td>the CEO of the company or companies that we engage with.</td>
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<td>Also it will be the chairperson or the president of the</td>
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<td>company.</td>
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<td>MS BARNES: But which companies are you</td>
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<td>referring to?</td>
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<td>MR GCILITSHANA: I don't have minutes.</td>
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<td>Again, I indicated that that was a job that could be done,</td>
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<td>it's either by the president or the general secretary, and</td>
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<td>I indicated that I'm not sure whether there, before the</td>
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<td>strike that that initiatives have been taken by them.</td>
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<td>MS BARNES: I'm sure if any of your</td>
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<td>colleagues at NUM have notes or minutes of these meetings</td>
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<td>that you refer to, they'll be made available to the</td>
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<td>Commission. Is that correct?</td>
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<td>MR GCILITSHANA: I don't know if there</td>
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<td>are any notes, as I indicated.</td>
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<td>MS BARNES: If you can go now to page 80</td>
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<td>of Mr Da Costa's statement, paginated page 80, page 15 of</td>
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<td>the statement. Do you have it?</td>
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<td>MR GCILITSHANA: Correct.</td>
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<td>MS BARNES: I'm going to read paragraph</td>
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<td>4.8. This is followed on from 4.7 in which Mr Da Costa</td>
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<td>talks about making contact with the various unions at</td>
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<td>Lonmin, including UASA and Solidarity. In paragraph 4.8 –</td>
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<td>CHAIRPERSON: Sorry to interrupt you. I</td>
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<td>think you should point out that the 28th of July is the date</td>
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<td>referred to in the previous paragraph, and that obviously</td>
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<td>is the same day referred to in 4.8, otherwise it's not</td>
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<td>clear and we have a complaint that you're taking it out of</td>
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<td>context.</td>
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<td>MS BARNES: Thank you, Chair. Paragraph</td>
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<td>4.8 starts with, &quot;On the same day,&quot; and that's a reference</td>
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<td>to the 28th of July 2012, by virtue of the previous</td>
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<td>paragraph. Do you see that?</td>
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<td>MR GCILITSHANA: That's correct.</td>
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<td>MS BARNES: The paragraph reads as</td>
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| follows, "On the same day I," being Mr Da Costa, "met with
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1 I'm asking you, was that reported to you?
2 MR GCILITSHANA: I don't recall that one.
3 MR TIP SC: Mr Chair, the question has
4 been put on the basis that appears to be different from
5 what is in the statement. The statement says that "I did
6 not debate the issue with Maloyi, nor did Maloyi insist
7 that NUM become involved in the matter." Now that has been
8 put on the basis that Maloyi had said to Da Costa
9 positively that NUM does not need to be involved in the
10 matter, and that is a different proposition. It's not
11 being put accurately.
12 CHAIRPERSON: I think Mr Tip's right.
13 Perhaps you should reformulate the question along the lines
14 that he's indicated, which I think would be a more accurate
15 way of doing it. You said, Ms Barnes, that he said he was
16 not averse. That's not what the paragraph says, so I think
17 it might be advisable just to read the paragraph again and
18 then put your question. It's important, I understand, that
19 you get a direct answer to the question, but the question
20 should be framed in accordance with what 4.8 says.
21 MS BARNES: Was it reported to you by
22 Maloyi that he had objected to Lonmin's proposed allowance?
23 MR GCILITSHANA: No, I don't recall.
24 MS BARNES: Did Maloyi say to you that he
25 had asked Lonmin if NUM could be involved in the matter and

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1 Elliot Maloyi from the NUM Regional office. I discussed
2 the RDO allowance with him. Maloyi was not adverse to the
3 idea, but pointed out to me that Lonmin was going outside
4 of the wage negotiation protocol. I did not debate the
5 issue with Maloyi, nor did Maloyi insist that NUM become
6 involved in the matter." Do you see that?
7 MR GCILITSHANA: Yes, I could see.
8 MS BARNES: As you indicated in your
9 answers to Mr Burger's questions yesterday, that you were
10 aware of this interaction between Maloyi and Lonmin. Is
11 that correct?
12 MR GCILITSHANA: That's correct, Maloyi
13 informed me.
14 MS BARNES: Maloyi himself?
15 MR GCILITSHANA: Yes, at a later stage.
16 MS BARNES: Did Maloyi tell you that he
17 had told Lonmin that NUM was not averse to the idea of an
18 allowance, and that NUM did not need to be involved?
19 MR GCILITSHANA: As I understand, Ntathe
20 Maloyi indicated that it was outside, the process was
21 outside the wage protocols.
22 MS BARNES: That wasn't the question.
23 Could you answer the question?
24 MR GCILITSHANA: I'm answering on the way
25 that Mr Da Costa have written here.

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1 CHAIRPERSON: I think just repeat the
2 question.
3 MS BARNES: The question is, did Maloyi
4 report to you that he had said to Da Costa that NUM was not
5 averse to the idea of these allowances being paid and that
6 NUM did not need to be involved?
7 MR GCILITSHANA: If one recalls Ntathe
8 Maloyi reporting to me that he was called by Mr Da Costa.
9 Anyway, he was representing Sidwell, because the person who
10 was called Ed Sidwell, then Sidwell requested Ntathe Maloyi
11 to go and listen to what Mr Da Costa is going to say. Then
12 when he got in Mr Da Costa informed him of what the process
13 is. Ntathe Maloyi, he raised his concern, as I - he raised
14 his concern that it is outside the protocols of wage, and
15 then he told me that he himself, he told Mr Da Costa that
16 they are going outside the wage agreement.
17 MS BARNES: Yes, I understand that, and
18 there we have no disagreement. The paragraph says exactly
19 that. It says that Maloyi pointed out that Lonmin would be
20 going outside of the protocols if it did that. So there
21 we're all agreed. What I'm asking you is what is also
22 stated in that paragraph, that Maloyi is alleged to have
23 said to Da Costa that NUM has no difficulty with this and
24 is not averse to the idea - that's the specific word that
25 is used - and that NUM does not need to be involved, and

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1 if the matter could be negotiated between Lonmin and NUM?
2 MR GCILITSHANA: I don't recall him
3 saying that.
4 MS BARNES: Can you explain to us why if
5 Maloyi had not said that, you did not intervene at that
6 stage and take the matter up with Lonmin and ask that the
7 matter be negotiated as it should be in terms of the normal
8 protocol?
9 MR GCILITSHANA: The process was already
10 in the middle of being finalised. There had been already
11 several meetings that had been set with RDOs.
12 MS BARNES: So you yourself, Sir, made no
13 intervention in this matter. Is that correct?
14 MR GCILITSHANA: That's correct.
15 MS BARNES: I put it to you, Sir, that
16 the actions of NUM do not accord with a trade union that is
17 unhappy, let alone outraged, by the unilateral action of
18 Lonmin. Would you like to comment on that?
19 MR GCILITSHANA: That will be opinion. I
20 indicated also that we were not against any adjustments to
21 the workers, but we were against the process.
22 MS BARNES: Now you've testified that NUM
23 encouraged its members not to participate in the RDO
24 strike. Is that correct? At Lonmin.
25 MR GCILITSHANA: They should not
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25 General Mpembe. Is that correct?
24 addressed - and the SAPS and where you were addressed by
23 meeting attended by NUM, AMCU, Lonmin and where you were
22 rather important meeting on the 15th of August 2012, the
21 MS BARNES: Now you were present at that
20 MR GCILITSHANA: No.
19 for why it's not in your statement.
18 MS BARNES: But you've got no explanation
17 mention on the cross-questioning that I was.
16 MR GCILITSHANA: Yes. But on the - I did
15 15th or the 16th of August, is that right?
14 MS BARNES: Can you tell us why you
13 didn't put that in your statement?
12 MS BARNES: But you were at Lonmin on the
11 of whom were your members. Is that right?
10 MS BARNES: On the 16th of August why did
9 want to talk to NUM.
8 clear that they don't want to talk – the strikers don't
7 because the message was
6 MS BARNES: Why not?
5 MR GCILITSHANA: Because the message was
4 try and resolve the matter, is that correct?
3 MS BARNES: But you didn't make such a
2 agree in order to solve the problem.
1 MS BARNES: And at that meeting General

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2013 MR GCILITSHANA: I knew that they were armed. The police, they are normally armed.
22 CHAIRPERSON: Never mind whether they
23 were armed or not. When you left after your briefing early
24 in the morning, did you see policeman on the premises?
25 MR GCILITSHANA: I saw them at
26 Middlekraal because the briefing was at LPD offices.
27 CHAIRPERSON: I'm interested in the
28 briefing at the LPD offices.
29 MR GCILITSHANA: Yes.
30 CHAIRPERSON: What time did you leave the
31 LPD offices?
32 MR GCILITSHANA: The normal – those
33 meetings takes about half an hour to 45 minutes. I won't
34 be sure exactly because sometimes they delay. I won't
35 be sure. I won't be sure about –
36 CHAIRPERSON: It sounds to what you say
37 as if you left between about 8 o'clock and quarter past 8,
38 would that be right?
39 MR GCILITSHANA: That could be possible.
40 I'm not sure. As I indicated it sometimes even start of
41 the briefing session, it start late at times.
42 CHAIRPERSON: If it started late then you
43 would've left even later.
44 MR GCILITSHANA: Yes.

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1 CHAIRPERSON: Ja. Okay, so you left some
2 time, from what you tell us, it appears some time after 8
3 o'clock.
4 MR GCILITSHANA: Ja, that is possible
5 yes.
6 CHAIRPERSON: Now when you left the LPD
7 just after 8 o'clock did you see a large contingent of
8 police there?
9 MR GCILITSHANA: Yes.
10 CHAIRPERSON: Significantly more police
11 would've been there the day before.
12 MR GCILITSHANA: Yes because the area
13 already was with the police, even on the previous day.
14 CHAIRPERSON: So you had been there the
15 day before -
16 MR GCILITSHANA: Yes.
17 CHAIRPERSON: - with -
18 MR GCILITSHANA: Yes.
19 CHAIRPERSON: But there were
20 significantly more police there on the morning of the 16th.
21 Something was going to happen.
22 MR GCILITSHANA: To me, Commissioner, it
23 will be because – because I wouldn't know the figures by
24 then but I saw many police like we did in the previous days
25 that there were many and the cars were many in the stadium.

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1 MR MPOFU: Yes, Chair, just to indicate
2 that I will ask some questions but I understand that
3 there's an arrangement that Mr Ntsebeza will move an
4 application.
5 CHAIRPERSON: Well I don't think his
6 application is urgent. I think we should rather finish
7 this witness first. So in any event – if necessary before
8 the application is moved, I would like to see Mr Semenya
9 and Mr Ntsebeza in my chambers. But –
10 MR NTSEBEZA SC: I just wanted to ask one
11 question –
12 CHAIRPERSON: You want to ask one – okay.
13 So you want to cross-examine first?
14 MR NTSEBEZA: Yes, Sir.
15 CHAIRPERSON: And then – of course you're
16 – I understood that you didn't want to ask any questions.
17 I was obviously not correctly informed. Mr Ntsebeza.
18 MR NTSEBEZA SC: Yes.
19 MR GCILITSHANA: That's correct.
20 MR NTSEBEZA SC: I just wanted to know if
21 you would be the person who would tell the commission as to
22 whether it is so that some of the people who were killed
23 between the 13th and the 16th were NUM members?
24 MR GCILITSHANA: Yes, we have verified
25 that to the lawyers that yes, some of them were members of
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<td>1 NUM.</td>
<td>1 MR GCILITSHANA:  No, I don’t.</td>
<td>1 MR GCILITSHANA:  No, I don’t.</td>
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<td>2 MR NTSEBEZA SC:  And would you know or</td>
<td>2 MR NTSEBEZA SC:  Thank you, Mr Chair.</td>
<td>2 MR NTSEBEZA SC:  Thank you, Mr Chair.</td>
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<td>3 would you be the person to say whether as at the time of</td>
<td>3 CHAIRPERSON:  Mr Mpolu?</td>
<td>3 CHAIRPERSON:  Mr Mpolu?</td>
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<td>4 their death, those NUM members and their families were</td>
<td>4 MR MPOFU:  Thank you, Chairman. Mr</td>
<td>4 MR MPOFU:  Thank you, Chairman. Mr</td>
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<td>5 contacted and were indicated that too that they would be</td>
<td>5 Gcilitshana, I represent the arrested and injured persons</td>
<td>5 Gcilitshana, I represent the arrested and injured persons</td>
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<td>6 represented by NUM at these proceedings?</td>
<td>6 who are part of the terms of reference of the commission.</td>
<td>6 who are part of the terms of reference of the commission.</td>
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<td>7 MR GCILITSHANA:  I know that there is a</td>
<td>7 Do you understand that?</td>
<td>7 Do you understand that?</td>
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<td>8 process and that I’m not sure when it started.</td>
<td>8 MR GCILITSHANA:  Yes, I know.</td>
<td>8 MR GCILITSHANA:  Yes, I know.</td>
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<td>9 MR NTSEBEZA SC:  Are you saying you are</td>
<td>9 MR MPOFU:  And just to – so that you can</td>
<td>9 MR MPOFU:  And just to – so that you can</td>
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<td>10 aware there is a process to do what?</td>
<td>10 get the context right, our case which we put before the</td>
<td>10 get the context right, our case which we put before the</td>
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<td>11 MR GCILITSHANA:  There is a consultation</td>
<td>11 commission in the opening address and which we will argue</td>
<td>11 commission in the opening address and which we will argue</td>
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<td>12 with the – the process of consultation with the families of</td>
<td>12 at the end suggests that the main parties that were the</td>
<td>12 at the end suggests that the main parties that were the</td>
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<td>13 the deceased who are NUM – who were NUM members that died,</td>
<td>13 causes of the calamities that befell our – the people we</td>
<td>13 causes of the calamities that befell our – the people we</td>
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<td>14 after and before.</td>
<td>14 represent were the police and Lonmin.</td>
<td>14 represent were the police and Lonmin.</td>
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<td>15 MR NTSEBEZA SC:  I asked and I will not</td>
<td>15 MR GCILITSHANA:  Yes.</td>
<td>15 MR GCILITSHANA:  Yes.</td>
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<td>16 ask you further unless you are able to let the commission</td>
<td>16 MR MPOFU:  And we say that they were</td>
<td>16 MR MPOFU:  And we say that they were</td>
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<td>17 understand this. I asked because these proceedings</td>
<td>17 responsible, both as individual parties and also in</td>
<td>17 responsible, both as individual parties and also in</td>
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<td>18 began, I placed on record, representing families of mine</td>
<td>18 collusion with each other.</td>
<td>18 collusion with each other.</td>
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<td>19 workers who were other than NUM members at that stage. Do</td>
<td>19 [10:34]  MR GGILITSHANA:  Yes.</td>
<td>19 [10:34]  MR GGILITSHANA:  Yes.</td>
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<td>20 you understand that?</td>
<td>20 MR MPOFU:  But we do also say in the</td>
<td>20 MR MPOFU:  But we do also say in the</td>
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<td>21 MR GCILITSHANA:  Yes.</td>
<td>21 opening address that there were other secondary or</td>
<td>21 opening address that there were other secondary or</td>
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<td>22 MR NTSEBEZA SC:  Now towards the end of</td>
<td>22 contributory parties or contributory causes to what</td>
<td>22 contributory parties or contributory causes to what</td>
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<td>23 last year when it became necessary again to – for us to</td>
<td>23 happened, and in that we list the conditions – the</td>
<td>23 happened, and in that we list the conditions – the</td>
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<td>24 place ourselves on record, I said that I now represent the</td>
<td>24 difficult conditions of – what we call the sordid history</td>
<td>24 difficult conditions of – what we call the sordid history</td>
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<td>25 remainder of the families with the exception of perhaps one</td>
<td>25 in the mining – of the mining industry in South Africa, and</td>
<td>25 in the mining – of the mining industry in South Africa, and</td>
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<td>1 we also mention the issue of the trade unions, or so called</td>
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<td>2 trade union rivalry. Understand that?</td>
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<td>3 MR GGILITSHANA:  Yes, I understand.</td>
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<td>4 MR MPOFU:  So we see the issue of the</td>
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<td>5 trade union rivalry only as one of the secondary causes,</td>
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<td>6 and I will then question you against that background. And</td>
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<td>7 maybe just for the sake of completion, in relation to the</td>
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<td>8 police to what we say is the culpability of the police,</td>
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<td>9 these will be issues that range from how they handled the</td>
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<td>10 event, the planning and so on, so those, the issues</td>
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<td>11 relating to the police do not concern you as far as we are</td>
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<td>12 concerned, in relation to the causes of this matter. Do</td>
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<td>13 you understand?</td>
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<td>15 MR MPOFU:  But in relation to Lonmin, one</td>
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<td>16 of the key issues that we say could – makes up their major</td>
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<td>17 contribution to the causes of the massacre is their refusal</td>
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<td>18 to negotiate or to engage with the strikers, on the basis</td>
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<td>19 that they were criminals. Understand that?</td>
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<td>21 MR MPOFU:  Now, you are an important</td>
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<td>22 witness in the sense that although you might not be a</td>
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<td>23 primary party, you, in particular, as an individual, had</td>
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<td>24 the privilege of interacting closely with these two</td>
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<td>25 parties, the police and Lonmin, in the days leading up to</td>
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the massacre or tragedy. Do you agree?

MR GGILITSHANA: Yes, because we had a meeting with the general on the 15th.

MR MPOFU: Yes, but not only that, as I understand it, you had, twice in a day you had what we call debriefing meetings.

MR GGILITSHANA: Yes, but sometimes it will be management, security, not police.

MR MPOFU: Yes, but sometimes the police would be present.

MR GGILITSHANA: Yes.

MR MPOFU: Right. Now, what I’d like you to please explain to the Commission is maybe some of the subtle issues, the attitudes, which we cannot pick up from videos or from minutes. Would you agree that the attitude of the police over the days that you were having these debriefing meetings seemed to harden towards the end, let’s say on the 15th and the 16th?

MR GGILITSHANA: That’s correct.

MR MPOFU: Did that hardening show itself even more, in a pronounced way, after the killing of the two policemen?

MR GGILITSHANA: I wouldn’t be specific, because they would more talk of not being able to tolerate the issues of violence.

MR MPOFU: Okay, maybe I should ask it in a more open-ended way. The hardening that you have confirmed happened, you might not be able to pinpoint the specific day, but in relation to the killing of the police, would it have happened before or after, bearing in mind that the killing of the police was on the 13th. of the two policemen, sorry?

MR GGILITSHANA: I think it was clear when we met with General Mpembe, because, as said, he indicated to us that they have to disarm those people if we can’t persuade them.

MR MPOFU: Okay.

CHAIRPERSON: On what day did General Mpembe say that?

MR GGILITSHANA: That’s on the 15th.

MR MPOFU: Thank you very much, so it was after the 13th. Right, now, as far as Lonmin was concerned, we will argue at the end of the case that there was a concerted campaign on the part of Lonmin to label the people at the mountain as criminals. If you did notice that happening, at what stage in your daily meetings would you say it happened?

MR GGILITSHANA: If my memory serves me well, it will be after the killing of the two security guards.

MR MPOFU: Okay, now I’ll come back to that thing, but I just now want to tap into your own experience as a union leader, per se, you would agree, wouldn’t you, as a person who’s experienced in matters of labour relations that the phenomenon of wildcat strikes or unprotected strikes is part of the whole industrial relations regime in the country.

MR GGILITSHANA: Yes, but after 1994 – after the reviewal of the Labour Relations Act, that reduced, because unions at least have rights – a better right in terms of the strike. There were more before 1994.

MR MPOFU: Yes, no, fair enough, but the point is that even now, in the post-Labour Relations Act regime after 1995, that wildcat strikes or unprotected strikes do occur, not with the same frequency as before, but they are still part of the reality of industrial relations in South Africa.

MR GGILITSHANA: That’s correct.

MR MPOFU: And actually workers are entitled to withdraw their labour, whether in a legal or an illegal strike, but what they’re not entitled to do is to employ violence in doing so. Will that be correct?

MR GGILITSHANA: Yes, I would agree that the process should not be violent, but the workers have got a right to strike.
1 MR GGILITSHANA: That's correct.
2 MR MPOFU: And that it would be a lie, to
3 put it mildly, to characterise what happened there simply
4 as something was not or could not be described as a labour
5 relations dispute?
6 MR GGILITSHANA: It will depend on the
7 analysis of that particular person, but what I do know is
8 that placards of 12 500 as a demand.
9 MR MPOFU: Okay, so let's put aside that
10 person. In your analysis, it was a labour relations
11 dispute?
12 MR GGILITSHANA: Yes, that's correct.
13 MR MPOFU: You would also agree - I can't
14 get my hands on the article now that was given to you
15 yesterday, but - no, it's fine, I'm just going to
16 paraphrase. Essentially there's a part there that says
17 that RDOs are some of the worst paid or work under some of
18 worst conditions in the industry, something to that effect.
19 MR GGILITSHANA: That's correct.
20 MR MPOFU: Yes, I think I'd like rather
21 to quote the more flowery language of Hartford, the author.
22 CHAIRPERSON: Do you have to, Mr Mpofu?
23 The paper is already before us. The witness has agreed
24 with the proposition. We have it, it was read out
25 yesterday. It just takes up time. It's just repeating a

1 point we have already, besides the whole –
2 MR MPOFU: No, no, Chairman, I won't even
debate that, you're quite correct, Chairperson. And it's a
view shared by the NUM that RDOs are also severely
underpaid, correct?
6 MR GGILITSHANA: Yes.
7 MR MPOFU: And the evidence would seem to
suggest that they're paid in the region of just less than
9 R5 000?
10 MR GGILITSHANA: In Lonmin, I think it was about 5 point something, in Lonmin. Generally they're around that, between 4 and 5.
13 CHAIRPERSON: Mr Mpofu, I was wrong when
14 I said the relevant passage had been read out yesterday.
15 It was put before us, but those in the auditorium, for
example, didn't have a chance to hear it. You'll find it
on page 3 of Exhibit XX7, it's the paragraph beginning,
"The RDO's Conditions of Employment," under the heading,
"The RDO's Experience." You might like to read it, put it
to the witness, and then it will be before us, not just as
a document, but as oral evidence. You can then form a
basis for launching your rocket further.
23 MR MPOFU: Thank you, Chairperson. I
wasn't sure whether it was read out by Ms Barnes, ja. The
passage – and the Chairman was right, we have already

1 agreed with the gist of this, but just to read it out for
the record. “The RDO's conditions of employment are
characterised by the following features, the RDOs are doing
the toughest, most dangerous, most production-critical core
mining function. They have long perceptions of
underpayment relative to their colleagues in the industry.
7 There are typically no serious service increment
differentials in platinum. In other words, gold sector has
some incentives, or other significant allowance in their
pay and as such few real cash incentives to do RDO work.
[10:54] In addition there is no prospect of any career
progression for RDOs given they are functionally illiterate
status in the structure of the mining work team in respect
of job categories, a structure which requires a basic
academic training for advancement to blasting certificate
status.” And just for completion -
17 COMMISSIONER TOKOTO: Sorry, just - we
are not with you here. We are listening but we are getting
you to listening but we are not sure exactly which
paragraph –
21 MR MPOFU: I'm so sorry. It's page 3 of
XX7, sorry, Mr Commissioner.
23 MR GGILITSHANA: Okay, we got it.
24 MR MPOFU: You got it? Okay, I've now
finished reading that first paragraph. I'm just going to

1 read one more sentence in the next paragraph. It says,
“the RDOs have a specific demographic pattern that is an
industry wide feature for all commodity classes and sets
them apart from the rest of their colleagues. They are
almost entirely migrant and functionally illiterate and the
80% majority of the migrants are South Africans from the
Eastern Cape. And one of the reasons I’m putting this to
you is because, and I hope you agree, that the majority of
the people at the mountain were RDOs and if you agree with
that, just to save time, I will say that by extension means
that the majority of the people that I represent are RDOs.
12 MR GGILITSHANA: On the grounds that you
know that the strike was initiated by RDOs, I would agree
that there have been – they maybe have been in majority.
15 MR MPOFU: Now another area I am still
tapping on your experience, would you agree that in the
situation such as the one we had on the 16th or around those
days, where the people are gathering on a daily basis as it
were that a sort of a sense of solidarity develops among
themselves as a group.
21 MR GGILITSHANA: I would agree that other
group categories of workers also participated in the
strike. I won't qualify it whether because - is that
others who claimed that they have been saying that they
have been – they are forcefully - others they will say they
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were not willing, but I won't go to that route.
2 MR MPOFU: Sorry, I don't think you are
3 answering my question. Maybe you are finishing answering
4 the other question about whether the majority were RDOs. I
5 thought we were beyond that. My question now is would you
6 agree that the - typically in these kinds of meetings that
7 we are dealing with where people meet, they develop a sense
8 of solidarity, comradeship and so on among the group
9 itself. In your experience as a unionist, not necessarily
10 on this - and that -
11 MR GCILITSHANA: Yes, I agree.
12 MR MPOFU: Yes, thank you, I heard you
13 agreeing with me. And that in those settings, really, the
14 people even if they are armed, they may pose a danger to
15 somebody else, but they do not pose a danger among the
16 members of that solidarity team. In other words not a
17 danger to themselves.
18 MR GCILITSHANA: Yes, that is usual
19 unless there is somebody who was - they suspect that he's
20 not exactly with them.
21 MR MPOFU: A well okay. Let's - putting
22 that exception aside you would agree with my proposition.
23 MR GCILITSHANA: Yes.
24 MR MPOFU: Okay. And therefore if you
25 agree then with that proposition, you would also agree with

my proposition that it would be absurd to suggest that the
members of that group as a unit actually had any motive or
intention to kill each other, to kill other people in the
group. And maybe to make it clearer, sorry, Mr
Interpreter, so that I don't speak in tongues. I'm
referring you directly to the fact that some of the members
of that solidarity group were charged with -

CHAIRPERSON: Solidarity is possibly the
wrong word to use in this context.

MR MPOFU: Yes, or the unit. Ja, no, I
agree. Of the - I do want an adjective, Chair, that will
suggest that this is not just 3 000 people but they are a
team of some sort, but I’ll find it. It’s actually a noun,
not an adjective that I’m looking for, but I’ll find it.

CHAIRPERSON: Maybe after tea.

MR MPOFU: Ja, maybe after tea. Chair?

CHAIRPERSON: [Inaudible]

MR MPOFU: Thank you, Chairperson.

CHAIRPERSON: - and allow you to finish
the question when you've found the relevant word, but I
want to remind you that I think the state case is based on
the principles of doles eventualis and I'm not going to
allow you to explain to the witness what you understand
about doles eventualis. But anyway, we'll take the tea
adjournment at this point.

which is brotherhood and I’m sure I won’t be in trouble
from a gender point of view because it's common cause that
all the people there were men. So, Mr Gcilithsana would
agree that the people who are in that situation form -
would form as among themselves a spirit of brotherhood.

MR GCILITSHANA: I agree with you in
general, but during the strike you’ll remember there were
some incidents had been reported on the issue of comrades
who have been found near the kopptie that I won’t say that
will not - I wouldn’t say whether that will be qualified as
brotherhood or what, but generally.

CHAIRPERSON: The point Mr Mpofu is
trying to make is there is no basis for believing that any
of the strikers would want to kill any of their fellow
strikers. There might be allegations about people who
weren’t prepared to strike but as far as their fellow
 strikers were concerned, the point is they were charged
with murdering their fellow strikers. He says it's
unlikely one can accept that they didn't - they wouldn’t
have wished to kill their fellow or even harm their fellow
 strikers. I think that's the basis of his point.
### Page 4013

| 1 | MR GCILITSHANA: | Yes, they will in involvement. |
| 2 | brotherhood, yes. | MR GCILITSHANA: | That's correct. |
| 3 | MR MPOFU: | Thank you. Now moving on to necessary to participate in those meetings? |
| 4 | the involvement of the NUM, I'm just going back to the how can we find solution and we are a recognised union. |
| 5 | issue of the daily meetings. Can you just explain to the MR GCILITSHANA: | Because we wanted to see |
| 6 | commission what were the roles or the nature of the inputs how we can find solution and we are a recognised union. |
| 7 | given by the various participants in these meetings and how can we find solution and we are a recognised union. |
| 8 | before you do that, I just want – just to make sure that how we can find solution and we are a recognised union. |
| 9 | we're on the same page, my understanding that under this how we can find solution and we are a recognised union. |
| 10 | police sometimes, management, HR of Lonmin and Lonmin how we can find solution and we are a recognised union. |
| 11 | security. how we can find solution and we are a recognised union. |
| 12 | MR GCILITSHANA: | What will happen, one, |
| 13 | the security will give feedback on what they have observed how we can find solution and we are a recognised union. |
| 14 | as security personnel and if there were any requests for how we can find solution and we are a recognised union. |
| 15 | escort or whatever for people who wanted to go to work, how we can find solution and we are a recognised union. |
| 16 | that's what they would report. One. Two, on the side of how we can find solution and we are a recognised union. |
| 17 | the trade unions, if there are any complaints that have how we can find solution and we are a recognised union. |
| 18 | been raised by the members to the structure, to the how we can find solution and we are a recognised union. |
| 19 | comrades, to the structures, those – they would raise that how we can find solution and we are a recognised union. |
| 20 | – in a particular point, people have been waiting for a how we can find solution and we are a recognised union. |
| 21 | bus, but it didn't come or the bus did come but there was how we can find solution and we are a recognised union. |
| 22 | no escort or some of those inputs. With management, they how we can find solution and we are a recognised union. |
| 23 | will more talk of the figures of people who were able to how we can find solution and we are a recognised union. |
| 24 | report to work. That is the general discussions. And even how we can find solution and we are a recognised union. |

### Page 4014

| 1 | if there were cases of people who will complain they were company was saying that it's not possible to talk to the |
| 2 | intimidated on the - in certain areas, those will be strikers while they're armed. They have to disarm and |
| 3 | reported. follow the appropriate channels. |
| 4 | MR MPOFU: | And the police when they were |
| 5 | there? In other words you failed to |
| 6 | MR GCILITSHANA: | And the police, they |
| 7 | will work together. It will be similar with the security persuade them to change that hard-line stance? |
| 8 | to say we have received these complaints and we have |
| 9 | responded on the complaints. No, that could not |
| 10 | MR MPOFU: | And would it be fair to |
| 11 | the police and the mine security would share their latest |
| 12 | intelligence at these meetings? |
| 13 | MR GCILITSHANA: | Not in front of us |
| 14 | because even – in most cases when you asked the plan they |
| 15 | will say that the issue of police is of the police, |
| 16 | therefore we should not be involved. |
| 17 | MR MPOFU: | Okay. So it would be fair to |
| 18 | say that there were – there was a labour relations segment |
| 19 | of the meeting and then a security segment, so to speak. |
| 20 | MR GCILITSHANA: | Yes. |
| 21 | MR MPOFU: | Is there any – okay, let me |
| 22 | put it this way. Your evidence is that the NUM actually |
| 23 | had no involvement in this matter. I mean putting aside |
| 24 | the fact that your individual members might have been at |
| 25 | the mountain and so on, but as a union you had no |

### Page 4015

| 1 | company was saying that it's not possible to talk to the |
| 2 | strikers while they're armed. They have to disarm and |
| 3 | follow the appropriate channels. |
| 4 | MR MPOFU: | In other words you failed to |
| 5 | persuade them to change that hard-line stance? |
| 6 | MR GCILITSHANA: | No, that could not |
| 7 | change. |
| 8 | MR MPOFU: | Did you find that frustrating |
| 9 | as you knew that the only way was through engagement? |
| 10 | MR GCILITSHANA: | I must say both issues |
| 11 | because the company on the other side was saying that these |
| 12 | people must disarm before they can talk to them. On the |
| 13 | other side the strikers say we don't want to talk to NUM. |
| 14 | That also frustrated us. |
| 15 | MR MPOFU: | No, Mr Gcilitsana, I’m afraid |
| 16 | that's not the correct description of the lock jam I was |
| 17 | referring to. The lock jam I was referring to is the |
| 18 | following and if you knew or you didn't know you'll tell |
| 19 | the commission. It was that the strikers were saying |
| 20 | repeatedly that they would like the employer to come and |
| 21 | engage their demands for R12 500 and if that happened then |
| 22 | they would disarm and do all the things that were being |
| 23 | asked of them. But on the other hand, the Lonmin stance |
| 24 | which was now already covered was that they're not going to |
| 25 | speak to those criminals and so on and so on and they |
MR GCILITSHANA: Yes.

MR MPOFU: And evidence has been led here that various parties, including members of the clergy, tried to break that lock jam by appealing to the employer to, as it were, meet the requests or demand of the workers for engagement. Not necessarily to give the 12 500 but to engage on it. Were you aware of that?

MR GCILITSHANA: I became aware on the 16th to be honest because I was not aware that there was - there were meetings that were scheduled before the 16th.

MR MPOFU: You - Mr Zokwana is going to come and testify, I understand, so we'll put the questions to him, but we did prefer to say that you and maybe to some extent the late Mr Bongo would've been the people who would give detailed briefings to somebody like the president of NUM. He was not on the ground on a daily basis, he would rely on you to - for his factual information, correct?

MR GCILITSHANA: That's correct, but not only limited to us because I've got a number of comrades. You know, during the crisis anybody would phone.

MR MPOFU: Yes, but officially you're holding the position you hold or held would've been the primary sources of his information about what was on the ground at Lonmin.

MR GCILITSHANA: Correct.

MR MPOFU: Did you ever say to Mr Zokwana that there were no NUM members at the koppie?

MR GCILITSHANA: No.

MR MPOFU: Do you know where he got that idea?

MR GCILITSHANA: No.

MR MPOFU: Alright. And would Mr Zokwana also report to you about other engagements that he might have had regarding the situation?

MR GCILITSHANA: At times, I wouldn't say everything.

MR MPOFU: Did he report to you that he held any meetings with the top management of Lonmin?

MR GCILITSHANA: I don't recall.

[11:56] MR MPOFU: Did he report to you that he held any meetings with any of the board members of Lonmin regarding the situation?

MR GCILITSHANA: I don't recall.

MR MPOFU: Then we spoke about the, or rather you testified about the situation in which you were overtaken by AMCU at various mines in terms of membership, which included Lonmin, Implats, and you were not sure if they had also overtaken you at Anglo Plats. Is that correct?

MR GCILITSHANA: Yes.

MR MPOFU: Would you agree with me that one of the quickest ways for a union to lose its membership is to lose the credibility and the trust of the workers?

MR GCILITSHANA: Yes.

MR MPOFU: And would you agree that one of the reasons that, there might be many reasons.

MR MPOFU: Yes, but essentially that the workers should never perceive that the interests of such a union are more with the management than with the workers, or if they do, if they perceive it, rightly or wrongly, that its membership would dwindle fast?

MR GCILITSHANA: I'm sorry, I put, I was putting on the mike of the interpreter. Can you please repeat your question?

MR MPOFU: Okay, no it's fine. I'll move on. I was just telling you, putting proposition to you, hoping you'll agree or disagree, but some of the things that might make a union lose its membership fast, would you agree that one of those is if the union, if the workers realised or perceived that a union was against wage increases for whatever reason, that that would be one of the fastest ways to lose membership?

MR GCILITSHANA: Yes.

MR MPOFU: Now are you aware that the RDOs had taken a conscious decision to embark on the industrial action outside the auspices of both the NUM and AMCU, as RDOs per se?

MR GCILITSHANA: Yes, I'm aware.

MR MPOFU: And in the case of NUM, the reason why they wouldn't involve you, or one of the reasons was because of this loss of credibility which you've already testified about. I don't want to go into the specific instances. Would you agree?

MR GCILITSHANA: I said that is possible.

MR MPOFU: Another reason is that they knew that the NUM was constrained by its agreement to the principle of central bargaining, whereas they wanted to push their agenda, as it were - for lack of a better word - as RDOs because they felt that they were neglected as RDOs.
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1. **MR MPOFU:** Ja. Yes, no I agree with you there. All I'm saying is that you as the NUM in any event, even if they had approached you, would have been constrained by the principles of centralised bargaining from taking up their specific issue as RDOs, you know, or as Lonmin RDOs as opposed to RDOs generally throughout the industry. That's how I understand centralised bargaining. Maybe you can correct me.

### Page 4022

1. **MR GCILITSHANA:** In this situation when we talk of the collective agreement, because the approach of centralised gold, platinum bargaining forum is still in process, have not been agreed, other than the gold mines where you negotiate for broad gold miners. Depend mining houses, here your Lonmin would have its own collective bargaining, Impala would have its collective bargaining, and Anglo Platinum will have its own collective bargaining.

### Page 4023

1. **CHAIRPERSON:** Ja, alright. The point I'm putting to you is that during the duration of this agreement it would have been difficult for NUM to have put up a special extra argument for an increase for the RDOs. Is that correct?
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Mr GCILITSHANA: Yes, it would.

Chairperson: And that would have been a reason for the RDOs to say if we want more money, we can’t get it with the help of NUM, we’ll have to do it ourselves.

I think that’s your point, Mr Mpofu. Is that right? Is that correct?

Mr GCILITSHANA: That is possible.

Mr Mpofu: Okay, possible is good enough.

Is it also possible that, or rather let me do it like this.

Going back to the definition of the centralised bargaining regime that you had, would it have been possible or easy for you to go and negotiate only for RDOs, or did the, what I’ll call the vertical application of the centralised bargaining regime imply that you would negotiate for all categories in one negotiation process, or am I wrong?

Mr GCILITSHANA: At times we negotiate, yes we negotiate for everybody. I must indicate, at some point, yes, in Lonmin, there was at some point where all the operators had a problem, but NUM had, was able to take up that issue.

Mr Mpofu: Yes, Mr Gcilitshana, I don’t think, nobody is suggesting that, that’s why the chairperson used the words “would it have been difficult,” and I used the words “you would have been constrained.” We’re not saying you would have been someone who was taken into jail. Obviously nobody is prevented from asking, but would that regime somehow constrain you from isolating one category and negotiating on their behalf, make it difficult?

Mr GCILITSHANA: Yes.

Mr Mpofu: Okay, let’s go to the events of the 11th. I know you’ve said that you were not there, but insofar as you’ve testified about them, and just for your edification, the events of the 11th are very important to the Commission because it’s our version that was being put to you by, I think Mr Burger or Mr Tip, that the 11th was some kind of turning point. So I’ll ask you a few questions about the 11th. I’ll take it that as the NUM you would have investigated this serious event where people were injured and shot at your offices.

Mr GCILITSHANA: That’s correct.

Mr Mpofu: Where did the people who shot at the workers get their guns? How many people – sorry, I’ll ask one question at a time. Where did they get the guns?

Mr GCILITSHANA: I don’t know.

Mr Mpofu: Do you normally have armed members of the NUM at your office?

Mr GCILITSHANA: Not as far as I know.

Mr Mpofu: And have your investigations revealed that you had armed members of the NUM on that day?

Mr GCILITSHANA: The investigation is more handled by our lawyers and the police.

Chairperson: Never mind who handled it. Mr Mpofu wants to know from you what information you have.

I can understand the lawyers and the police did the major investigation, but if you are able to tell us on the basis of your own knowledge something about this aspect that Mr Mpofu wants to ask you about, then I think you must tell us.

Mr GCILITSHANA: Yes, there were.

[12:16] Mr Mpofu: Chairperson, if you can bear with me one second. Okay, was one of the armed NUM members called Sisa?

Mr GCILITSHANA: I don’t know who was armed or not armed?

Mr Mpofu: Okay. You’ve just said to the chairperson that some NUM members were armed, which NUM members were armed, to your knowledge?

Mr GCILITSHANA: As I indicated, on our investigation, I’m not particularly involved in this investigation, that’s why I don’t know who was armed and who was not armed.

Chairperson: May I interrupt at this point? Mr Tip are you going to lead evidence from people who were present on the NUM side, as it were, on the 11th at the time of the incident that Mr Mpofu is referring to?

Mr TIP SC: There will be two witnesses, Mr Chair.

Chairperson: And will they be able to give direct evidence in respect of the points that Mr Mpofu is asking about now?

Mr TIP SC: They’ll be able to deal with that directly.

Chairperson: So -

Mr Mpofu: Yes, I’m going to move to something else, but do you know one Sisa who worked at the office?

Mr GCILITSHANA: Yes, I know Sisa.

Mr Mpofu: And Mohilwa?

Mr GCILITSHANA: I don’t recall, because I don’t know all of them.

Mr Mpofu: You don’t know all of them, thank you. In your – either in the investigations or in the day to day meetings you had at Lonmin, or subsequently, did you become aware that the strikers hold the view that shootout near the NUM offices was the reason why they subsequently gathered at the kopjie on a daily basis, in the first place?

Mr GCILITSHANA: Yes, I heard about that,
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2 MR MPOFU: And were you aware that until that shootout, they had been gathering at the Wonderkop stadium.
3 MR GGILITSHANA: Next to Wonderkop stadium.
4 MR MPOFU: Yes, that's correct, next to the entrance?
5 MR GGILITSHANA: Yes.
6 MR MPOFU: Now, you've also testified -
7 I'm moving away from the 11th now, you've testified that on the 15th you were present at the meeting - oh by the way, before we get there, this meetings, the daily meetings, who used to chair those meetings?
8 MR GGILITSHANA: It will be Mr Blou, as I recall, from the mine security.
9 MR MPOFU: And they were convened by Lonmin?
10 MR GGILITSHANA: Yes.
11 MR MPOFU: Right. Now, on the 15th you testified that you were present at the meeting where General Mpembe met, among others I suppose, with AMCU and the NUM?
12 MR GGILITSHANA: Yes, I was present.
13 MR MPOFU: Were you present when - okay, let me put it this way, from General Mpembe's statement, he seems to exhibit a kind of frustration at the stance which was taken by the president of the NUM in his refusal to go to the mountain, basing that on the fact that there were no NUM members there. Did you witness that?
14 MR GGILITSHANA: What I understand, yes, the president - because we had a briefing, short briefing, when he arrived. We listened to that he is here, he has been called by the general. After having a briefing, that's when General Mpembe persuaded the teams to go to the mountain. Our shop stewards were not eager to allow the president to go to the mountain, simply because of the songs and stuff that were sung in the mountain about the NUM and the president.
15 MR MPOFU: Now, put aside the issue of the songs, that may well have been another reason. My question was were you aware or did you witness the expression or the refusal of your president to go to the mountain on the basis that there were no NUM members there?
16 MR GGILITSHANA: My recollection is that he said NUM have not sent people to the mountain.
17 MR MPOFU: Ja, no, that's not the point. In fact, General Mpembe statement says that to turn that situation around, he had to show pictures - they had to show pictures of people who were at the mountain who were NUM members and then that was the end of that debate.
18 MR GGILITSHANA: That is not correct.
19 MR MPOFU: Two pictures were shown in the meeting. He indicated to us that he have verified people who are on the mountain, that they are both NUM and AMCU.
20 MR MPOFU: Okay, so that did not happen.
21 MR GGILITSHANA: Either General Mpembe is lying or he's making a mistake.
22 MR MPOFU: You've already confirmed that you were aware of the statement by General Mbombo that the 16th was D-day.
23 MR GGILITSHANA: That's correct.
24 MR MPOFU: And subsequent to the morning meeting, did you have occasion to witness even further this build up, the Nyalas coming in, all sorts of vehicles and helicopters flying around and so on?
25 MR GGILITSHANA: I assume many police - I wouldn't know exactly when the build up - the actual build up, exactly, but the police were many.

1 way, Mr Mathunjwa went – his last visit to the mountain, or rather during his last visit to the mountain, basically said to the workers that it was clear that they were going to be killed, and he explained here that this was because of all these movements, did you have a chance to form that kind of impression or to see some or all of that of what would have made him to come to that conclusion?
2 MR GGILITSHANA: No, I didn't see that the police were going to kill.
3 MR MPOFU: Right. Okay, now I just want to ask you about - I'm coming towards the end. There are some propositions - or by the way, just to follow up on what Mr Ntsebeza asked you, are you also aware that some of the injured and arrested persons were members of the NUM?
4 In other words, apart from the ones who died?
5 MR GGILITSHANA: Yes.
6 MR MPOFU: And, as a union, have you taken any steps to assist those members of yours who were either arrested or injured in any way during their plight?
7 MR GGILITSHANA: I will say no and qualify, normally when a NUM member has got a problem, he will go to the NUM offices and report the problem, so that the structures can be able to take up those issues. In this incident, beyond the strike, nobody came to the NUM and requested any assistance, as I recall.
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Mr MPOFU: Is the NUM a caring union?
Mr GGILITSHANA: That's correct.
Mr MPOFU: And is NUM concerned about its rapid loss of membership?
Mr GGILITSHANA: It's correct.
Mr MPOFU: Well, don't you think the attitude you've just displayed now contributes significantly to that? Isn't it true that the reason why people would come to your office to report any calamity, would be that you would not be expected to know about it - informed, sorry.
Mr GGILITSHANA: As you indicated to that even before, it will be mainly different reasons that people would leave the union. It may be one of. Mr MPOFU: Well, how was it going to be possible for NUM members, who are sitting in police custody, to come to your office and tell you that we are now in police custody?
Mr GGILITSHANA: It will not be possible, but after their release, they can be able to come to the NUM.
Mr MPOFU: So if they were not released, they would still be sitting there and you'd be waiting for them in your office?
Mr GGILITSHANA: It's not only, even it them in your office?
Mr GCILITSHANA: That will raise expectations to other categories.

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Mr MPOFU: Evaluate?
Mr GGILITSHANA: 24 words, you did not visit the people in hospital to even evaluate?
Mr MPOFU: And you did not – in other words, you did not visit the people in hospital to even evaluate?
Mr GGILITSHANA: It's not only, even if it them in your office?
Mr GCILITSHANA: That will raise expectations to other categories.

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Mr MPOFU: And was accordingly...
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<td>1 problem</td>
<td>1 MR MPOFU: I'll break it down. Mr</td>
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<td>2 MR GCLITSHANA: Yes, it could be</td>
<td>Burger, first he suggested that, or rather he put to you,</td>
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<td>3 problematic, yes.</td>
<td>which you confirmed, that although strictly speaking those</td>
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<td>4 MR MPOFU: Okay, thanks. So would you</td>
<td>discussions were outside the bargaining structures, firstly</td>
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<td>5 agree therefore that given all the concerns that we spoke</td>
<td>he confirmed to you that the CCMA was present, which I</td>
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<td>6 about earlier, and this one, that it was probably a good</td>
<td>presume somehow ameliorated the position.</td>
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<td>7 idea, or quite an intelligent decision by the RDOs, if they</td>
<td>MR GCLITSHANA: Yes, correct.</td>
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<td>8 wanted to operate as RDOs, not to do so involving the NUM?</td>
<td>MR MPOFU: And then he also put to you</td>
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<td>9 MR GCLITSHANA: I would encourage to,</td>
<td>that another reason for stepping outside those structures</td>
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<td>10 the RDOs to follow the right channels. In fact if it</td>
<td>was the fact that 44 people had died. Remember that?</td>
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<td>11 doesn't succeed, it doesn't succeed, but need to give</td>
<td>MR GCLITSHANA: Yes, I remember.</td>
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<td>12 chance an attempt.</td>
<td>MR MPOFU: Now the question is, would you</td>
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<td>13 MR MPOFU: No, I accept that. All I'm</td>
<td>agree with me that if, as it becomes clear from what I've</td>
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<td>14 saying is that if you are an RDO and there are two ways of</td>
<td>just said to you, Lonmin accepted that under certain</td>
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<td>15 achieving your goals, one is to do it outside, excluding</td>
<td>exceptional circumstances one has to step outside the</td>
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<td>16 the NUM, and the other one is to do it including the NUM,</td>
<td>strict rules of the bargaining processes, that once 10</td>
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<td>17 and the NUM has all these constraints that make it almost</td>
<td>people had died, one death is one death too many, but those</td>
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<td>18 impossible for them to achieve your goal as RDOs, then</td>
<td>should have been sufficient exceptional circumstances to</td>
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<td>19 which route, or rather I'm putting to you that it was an</td>
<td>step outside the unit, rather, the process, the agreed</td>
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<td>20 intelligent decision to choose the route that was without</td>
<td>processes.</td>
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<td>21 the NUM.</td>
<td>MR TIP SC: Chair, before the witness</td>
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<td>22 MR GCLITSHANA: I don't think that was</td>
<td>answers that, we respectfully query whether this is a</td>
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<td>23 intelligent decision. I think that they, actually they</td>
<td>legitimate line of cross-examination which requires the</td>
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<td>24 should have approached NUM and see if NUM would be able to</td>
<td>witness to extrapolate into Lonmin's mind from certain</td>
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<td>25 do or not.</td>
<td>propositions which he has accepted put in a particular way.</td>
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<tr>
<td>1 MR MPOFU: Okay, thank you, we'll leave</td>
<td>1 Are these not matters that should be put to the Lonmin</td>
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<td>2 that for argument. There were propositions – unfortunately</td>
<td>witnesses in due course and to get a direct answer as to</td>
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<td>3 my learned friend Mr Schalk Burger is not here, but he's</td>
<td>what their attitude was?</td>
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<td>4 ably represented by my learned friend Mr Motau. I just</td>
<td>CHAIRPERSON: - he has got any knowledge</td>
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<td>5 want to put some propositions which were put to you by Mr</td>
<td>about things, but NUM also participated in those</td>
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<td>6 Burger, which you agreed with. Mr Burger suggested to you,</td>
<td>negotiations. I take it it's appropriate to ask the same</td>
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<td>7 and you agreed, that during July episode the company had no</td>
<td>question that will be asked in due course of Lonmin, of</td>
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<td>8 option but to engage with the RDOs outside the bargaining</td>
<td>this witness as a chief negotiator for NUM. I take Mr</td>
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<td>9 structures. Do you remember that being put to you?</td>
<td>Mpofu doesn't propose taking the point much further than</td>
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<td>10 MR GCLITSHANA: Yes, I remember.</td>
<td>he's taken it as the moment, so I don't see harm in the</td>
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<td>11 MR MPOFU: So would it be fair from that,</td>
<td>question being asked, provided it's done on the basis that</td>
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<td>12 because Mr Burger is here representing other people,</td>
<td>obviously Lonmin would have their own concerns. The</td>
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<td>13 representing Lonmin, that that would suggest then that the</td>
<td>question is, what would NUM's attitude have been to going</td>
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<td>14 view of Lonmin is that under certain exceptional</td>
<td>outside the bargaining structures after 10 people had died.</td>
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<td>15 circumstances one can negotiate outside the bargaining</td>
<td>I think that's your point. I don't have a problem with that.</td>
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<td>16 structures?</td>
<td>MR MPOFU: Thank you.</td>
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<td>17 MR GCLITSHANA: I indicated that</td>
<td>CHAIRPERSON: Do you have a problem? Do</td>
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<td>18 anything that has to do with money or substantive issues</td>
<td>you want to address me further?</td>
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<td>19 have to be dealt with at the central bargaining.</td>
<td>MR TIP SC: Yes. Well, perhaps I</td>
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<td>20 MR MPOFU: Okay, Mr Burger also put to</td>
<td>misheard the question. If I did, then of course the</td>
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<td>21 you that the negotiations which took place towards the end</td>
<td>objection is withdrawn. I had understood that the question</td>
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<td>22 of August to September, which eventually found a solution,</td>
<td>was not what was NUM's attitude and what would NUM's</td>
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<td>23 were also justifiably done outside the bargaining</td>
<td>attitude have been had there been one death. It was what</td>
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<td>24 structures because 44 people had died. You remember that?</td>
<td>did NUM have to say about Lonmin's attitude.</td>
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<td>25 MR GCLITSHANA: Your question again?</td>
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2 MR MPOFU: Thank you, Chairperson. Yes, maybe the question was clumsily phrased. The question, even, Mr Gcilitshana, what your attitude in your official capacity, or that of the NUM is to that, the stance that was put to you by Mr Burger, which seemed to suggest that the 10 deaths that had occurred by the 15th, or at least the morning of the 16th of September, were not sufficient to trigger, as it had done in July, the exceptional stepping out of the bargaining processes. The NUM wished to venture riskily, that they would not have said that sentiment. It would have agreed that 10, the 10 deaths were sufficient to step out, and you can agree with me or disagree, or that prevention – sorry, just to complete it, sorry, now it becomes a long question, but the gist of it is that the NUM would rather have subscribed more to the view that the prevention of the further 34 deaths was better than curing them, if death can be cured.

3 MR GCILITSHANA: That's correct.

4 CHAIRPERSON: I don't know what your answer “that's correct” means. Can I endeavour to put the question so that I can understand your answer? If it is not Mr Mpofu's question, that's unfortunate. Was NUM's attitude that in view of the fact that 44 people had died, it was appropriate to step outside the ordinary bargaining processes and deal with the matter, as it was done, with the CCMA and representatives of the church present? Was that NUM's attitude?

5 MR GCILITSHANA: Yes, I indicated –

6 CHAIRPERSON: Now the next point is before 44 had died, we'd reached a stage on the 15th when 10 had died. Now what was NUM's attitude, or what would NUM's attitude have been if the question had been asked directly, is this enough to justify, i.e. the 10 deaths, is this enough to justify stepping outside the ordinary bargaining structures?

7 MR GCILITSHANA: Yes, that's the –

8 CHAIRPERSON: Is that your point?

9 MR MPOFU: Yes.

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11 MR GCILITSHANA: Yes, it does justify, yes.

12 MR MPOFU: Have you taken any steps to trace the two people who were injured, who were shot at on the 11th outside your offices?

13 MR GCILITSHANA: I don't know.

14 MR MPOFU: Who are they?

15 MR GCILITSHANA: I don't know exactly the names, as I know that, as I indicated I was not involved, but I know that one is working at Roland. I don't know other one where he's working. I'm not sure exactly the other one where he's working.

16 MR MAHLANGU: The one is working at?

17 MR GCILITSHANA: At Roland Shaft, because the branch and the lawyers are, have been handling all those incidents.

18 MR TIP SC: Mr Chair, it may assist my learned friend, he might recall that in the course of the evidence-in-chief two dockets were handed up, being XX5 and XX6, and those fully identify who the complainants were, and of course then the two persons who were injured in the vicinity.

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I'm going to try and do the clarification through you, Mr Mpofu. I suggested to you – as such but to Mr Zokwana. When Mr Zokwana takes the podium I’ll also clarify it with him. I suggested to you – I’m going to try and do the clarification through you, Mr Mpofu.
I ask you – I’ll ask you a question as to your comment on whether if that was a wise move or not. A bit before. What I really want to say or rather to ask you, Mr Gcilitshana, is this. Mr Burger, quoting from XX2, demonstrated to you that the view of Lonmin was that this strike, even though it was supposed to be RDOs, non-affiliated and so on, it was, to use their words, reeking all over of AMCU involvement. In other words the belief of Lonmin was that this - whatever these - are saying this actually is an AMCU thing. Were you aware of that sentiment?

MR GCILITSHANA: Yes, I remember.

MR MPOFU: Anyway. If the thing was reeking or smelling of AMCU involvement, the question is do you think therefore it was a wise thing or not a wise thing to invite every union except AMCU which is the one that is suspected of being the real organisation behind the entire thing.

MR GCILITSHANA: Yes, it will be wise.

MR MPOFU: And at the risk of stating the obvious, it would be unwise therefore not to invite them?

MR GCILITSHANA: Yes, it will be unwise.

MR MPOFU: Thank you, Chairperson, there's nothing further.

CHAIRPERSON: Mr Mpfu –

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MR MPOFU: Sorry, Chairperson. Maybe – sorry, really this is the last question. The –

CHAIRPERSON: This is the last, last question.

MR MPOFU: Last, last question, Chairperson. If AMCU had been invited in those meetings, either the one with the minister or the twice a day meetings, would the NUM have objected or?

MR GCILITSHANA: No.

MR MPOFU: And you were really concerned that at the negotiations that happened in September, the NUM was represented, the AMCU was represented –

CHAIRPERSON: Is this the last, last, last question?

MR MPOFU: This is the real last one, Chair. I just want to make this point which is quite important, that at the September discussions, you know what I mean by that, which eventually came with a solution. The NUM was represented, AMCU was represented but the strikers had chosen to put, what they call the delegation, their own delegation outside those two unions. Would you confirm that?

MR GCILITSHANA: That's correct.

MR MPOFU: Chairperson, there's no further last question. Thank you, Chair.
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25

MR MATHEBEDI SC: Do you agree with me that the carrying around of dangerous weapons by striking workers posed a serious threat to members of the general public and non-striking workers?

5

MR GCILITSHANA: That's correct.

6

MR MATHEBEDI SC: Do you agree that there was nothing wrong in the police stating that if the protestors are not going to disarm, they will take the necessary lawful measures to ensure that they disarm or confiscate the weapons?

11

MR GCILITSHANA: Yes.

12

MR MATHEBEDI SC: Now, see I'm going to refer you to your statement that is XX1 at page 46. Sorry, page 14 paragraph 46. Do you have it?

15

MR GCILITSHANA: Yes.

16

MR MATHEBEDI SC: I'm going to read that into the record.

19

Chairperson: You don't have to read it into the record.

20

MR MATHEBEDI SC: I'm going to read that page 14 paragraph 46. Do you have it?

23

Chairperson: You don't have to read it out into the record, it's in the record already.

24

MR MATHEBEDI SC: Now from this paragraph 14 it is clear that you urged the police to increase law enforcement officers. Sorry, measures. Sorry, thanks, Mr Semenya. Measures.

29

MR GCILITSHANA: That's correct.

30

MR MATHEBEDI SC: What did you mean by that?

34

MR GCILITSHANA: What we meant is that necessary lawful measures to ensure that they disarm or confiscate the weapons? It is prudent that measures should be put in place, like educating your members that it is not in the interest of anyone to be engaged in violent activities?

40

MR GCILITSHANA: It is wise.

41

MR MATHEBEDI SC: We spoke to our members to calm down and report any attacks or intimidation or anything that they feel is not going well with them to the appropriate structure, to the police, or to the management.

46

MR MATHEBEDI SC: But don't you think it is prudent that measures should be put in place, like educating your members that it is not in the interest of anyone to be engaged in violent activities?

52

MR GCILITSHANA: So what measures has been taken by your union?

53

MR MATHEBEDI SC: People have died as a result of rivalry between members of the two unions.

58

MR GCILITSHANA: Yes.

59

MR MATHEBEDI SC: What measures has your union taken to ensure that this kind of conduct comes to an end?

64

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MR MATHEBEDI SC: How do you encourage them not to get involved in criminal activities?

87

MR GCILITSHANA: By talking to them.

92

MR MATHEBEDI SC: Is it not necessary to hold seminars with them - regular seminars with them?

97

MR GCILITSHANA: Yes, it's one of the options that we have to take.

102

MR MATHEBEDI SC: So why has that option not been implemented?

107

MR GCILITSHANA: As we do talk to our members not to take law on their own, to report the incidents.

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25 unions do not come to an end, it would be very difficult to
4 as long as the tension between the officials of the various
5 unions does not come to an end, it would be very difficult to
6 MR MATHIBEDI SC: Now, what measures have
7 MR GGLITSHANA: As you can go through,
8 there were letters or emails by the late Daluvuyo to
9 Lonmin, the question a mass meeting which materialised.
10 Also on the attempts again, there were attempts by NUM to
11 talk to its members not to get involved into unprotected
12 strike.
13 CHAIRPERSON: No, your attention was
14 drawn to paragraphs 12 and 14 of your statement, which deal
15 with the situation at Karee, that after the branch
16 chairperson and secretary at Karee had been suspended, then
17 there was this problem. Are you saying it was then that
18 you spoke to Lonmin?
19 MR GGLITSHANA: At that time we had a
20 very little membership in Karee. When the workers were
21 dismissed, they were reemployed and then access to Karee
22 was very difficult for us, but it’s our norm to talk to our
23

1 dissuade members on the ground not to have tensions?
2 MR GGLITSHANA: I fully agree with you.
3 MR MATHIBEDI SC: Now, do you agree with
4 me that there was nothing wrong in the police sharing
5 intelligence information with security personnel of Lonmin?
6 MR MATHIBEDI SC: As long as there’s
7 trust between the two parties, I don’t see any problem.
8 MR MATHIBEDI SC: You also agree that
9 there was nothing wrong in the police setting up a JOC on
10 the property of Lonmin?
11 MR GGLITSHANA: I don’t know the
12 procedures of the police and stuff, but taking into account
13 the explanations that was given in the previous sessions,
14 so when I was here, I don’t see anything wrong.
15 MR MATHIBEDI SC: On the 15th of August
16 2012, was it the attitude of NUM that they were not
17 prepared to negotiate outside the labour structures?
18 MR GGLITSHANA: NUM have been openly
19 saying that workers have to drop the arms and allow the
20 protest to come back – to follow the correct structures in
21 raising their issues.
22 MR MATHIBEDI SC: Mr Gcilitshana, I’m
23 going to repeat my question. My question is as at the 15th
24 of August 2012, was it NUM’s attitude that they would not
25 negotiate outside the labour structures?

5 members not to engage in unprotected strikes and any
6 violence.
7 MR MATHIBEDI SC: Now, what you call the
8 tension, does it also exist between the officials of both
9 the unions?
10 MR GGLITSHANA: I won’t say yes or no at
11 that level, but I can indicate that when I meet Mr
12 Mathunjwa, I do treat him and talk to him and check how
13 he’s doing and that’s what he does with me.
14 MR MATHIBEDI SC: Mr Gcilitshana, this is
15 a very important aspect.
16 MR GGLITSHANA: Yes.
17 MR MATHIBEDI SC: Does that tension exist
18 between the officials of both the unions or not?
19 MR GGLITSHANA: It is possible that it
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23 Kulukele, inasmuch as he have left NUM, when I meet him I
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29 unions do not come to an end, it would be very difficult to
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MR GCILITSHANA: I won't say yes or no on that, because I don't know what was the attitude on the strike, as the people were striking at that time, I won't know.

MR MATHIBEDI SC: I find that very strange, Mr Gcilithshana.

CHAIRPERSON: Is that a question?

MR MATHIBEDI SC: I put to him.

CHAIRPERSON: Yes, well ask questions, don't just tell him what you think.

MR MATHIBEDI SC: But with due respect, Mr Chairman, this is based on the evidence that has been led and the questions that the witness has provided.

MR GCILITSHANA: I'm not saying that what you're saying is incorrect, I'm simply saying you're supposed to ask questions, you're not supposed to tell the witness what you find strange or don't find strange. It's for us to find things strange or not, as the case may be.

It doesn't advance the case any further by your telling him what you think. Just ask the questions.

MR MATHIBEDI SC: Now, my instructions are that the meeting that was held on the 15th was as a result of an effort by General Mpembe?

MR GCILITSHANA: That's correct.

MR MATHIBEDI SC: And the purpose of calling the meeting and accompanying officials of the union to the koppie was an endeavour on the part of the police to find a peaceful resolution to the dispute that existed. Do you agree with me?

MR GCILITSHANA: That's correct.

MR MATHIBEDI SC: Do you agree with me?

MR GCILITSHANA: That it is unfair to expect the police to have suggested to both the unions and Lonmin management that a negotiation should take place outside the bargaining structures?

MR GCILITSHANA: For the police to say that, that will be determined whether how do the police view the situation and what will be their contribution on the situation.

[14:15] MR MATHIBEDI SC: Do you know of a policy that the management of Lonmin are entitled to speak to a certain segment of the workforce without the involvement of the union?

MR GCILITSHANA: Yes, they normally do that, especially when they do communication, and they will do it right.

MR MATHIBEDI SC: Maybe I did not put my question clearly. That pertains to issues of salary and bonuses.

MR GCILITSHANA: The NUM, they always involve unions. That is the norm.

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COMMISSIONER HEMRAJ: During the entire day of the 16th, you received no report from any other member of NUM, as to what was happening?

MR GCILITSHANA: I did, there are a number of people again have gathered in the koppie as usual, as they used to meet there.

COMMISSIONER HEMRAJ: Did you not receive any reports during the day of the events as they transpired?

MR GCILITSHANA: I did receive that on the shafts what was happening, but except on the area of Wonderkop that people are gathering there as usually. There are some cars, there are many cars in the, next to the stadium.

COMMISSIONER HEMRAJ: Yes, thank you.

CHAIRPERSON: Any re-examination?

RE-EXAMINATION BY MR TIP SC: Thank you, Mr Chair. Mr Gcilithshana, just a few points to clarify aspects of the evidence, in case they are not entirely clear. In respect of the 16th of August, you've told the
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Mr TIP SC: I don't think that those initials were explained. Can you just tell us what CBF stands for?

Mr GCILITSHANA: Collective bargaining forum. When we talk CB1 it's cut 3 to 9. Then your C level, your C lower, C upper, it will be CBF2.

Mr TIP SC: And that would be with the collective bargaining forum within Lonmin as a whole.

Mr GCILITSHANA: Yes, both your CBF1 and CBF2.

Mr TIP SC: And you were asked some questions around the topic of reinstatement and re-employment, and in the course of that, there were some questions concerning the position of union membership as it had been before the dismissal of the persons who were thus re-employed in this case.

Mr GCILITSHANA: That's correct.

Mr TIP SC: And you made it clear, I believe that in respect of re-employment employees who were thus re-employed must again choose and join a trade union, if they so wish.

Mr GCILITSHANA: Yes, that's correct.

Mr TIP SC: Depending on whether we have succeeded in persuading the management for reinstatement membership or not.

Mr GCILITSHANA: And with the situation of reinstatement, would it be the position that generally what is reinstated are the terms and conditions of employment.

Mr TIP SC: Is it ever a term or condition of employment that a particular employee should belong to a particular trade union?

Mr GCILITSHANA: No.

Mr TIP SC: And is that why, even in the case of reinstatement the trade union must negotiate if it wants to reinstate trade union membership automatically on the fact of reinstatement?

Mr GCILITSHANA: That's correct.

Mr TIP SC: In answer to some questions from my learned friend, Mr Mpofu, regarding the meeting with General Mpembe, on the 15th of August, you had said that shop stewards from Lonmin had warned, they did not want the president, Mr Zokwana, to go to the koppie because of the songs that were being sung there.

Mr GCILITSHANA: That's correct.

MR TIP SC: Did they identify what songs they had heard?

MR GCILITSHANA: Yes.

MR TIP SC: What?

MR GCILITSHANA: "How are we going to kill this NUM, how are going to kill Zokwana?"
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Mr Tip SC: Lastly, Mr Gcilitshana, you were -

Mr Hanabe: Sorry, just the other part, that "we hate NUM."

Mr Tip SC: Are those the songs, you've seen the videos here, Mr Gcilitshana, are those the songs that we've seen on the video?

Mr Gcilitshana: That's correct.

Mr Mpofo SC: I am sorry, Chair, I don't want to interrupt, I don't recall any song that has been played in this forum at least that says anything about how they are going to kill Zokwana.

Mr Tip SC: Mr Gcilitshana, let me just clarify, the version of the song that we've heard here, relates to the killing of NUM. Have you seen that on video?

Mr Gcilitshana: Yes.

Mr Tip SC: Mr Chair, Mr Zokwana will deal with the songs that he heard when he visited the koppie on that day, the 15th. Finally, Mr Gcilitshana, my learned friend, Ms Barnes raised with you that in paragraph 48 of your statement, that you made no mention of any meeting on the 15th of August between you and others and General Mpembe. I just want to take you to that paragraph.

It's already on record. I won't read it again, but it deals with the visit of Mr Zokwana to the mine on 12 August and again on 15 August, and at the conclusion of that paragraph, you say, "I refer to his statement." Do you see that?

Mr Gcilitshana: Yes.

Mr Tip SC: Mr Chair, the statement has been circulated, it's not yet an exhibit. It will be made an exhibit -

Chairperson: I see Mr Zokwana's statement -

Mr Tip SC: Yes.

Chairperson: - which we've been given copies of, which has not yet been given an exhibit number. It will be when he gives evidence. In paragraph 19 he describes, which is part of his description what happened on the 15th, and he says "At about 16:30, I and two NUM colleagues, Mr Gcilitshana and Mr Moloi, were taken to the koppie in a SAPS Nyala." So by referring to Mr Zokwana's statement he was in effect referring to a reference to himself having been there on the 15th. He doesn't of course deal with his presence on the 12th, although because Mr Zokwana doesn't mention him in his narrative of the 12th, and that was the other half of the point Ms Barnes made.

[14:35] Mr Tip SC: Yes, it was really just in respect of the fact that their names were identified and perhaps we can leave the identification of the exhibits to when Mr Zokwana attends. Thank you, Mr Gcilitshana, I have no further questions for you. Thank you, Chair.

Chairperson: Mr Gcilitshana, you're excused.

Chairperson: [NO FURTHER QUESTIONS - WITNESS EXCUSED]

Chairperson: Mr Tip, your next witness, have you got a witness ready, your next witness I presume, he will be testifying in chief from a statement.

Mr Tip SC: Yes.

Chairperson: So there will be no prejudice to him if he covered the first 25 minutes and then continue on Monday?

Mr Tip SC: Yes, we're ready to begin.

Chairperson: Alright, we'll do so.

Mr Tip SC: Yes, I call Mr Malesela William Setelele. He will testify through, with the assistance of an interpreter. We have signed copies, may I hand up the original and two copies to the commissioner? We have a number of other copies, these have also been forwarded through Ms Pillay by e-mail previously. If there are any parties who require a copy we have.

Chairperson: Will this be XX10?

Ms Pillay: Chair, it is a new witness, that would be ZZ1.

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Chairperson: ZZ, what's wrong with YY?

Ms Pillay: I apologise, Chair, it is YY leaving Y out?

Chairperson: Are there reasons for leaving Y out?

Ms Pillay: None whatsoever.

Chairperson: YY1. Mr Setelele, would you please stand? Are you prepared to swear that the evidence that you give will be the correct or do you wish to affirm?

Mr Setelele: I'm prepared to swear.

Chairperson: Alright, do you swear the evidence you’ll give in this matter before this commission will be the truth, the whole truth and nothing but the truth, please raise your right hand and say, I swear, so help me God?

Malesela William Setelele: I swear, so help me God.

Chairperson: Thank you, you may be seated. Mr Tip?

Examination by Mr Tip SC: Thank you, Mr Chair. Mr Setelele, you've now taken the oath, there is a statement of yours which you have signed which you have before you, you've read that statement with care?

Mr Setelele: Yes.
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1. MR TIP SC: And do you under oath confirm the correctness of it?
2. MR SETELELE: That’s correct.
3. MR TIP SC: Let me just establish, are you comfortable to testify in English or do you want the interpreter to assist you as you go?
4. MR SETELELE: I think the interpreter must interpret and where I understand I will answer directly.
5. MR TIP SC: Yes, very well. Mr Chair, will that be in order with the commission, it will save time, it will avoid a duplication of translation. Thank you, Mr Setelele, so at any time where it is not absolutely clear to you what I or anybody else is asking, just indicate and you’ll have the assistance that you require.
6. MR SETELELE: Thank you.
7. MR TIP SC: I’m going to lead you in respect of a number of matters off your statement and if you’ll just follow me and from time to time I’ll ask you to clarify matters or to express themselves in your own words as we go.
8. MR SETELELE: Okay.
9. MR TIP SC: You’re presently employed at Lonmin at its Western Platinum operation?
10. MR SETELELE: That’s correct.
11. MR TIP SC: You began there as a general worker in July 1988 and became a team supervisor in 2001?
12. MR SETELELE: That’s correct.
13. MR TIP SC: You’re a member of NUM and in December of 2010 you became the elected chairperson of the NUM branch at Western Platinum?
14. MR SETELELE: That’s correct.
15. MR TIP SC: In accordance with the arrangement with Lonmin are you a fulltime official?
16. MR SETELELE: Correct.
17. MR TIP SC: Whilst at the same time remaining a salaried employee of Lonmin?
18. MR SETELELE: Correct.
19. MR TIP SC: Well, as you know, Mr Setelele, we’re dealing here with the events that were in many ways pursuant to the beginning of the strike in August 2012.
21. MR TIP SC: Before that strike began had you become aware of rock drill operators putting forward any demands?
22. MR SETELELE: Not to our branch.
23. MR TIP SC: And were you aware of any demands that had been put by them to Lonmin?
24. MR SETELELE: Yes.
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25 TIP SC:          Those were the allowances you
24 report to the workers about the allowance that came with
23 SETELELE:          The meeting was about to
22 report back on?
21 TIP SC:          And the purpose of it, it is
20 SETELELE:          That's correct.
19 TIP SC:          Your branch secretary, Mr Daluvuyo Bongo, is that correct?
18 SETELELE:          That's correct.
17 TIP SC:          The meeting was convened by
16 SETELELE:          That's correct.
15 TIP SC:          And the purpose of it, it is
14 SETELELE:          It was before they went for
13 unprotected strike.
12 TIP SC:          The meeting was convened by
11 SETELELE:          That's correct.
10 TIP SC:          Do you recall now whether
9 TIP SC:          Those were the allowances you
8 referred to a short while back being the decision by Lonmin
7 management to make certain additional allowance payments to
6 RDOs, is that right?
5 SETELELE:          That's correct.
4 TIP SC:          Amongst the persons present
3 there were there any RDOs?
2 SETELELE:          That's correct.
1 TIP SC:          Did some of those RDOs
express their attitude to the position?

25 TIP SC:          You've the phrase in your
24 statement that they in fact said that they did not want to
23 talk to NUM about it, is that what was said at the time?
22 TIP SC:          That's correct.
21 TIP SC:          And in response to that what
20 was said by the NUM officials who were at the meeting?
19 TIP SC:          Most of the workers as we
18 deal with their votes at the mass meeting, most of the
17 people who commented were against the RDOs to take this
16 matter on their own.
15 TIP SC:          And did NUM express its
14 attitude to unprotected strike action to those present at
13 the meeting?
12 TIP SC:          That's correct.
11 TIP SC:          By saying what?
10 SETELELE:          We always in our meeting we
9 advise the workers to bring forward their concerns or their
8 demands directly to the branch committee in the mass
7 meetings, and even in that same meeting we did the same
6 thing.
5 TIP SC:          Did it at the same time make
4 it clear that it was not in favour of unprotected strikes?
3 TIP SC:          That's correct.
2 SETELELE:          That's correct.
1 TIP SC:          I'm going to turn to the
0 events of 10 August 2012. Mr Chair, there are a number of
-1 aspects of it, I wonder if it might be convenient to
-2 adjourn? We can use the time if the commission wishes, to
-3 work our way into it?
-2 CHAIRPERSON:  [Inaudible].
-1 TIP SC:          Yes, yes, let me continue, Mr
0 Chair. Mr Setelele, you begin in your paragraph 7 of your
-1 statement with the events of 10 August, that would be the
-2 Friday, do you recall that?
-1 TIP SC:          That's correct.
-2 TIP SC:          That's correct.
the vice president for WPL?

MR SETELELE: That's correct.

MR TIP SC: You requested a meeting with him.

MR SETELELE: Correct.

MR TIP SC: And you detail your discussion with him in the next paragraph to which we will come. Did you also at the same time request Mr Bongo to make arrangements for the convening of a mass meeting of workers for later that day of the 10th of August?

MR SETELELE: Correct.

MR TIP SC: And that, am I correct in understanding, that that would be a mass meeting for NUM members.

MR SETELELE: That's correct.

MR TIP SC: Generally speaking, are such meetings open also to other employees who are not necessarily NUM members?

MR SETELELE: Correct.

MR TIP SC: Mr Chair, would this be the moment?

CHAIRPERSON: [Inaudible].

MR TIP: I'm asking for an adjournment until 10 o'clock on Monday morning, Mr Chair.

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