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 38  28 JANUARY 2013  PAGES 4082 TO 4205

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE

© REALTIME TRANSCRIPTIONS
28th January 2013

Marikana Commission of Inquiry
Rustenburg

[PROCEEDINGS ON 28 JANUARY 2013]

1 [10:07] CHAIRPERSON: The Commission resumes. Ms Pillay, I see you're the chief evidence leader this morning. You're still under oath and you were still leading your witness, Mr Tip.

2 MR MSIMANG: Mr Chairperson, my name is Henry Msimang. Adv Mpofu, the leader of this team, will not be in today. He has asked me to put his apologies and I'll stand in for him. Thank you.

3 CHAIRPERSON: Thank you for putting yourself on record.

4 MR TIP SC: Mr Chair, before I move on to the next paragraph, there are some documents that we were able to complete in the course of the weekend, which we trust will be of assistance to the Commission and all the parties. Given that we are dealing with the events in and around the NUM office, we have prepared a set of three enlargements from the reliable source of Google and we'll hand those up and get an exhibit number. I will describe what they are - well, it will be more useful for me to describe it when you have them.

5 CHAIRPERSON: If the acting chief evidence leader can tell us how to describe the exhibit, we'd be grateful.

6 MR TIP SC: The Commission raised, in the course of last week, the fact of the pointing out at the NUM office towards the right hand side. Of course - satellite police station. Of course - satellite police station. Of course -

7 CHAIRPERSON: Sorry, there's a little bit of confusion with the documents we've been given, so we're busy trying to sort them out here on the bench. When we've finished you can proceed because we'd like to listen to you, but am I right in saying that the one with Wonderkop Stadium on the left is YY2.1, the one with the Shagan workshop is YY2.2, is that right?

8 MR TIP SC: That's correct, Mr Chair.

9 CHAIRPERSON: Then we've got what looks like the same thing. It looks like a black and white copy of YY2.2. Perhaps the printer ran out of coloured ink or something. In fact we've got a number of -

10 MR TIP SC: Then may I suggest, Mr Chair, if the Commission has these photographs, that we make them YY2, 1, 2 and 3. The first one in the set is the one that gives the broadest overview and -

11 CHAIRPERSON: Sorry, so -

12 MR TIP SC: Yes, yes.

13 CHAIRPERSON: Is it this?

14 MR TIP SC: That is the one, Mr Chair, yes.

15 CHAIRPERSON: If we stapled them together, if you could - what - if they're all in the same order we should possibly staple them together so they don't get out of sequence but you say the first one, which is -

16 MR TIP SC: It's the one that gives the largest view. That is the one that extends from Wonderkop Stadium on the left hand side through to, inter alia, the NUM office towards the right hand side.

17 CHAIRPERSON: It's a Google document and at the bottom it says "Imagery date 10/24/2011."

18 MR TIP SC: It's a Google -

19 CHAIRPERSON: So we'll call that YY2, YY2.1.

20 MR TIP SC: Point 1.

21 CHAIRPERSON: Right. Let's mark them now while we're about it.

22 MS PILLAY: Chair, it would be YY2.

[PROCEEDINGS ON 28 JANUARY 2013]

1 MR TIP SC: Mark them all, then I'll -

2 CHAIRPERSON: The next one is, it looks like the Shagan workshop.

3 MR TIP SC: It's got Shagan workshop and a closer, a better view of the roads around the NUM office and satellite -

4 CHAIRPERSON: Is that -

5 MR TIP SC: - police station.

6 CHAIRPERSON: - YY2.2?

7 MR TIP SC: That's correct, Mr Chair, and the third one we put in is a close-up. We put it in for completion of the immediate vicinity of the NUM office and satellite police station. Of course -

8 CHAIRPERSON: Sorry, there's a little bit of confusion with the documents we've been given, so we're trying to sort them out here on the bench. When we've finished you can proceed because we'd like to listen to you, but am I right in saying that the one with Wonderkop Stadium on the left is YY2.1, the one with the Shagan workshop is YY2.2, is that right?

9 MR TIP SC: That is the one, Mr Chair.

10 CHAIRPERSON: Then we've got what looks like the same thing. It looks like a black and white copy of YY2.2. Perhaps the printer ran out of coloured ink or something. In fact we've got a number of -

11 MR TIP SC: Mr Chair, what may have happened is that because they were e-mailed to the evidence leaders, they may have run off copies in black and white.

12 CHAIRPERSON: Alright.

13 MR TIP SC: The ones that we've handed in are in full colour.

14 CHAIRPERSON: What the acting chief evidence leader has suggested is that we hand them all back to her and she will sort them out for us. It's not a task that chief evidence leaders normally perform but she's prepared to do it.

15 MR TIP SC: Needless to say, we offer our assistance.

16 CHAIRPERSON: Thank you. Alright, so you take them back for the moment while they're being sorted, put in the proper order, and she can mark them for us and possibly during the tea adjournment attempts can be made to ensure that everybody has got the same exhibit numbering on each photograph, so we won't have confusion. So shall we carry on with the witness in the meanwhile?

17 MR TIP SC: There's one other matter, Mr Chair.

18 CHAIRPERSON: Oh.

19 MR TIP SC: The Commission raised, in the course of last week, the fact of the pointing out at the
28th January 2013
Marikana Commission of Inquiry
Rustenburg

2 NUM office which was conducted on the 2nd of October and I undertook – 2nd of October last year –
3 CHAIRPERSON: Yes.
4 MR TIP SC: I undertook to see to it that a transcript would be prepared. That we have done. May we mark that YY3?
5 CHAIRPERSON: Well, let’s ask Ms Pillay for permission.
6 MS PILLAY: It will be YY3.
7 CHAIRPERSON: The transcript of inspection at NUM office on 2/10/12.
8 MR TIP SC: Okay and that’s YY3.
9 MR TIP SC: That is YY3 and it has been done by a professional transcriber service but that doesn’t mean, of course, that if parties disagree with any aspect of it, they shouldn’t raise it and we can then attend to that. I should also just point out, Mr Chair, that the transcribers - the very first portion which consists of two pages, that was the portion relating to the stage when somebody pointed out that a body had been put to death by assegai stabs in the vicinity of the bus stop, of course that comes after, you will recall, the pointing out at the NUM office itself. So the pages are out of sequence but otherwise I all follows.

18 MR TIP SC: It’s not contentious. What you say there is the following, Mr Setelele, “At approximately 13H00, together with Bongo, I met with Mr Dietrich. By that time we know that the RDOs had marched to the main offices of Lonmin and that they were indeed on strike. I informed Mr Dietrich that the unprotected strike and the march to Lonmin had not in any way been organised or endorsed by NUM. I also requested permission to convene a mass meeting for workers at 2PM that day at C2 hostel, Wonderkop, so that we could inform the workers of NUM’s position and encourage them not to participate in the unprotected industrial action. Mr Dietrich granted us permission to convene the meeting. Shortly thereafter I received a message from Mr Dietrich that the meeting should not take place because he had concerns about the possibility of violence. However, by that time NUM members had already been informed that a meeting was to take place and several of them had started gathering in that area. The meeting eventually started at around 4PM with about 500 in attendance.” Paragraph 11, “I informed them that the meeting had to be cancelled. I did, however, inform the members that the strike by the RDOs was unprotected, that it was not endorsed by NUM and that they should therefore continue to report for duty. I advised them also that should anyone encounter any difficulties in connection with the strike and reporting for duty, the NUM office should be notified and that assistance would be provided. The NUM office was to remain open throughout that night and I had arranged with the NUM shop stewards to be present in the office to assist employees as necessary.” Let me just pause to say this, Mr Setelele, you’ve already confirmed under oath the correctness of this entire statement.

19 MR SETELELE: You are correct.
20 MR TIP SC: And I’m not going to ask you at the end of every paragraph whether you confirm that that is correct, but if you should detect that some inaccuracies have crept in, then you’ll let us know.
21 MR SETELELE: Alright.
22 MR TIP SC: Good. Then paragraph 12,
28th January 2013

Mr SETELELE: Paragraph 16, “I had also, in the early hours of 11 August, used a loudhailer whilst driving around, to inform people that the strike was not already on the road going alongside the hostel.” Mr Chair, those are, of course, cumbersome descriptions of the roads and perhaps just for cross-reference purposes, YY2.1 street B is the road leading to the hospital. Street A is the one leading down from Wonderkop Stadium to the T-junction. 

CHAIRPERSON: [Inaudible] – the A is?

MR TIP SC: A is, street A is the one leading from Wonderkop Stadium on the left through to the T-junction –

CHAIRPERSON: Yes.

MR TIP SC: With street B.

CHAIRPERSON: Yes, thank you.

MR TIP SC: And whilst – you have those maps in front of you?

MR SETELELE: Yes.

MR TIP SC: And is it correct that the T-junction of streets A and B is the point that you feared that the marchers might spot your Quantum vehicle being driven?

MR SETELELE: Correct.

MR TIP SC: Then you go on with paragraph 18 to say, “They would then have realised” – that is if they’d seen it – “that we were taking it to the hospital. We therefore drove away from the NUM office in the direction of Wonderkop township and used quite a long...
28th January 2013
Marikana Commission of Inquiry
Rustenburg

21 detour in order to come out at the back of the hospital.
22 MR SETELELE: Correct.
23 MR TIP SC: Just to illustrate that in
relation to the same aerial – or not aerial photograph but
the map – you would then have travelled along street B,
roughly speaking, in a northerly direction or north-west.
24 You’ll see in the right hand top there is an “N” sign for
north that Google provides on all its photographs, would
that be right?
25 MR SETELELE: Correct.
26 MR TIP SC: Then to continue with your
statement, “As already indicated, I was responsible for
this vehicle and therefore decided that I should go with it
to ensure that it reached a safe destination.”
27 MR SETELELE: Correct.
28 MR TIP SC: Paragraph 10, “There were, at
the time, a number of weapons such as knobkerries, sticks
and spears at the NUM office. That was not usually the
case. Ordinarily there would be none.
29 MR SETELELE: Correct.
30 MR TIP SC: Some of the weapons that were
there that morning, had been taken away from strikers in
the course of the night before. Others had been brought in
by members who had gone home to fetch them in response to
their experience of threats and intimidatory conduct by
31 strikers when these members were assisting employees to get
to work during the night.”
32 MR SETELELE: Correct.
33 MR TIP SC: “I heard afterwards that the
late Mr Bongo had distributed these weapons amongst those
who decided to defend the NUM office against the
approaching strikers.”
34 MR SETELELE: Correct.
35 MR TIP SC: Paragraph 20, “By the time we
had parked the vehicle at the hospital and walked back to
the NUM office, the incident there had already taken
place.”
36 MR SETELELE: Correct.
37 MR TIP SC: “We met up with a group of
NUM strikers who were marching down from the direction of
the Wonderkop Stadium towards the NUM office.”
38 MR SETELELE: Correct.
39 MR TIP SC: “They were singing. I
received a short report on what had happened. It was clear
that these members were very relieved that they had been
able to disperse the attacking strikers.”
40 MR SETELELE: Correct.
41 CHAIRPERSON: What were they singing?
42 MR SETELELE: I don’t remember correctly
43 but it was a union song.
28th January 2013 Marikana Commission of Inquiry Rustenburg

25 MR TIP SC: Thank you, thank you for that
24 MR SETELELE: Correct.
23 further along towards Wonderkop Stadium?
22 stadium buildings come to an end before you then move
21 saying this, that the gate is really at the point where the
20 MR TIP SC: Yes. Would I be correct in
19 towards street A and that is where the gate is.
18 MR SETELELE: And IU is a white line
17 MR TIP SC: Yes.
16 says "Wonderkop Stadium."
15 Stadium? On this exhibit YY2 there is writing there that
14 MR SETELELE: You see where is Wonderkop
13 to us where the gate that you're talking about is.
12 MR TIP SC: Perhaps you can just describe
11 where I met them, before they come out of the gate towards
10 the stadium.
9 MR SETELELE: Ja, I just want to check, I
8 just want to find the direction to the stadium on this map.
7 Where is it? Okay, they were on the street, street A
6 towards Wonderkop Stadium, right at the gate. then it's
5 where I met them, before they come out of the gate towards
4 the best way, just point out the spot that you're referring
3 MR TIP SC: Yes, point – that would be
2 If you can look at this exhibit YY2.1.
1 hostel towards the gate of - on the road to the stadium.

1 correction, Mr Setelele. Then to continue with your
2 statement, you say that “I met up with them” – that is
3 these NUM members – “and was told that they had marched to
2 the stadium to see whether there were any indications that
1 the strikers were preparing another attack. They had not
10 seen any indications of that kind.”
9 MR SETELELE: Correct.
8 MR TIP SC: Paragraph 23, "Later that
7 afternoon I addressed a meeting of about 1 000 workers in
6 the veld near the Wonderkop Stadium.”
5 MR SETELELE: Correct.
4 MR TIP SC: "I again outlined NUM's
3 position that it opposed the strike which was unprotected,
2 and that workers should report for duty. I further
1 emphasised that a wage agreement was already in place and
10 that any wage demands had to be addressed through the
9 proper channels.”
8 MR SETELELE: Correct.
7 MR TIP SC: "I stressed that employees
6 who took part in illegal strike action may jeopardise their
5 employment and urged them to think of their families and
4 dependants before joining any such action. After this
3 meeting we returned to the NUM office which I left at
2 around 5:30PM and went home.”
1 MR SETELELE: Correct.

1 meeting of members was arranged by the Eastern Platinum NUM
2 branch, which was well attended. I understand that members
1 of the regional leadership were also present and that NUM's
1 position concerning the strike was once more conveyed.”
5 And paragraph 27, “I understand further that the meeting
6 also condemned the acts of violence that had taken place at
5 that stage, as well as ongoing acts of intimidation.”
8 MR SETELELE: Correct.
9 MR TIP SC: Mr Chair, that concludes the
10 evidence-in-chief of Mr Setelele.
11 CHAIRPERSON: Mr Semeny, I take it you
12 don't want to cross-examine at this stage, do you?
13 MR SEMENYA SC: If there is anybody going
14 first, that's alright, Chair.
15 CHAIRPERSON: Mr Burger?
16 MR BURGER SC: Thank you very much, I'm
17 in the same position, Chair.
18 CHAIRPERSON: Ms Barnes, you're here for
19 AMCU.
20 MS BARNES: Yes, I do have some
21 questions, Chair.
22 CHAIRPERSON: Yes, alright.
23 MS BARNES: I had thought that it might
24 be prudent for Mr Mpofu's team to cross-examine first,
25 having regard to the statement of Mr Boo.
28th January 2013
Marikana Commission of Inquiry
Rustenburg

1. CHAIRPERSON: Yes, yes, I follow.
2. MS BARNES: And then I would have some
3. questions after that.
4. CHAIRPERSON: Are you going to cross-examine? Do you wish to cross-examine first?
5. MS BARNES: No, I'm not going to do that. I think you'd better start.
6. MR SETELELE: Who, me Chairperson?
7. CROSS-EXAMINATION BY MS BARNES: Mr Setelele, you testified that you attempted to persuade your
8. members not to participate in the unprotected strike, is that correct? But nevertheless NUM members did participate
9. in the unprotected strike, is that correct?
10. MR SETELELE: Correct.
11. MS BARNES: And in fact the majority of
12. the people that participated in the unprotected strike were
13. NUM members, is that correct?
15. MS BARNES: Would you like to explain
16. what you mean by partly correct?
17. MR SETELELE: I thought that you will say
18. some of them and maybe you were looking to the fact that
19. how did they come, how did they went to the mountain or how
20. did they went for strike. I think that the issue of
21. intimidation also shall be part of your comment.
22. MS BARNES: Well, evidence has been led,
23. sir, that approximately 55% of the group were NUM members
24. and 35% were AMCU members. You can't dispute that, can you?
25. MR SETELELE: It may be possible, it may
26. be possible because if a person was not on work on that
day, that doesn't mean he's on strike. He may be, or she
27. may be, at home because of threats that he came across.
28. CHAIRPERSON: Ms Barnes, may I intervene
29. and ask a couple of questions just to set the scene a bit?
30. MS BARNES: I don't think it'll interfere with the cross-examination
31. you're going to be busy with. In your statement you tell
32. us about the discussion you had with Mr Dietrich on the 12th
33. of August, that's the Sunday, paragraph 24. Then in
34. paragraph 25 you say, "A little later" - I take it that's
35. on, that's the same day, Sunday the 12th - "there were some
36. discussions about what the WPL branch should do" - that's
37. Western Platinum Lonmin branch, I take it - "should do. It
38. was decided that, given these two attacks on the NUM office
39. and the overall volatility of the situation, branch
40. committee members should, for their own safety, be
41. accommodated off the mine premises." Now and then you
42. tell us about a meeting on the 14th, which is the Tuesday,
43. but I take it you weren't there, is that correct?
44. MR SETELELE: I was not there at the
45. Eastern Platinum meeting.
46. CHAIRPERSON: Right. You talk about
47. arrangements being made for branch committee members being
48. accommodated off the mine premises and you say that
49. happened on the 12th. Do I understand that you weren't at
50. the mine, on the mine premises, from the 12th onwards? Were
51. you one of the members who was accommodated, for his own
52. safety, off the mine premises?
53. MR SETELELE: Ja, I think Chairperson, I
54. need to explain. The decision to take the members of the
55. branch committee out of the mine premises and the nearby
56. villages, this took place of course on the 12th of -
57. CHAIRPERSON: All I want to know is
58. whether you were one of those people who were away from the
59. mine premises from sometime on the Sunday the 12th?
60. MR SETELELE: Correct.
61. CHAIRPERSON: And when did you come back
62. to the mine premises?
63. MR SETELELE: Maybe I need to explain
64. further so that, Chairperson, it must be clear for you -
65. CHAIRPERSON: No - no, I'll try to keep
66. it short. When did you come back? Did you come back on
67. the 15th or the 16th or the 17th? When did you come back?
68. MR SETELELE: Actually in the mine
69. premises, I've been in the mine premises since the strike
70. started and until today I used to be at the mine premises.
71. What happened that I wanted to explain to Chairperson was
72. that on Sunday the 12th, after hearing that there is a
73. problem at Western Plat, most of the members of the NUM
74. officers were already fled away from the premises of the
75. company and I heard they were on the veld somewhere. Then
76. I fetched the very same Combi and go and collect them in
77. the bush. I left them, I put them on a safe place in the
78. bush, then I went directly to the Middlekraal where the
79. president was already there, the president of NUM. Later
80. then I went there at the bush again and take the people to
81. a safe place where they were booked for a new residence.
82. And every day I was at the mine premises, more especially
83. at Middlekraal. Even though it's not all the days but most
84. of the days I used to go to Middlekraal on a daily basis.
85. CHAIRPERSON: I'm really interested in
86. the WPL section of it. I take it that's Western Platinum?
87. MR SETELELE: Ja, that's Western Plat.
88. CHAIRPERSON: What I really tried to
89. ascertain is, were you at Western Platinum after you left
90. on Sunday the 12th and of course much later when you came
28th January 2013

Marikana Commission of Inquiry
Rustenburg

25 Wonderkop.
24
23 MR SETELELE: Sometimes I used to go to Wonderkop for some days after the 12th of August?
22 Now what I want to know from you is, were you away from –
21 CHAIRPERSON: What Ms Barnes was wanting to know when she asked you your evidence – Wonderkop Stadium, NUM office, WPL, satellite police station and so on – what do you call that area? Do you call it Wonderkop or what do you –
20 MR SETELELE: That is Wonderkop.
19 CHAIRPERSON: Okay, that’s Wonderkop.
18 Now what I want to know from you is, were you away from Wonderkop for some days after the 12th of August?
17 MR SETELELE: Sometimes I used to go to Wonderkop.
16 CHAIRPERSON: You see what I was concerned about, Ms Barnes was asking you questions about how many people were involved – about the people involved in the strike and how many were NUM and how many were AMCU and how many weren’t members of unions at all and what I want to know from you was, does your knowledge extend to what happened after the 12th or is your knowledge primarily based upon what you saw up to the 12th and particularly on the 10th, 10th and 11th?
15 MR SETELELE: I need to be clear here.
14 Chairperson, whether the numbers that you asked me, is the attendance of the people on these two meetings that I held. CHAIRPERSON: What Ms Barnes was wanting to know from you was how many people, the people who took part in the strike and how many of those were, or what percentage of those were NUM members, what percentage were AMCU members and what percentage weren’t members of any union at all. Now, I’m interested to know, insofar as you answer her question, is your – would your answer be based upon what you saw on the 10th and the 11th or do you have other knowledge of your own, based upon what happened thereafter?
12 MR SETELELE: I’m not quite sure.
11 Chairperson, how many members of NUM who was on strike, but I just only say that some of them they fled to home and –
10 MR SETELELE: Ja.

25 Chairperson, how many members of NUM who was on strike, but some of them may not be at that strike but staying at their homes.
24 CHAIRPERSON: A lot of the strikers were rock drill operators, is that correct?
23 MR SETELELE: I agree.
22 CHAIRPERSON: And a number of the rock drill operators were members of the NUM.
21 MR SETELELE: Ja.
20 CHAIRPERSON: Ms Barnes, I was actually trying, unsuccessfully, to cut things short and help you to focus your cross-examination. I wasn’t successful but I did try. Please carry on.
19 MS BARNES: Thank you, Chairperson. Sir, if you could look at paragraph 25 of your statement.
18 MR MAHLANGU: Paragraph number?
17 MS BARNES: 25. You say there, “It was decided that given these two attacks on the NUM office” – presumably there you are referring to what you’ve just described in relation to what happened on Saturday the 11th.
16 CHAIRPERSON: And one false report you received – I must put it differently - one incorrect report you received that the office had been set alight, which turned out to be incorrect. So you’ve only actually told us about one attack on the NUM office. That’s why she says she’s making the point that what you’ve told us about was one attack on the NUM office –
15 MR SETELELE: Ja.
14 CHAIRPERSON: And one false report you received – I must put it differently - one incorrect report you received that the office had been set alight, which turned out to be incorrect. So you’ve only actually told us about one attack on the NUM office. That’s why she says she’s making the point that what you’ve told us about was one attack on the NUM office –
13 MS BARNES: That is quite correct, thank you, Chair.
12 MR SETELELE: You’re correct. However, it would like to give further information. There were two attacks. The Saturday I think is the one that is well known, if I can put it that way. On Sunday after the killing or the murdering of the policeman, they proceeded to the NUM offices.
28th January 2013

Marikana Commission of Inquiry

Rustenburg

1 CHAIRPERSON: Do you know that from your own knowledge?

2 MR SETELELE: I was told and the windows were broken.

3 MS BARNES: Yes, you were not present when that – when what you say happened, took place. Is that right? You weren't there yourself?

4 MR SETELELE: I was not there, it was reported by the stewards.

5 MS BARNES: If you could look please at paragraph 17 of your statement, this is where you refer to the Lonmin security guards coming to the NUM office and warning you that the striking workers were headed towards the office, do you see that?

6 MR SETELELE: You talk about - it talks about the incident of the 11th, not the 11th.

7 [11:07] MS BARNES: Yes, I'm not talking about the 12th of August, sir, I'm talking about what is written in paragraph 17 of your statement. Are you with me now?

8 MR SETELELE: Correct.

9 MS BARNES: Isn't it correct that those Lonmin security guards warned all the NUM officials in the office to leave the office, isn't that correct?

10 MR SETELELE: You are correct.

11 MS BARNES: And then the altercation that took place between the striking workers and the NUM officials on Saturday the 11th, you didn't witness that altercation, did you?

12 MR SETELELE: Correct, I was not there.

13 MS BARNES: I have no further questions, Chair.

14 CHAIRPERSON: Would you like to ask questions now? I don't – we used to have an argument as to who should cross-examine first, now we're going to get into an argument as to who's going to cross-examine last but before I give you a chance to cross-examine next, I must ask Mr Madlanga whether he wishes to ask any questions.

15 CROSS-EXAMINATION BY MR MADLANGA SC: Mr Chairman, commissioners. Would you agree with me – and I'm sure you would, Mr Setelele, that the safeguarding of human life would be or is more important than the upholding of labour laws with regard to unprotected strikes? Would you agree with that?

16 MR SETELELE: Of course, safety first.

17 MR MADLANGA SC: In your statement, paragraph 14, you say that you received reports of intimidation and that the bus service was interrupted - that is the bus service assisting people to go to work. Do you see that?

18 MR MAHLANGU: Paragraph 14?
28th January 2013
Marikana Commission of Inquiry
Rustenburg

MR MADLANGA SC: Did this stance or attitude of yours - and by yours I’m referring to NUM at large, at least at the workplace - did that stance ever change at all?

MR SETELELE: I think we always say, stand by that position that people should go to work and if there is any concern they must raise it through the relevant structures so that it can be addressed. And furthermore, in these two meetings that I held, if you can look into my message, it was clear that the strike was unprotected and we understand that if there is any issue they need to bring it forward so that we can look at how to get it solved. It was not only a matter of, go to work, the strike is illegal, go to work, the strike is illegal.

It was to say if there is an issue, bring it forward so that we can get it sorted out.

MR MADLANGA SC: That was your stance throughout, from the beginning.

MR SETELELE: Ja.

MR MADLANGA SC: My question is, did that stance ever change? You have not answered that.

MR SETELELE: Yes, that was our stance.

CHAIRPERSON: Did it ever change? We'll take the tea adjournment when we've got an answer to the question. Did that stance ever change or was it the stance throughout?

MR MADLANGA SC: That was your stance of NUM throughout?

MR SETELELE: You are correct, we didn't even change our stance. The only thing, if you can look into my statement is that we have even made an addition of talking about the families so that workers can see how important is their families, women and children.

CHAIRPERSON: Yes, I understand that. At this point we'll take the tea adjournment.

[COMMISSION ADJOURNS COMMISSION RESUMES]

MR MADLANGA SC: Mr Chairman, even with that last clarification by you, I still do not agree that the questions themselves are not clear. It may well be that my learned friend doesn't know where I'm getting - that's something else altogether, but it does not follow as a matter of logic that my questions then do not or are not of such a nature that the witness follows them.

Throughout, throughout, even the Chairperson appeared to shorten matters, perhaps Mr Madlanga can give us the answer to the question and then carry on with his cross-examination.

MR TIP SC: Thank you, Chair.

MR MADLANGA SC: Chair, commissioners, I would rather not answer the question. In the absence of the suggestion by my learned friend that the witness is having difficulty for one reason or another, perhaps the question is misleading or the witness does not follow where I'm getting to, and so on, I do not understand the basis -

[COMMISSION ADJOURNS COMMISSION RESUMES]

MR MADLANGA SC: Mr Madlanga, what he says is the question is unclear because it's not clear to him and presumably not clear to the witness, what exactly you're putting. He says are you putting that there was an obligation on NUM to change its stance because there had been violence and intimidation? I didn't understand you to be putting that but he asks whether that's what you are putting. You know, in other words, whenever there's violence and intimidation, do the ordinary basic structures have to be relaxed? That's what he's asking. I don't know whether that's what you want, what you're putting to the witness. As I say, I didn't understand you to be saying that but it might just help if you clarify what it is that you are putting because it may be that the witness shares Mr Tip's difficulty in understanding what precisely you are putting and if he doesn't understand what you're putting properly, then we won't get a meaningful answer that's going to take us any further.

MR MADLANGA SC: Mr Chairman, even with that last clarification by you, I still do not agree that the questions themselves are not clear. It may well be that my learned friend doesn't know where I'm getting - that's something else altogether, but it does not follow as a matter of logic that my questions then do not or are not of such a nature that the witness follows them.

Throughout, throughout, even the Chairperson appeared to follow the questions themselves. Hence the Chairperson even, even -

CHAIRPERSON: Yes. Mr Madlanga, thank you for the "even the Chairperson understood," I - put the questions again as you framed them before and we'll carry
28th January 2013

Marikana Commission of Inquiry
Rustenburg

25 addressed on the negotiating table.
24 negotiation table, it was opened and their demand was
23 later stage whereby the workers really, there was a
22 what happened is that we stand on our position until at a
21          MR SETELELE:          Actually if you can get
20 moment?
19           MR MADLANGA SC:          Are you aware that as at
18 August 2012 about 10 people had already died as a result
17 of the protests or strike action?
16 MR SETELELE:          Of course I heard.
15 MR MADLANGA SC:          We now know, with the
14 wisdom of what actually happened, that the coming together
13 of all the people concerned around the negotiating table
12 and the discussion of all the issues, resulted in a
11 solution.
10           MR SETELELE:          Yes.
12 MR MADLANGA SC:          Would you discount the
11 probability that instead of being legalistic – legalistic
10 in the sense of just saying this is an unprotected strike,
9 go to work, if there’s an issue come to us – would you
d0 discount the probability that if NUM had been proactive and
taken an initiative at an early stage, many lives might
9 have been saved?  Would you discount that probability?
8 MR TIP SC:          Mr Chair, before the witness
7 answers, this proposition has been put on the basis of
6 there being a probability that –
5 CHAIRPERSON:          Perhaps it should have been
4 framed as a possibility.
3 MR TIP SC:          Well, perhaps it should.
2 CHAIRPERSON:          If it’s framed as a

Page 4119

1 MR MADLANGA SC:          And the opening of the
2 negotiation table, as you put it, was only after the 16th of
3 August 2012, not so?
4 MR SETELELE:          Of course.
5 MR MADLANGA SC:          You referred to – or
6 rather you said you’d told the workers at the meeting of
7 the 11th in the afternoon, attended by about 1 000 workers,
8 you told them, amongst others, that if there is an issue
7 they must bring it forward.  What sort of issue or issues
6 did you have in mind?
5 MR SETELELE:          Obviously we already heard
4 that they are demanding a certain amount of money on their
3 wages.
2 MR MADLANGA SC:          Yes, that was an issue
1 but that could not have been the issue that you had in mind
2 because you said if there was an issue they should bring it
1 forward.  That one you were already aware of.  What other
2 issue did you have in mind?
1 MR SETELELE:          Actually as a union, people
2 bring in the demand at the mass meeting and so that we can
1 address that demand.  So I had never had a meeting where
2 they have told us directly that how many demands do they
1 have.  So I will never speculate what demand, what other
2 demand they had because remember, they even explained that
1 they don’t want the assistance of a union when they demand
0

Page 4120

1 this sort of money.
2 MR MADLANGA SC:          Are you aware that as at
3 16 August 2012 about 10 people had already died as a result
4 of the protests or strike action?
5 MR SETELELE:          Of course I heard.
6 MR MADLANGA SC:          We now know, with the
7 wisdom of what actually happened, that the coming together
8 of all the people concerned around the negotiating table
9 and the discussion of all the issues, resulted in a
10 solution.
11           MR SETELELE:          Yes.
12 MR MADLANGA SC:          Would you discount the
11 probability that instead of being legalistic – legalistic
10 in the sense of just saying this is an unprotected strike,
9 go to work, if there’s an issue come to us – would you
d0 discount the probability that if NUM had been proactive and
taken an initiative at an early stage, many lives might
9 have been saved?  Would you discount that probability?
8 MR TIP SC:          Mr Chair, before the witness
7 answers, this proposition has been put on the basis of
6 there being a probability that –
5 CHAIRPERSON:          Perhaps it should have been
4 framed as a possibility.
3 MR TIP SC:          Well, perhaps it should.
2 CHAIRPERSON:          If it’s framed as a

Page 4121

1 possibility, will you still object?
2 MR TIP SC:          No, that – that would make a
1 very, very, substantial difference to the question.
2 CHAIRPERSON:          Let’s see what Mr –
1 MR BURGER SC:          Chair, may I then raise an
2 objection?
1 CHAIRPERSON:          Yes, you may.
2 MR BURGER SC:          Whether that’s a
1 probability or a possibility, with respect, is within your
2 jurisdiction, your Commission’s jurisdiction.  The witness
3 can’t help us on that but it’s an unfair question.  It’s no
4 good to put that question without explaining to the witness
3 that by the 16th of August one of the constituents to the
4 debate are armed, are threatening criminal action and as
3 part of an unprotected strike and the September debate
2 happens with unarmed people under the guidance of an
1 institution of state, the CCMA, and the role players are
0 all in a very, very different state of mind.  So it’s quite
1 an unfair question to put without those qualifications.
2 MR MADLANGA SC:          Not that I don’t have a
1 response to that, Chair, I will just leave the question on
2 the basis that it’s better that one can argue ultimately
0 and -
1 CHAIRPERSON:          One of the points is
0 whether the witness’s answer would help us very much.  I

28th January 2013
Marikana Commission of Inquiry
Rustenburg

25 industrial framework of labour relations, am I right?
24 representative, you are the one to assert it within the
23 MR SEMENYA SC: And as their
22 MR SETELELE: Of course they were.
21 MR SEMENYA SC: So NUM did know that the
20 MR SEMENYA SC: If you go to page 19 of
19 MR SETELELE: No.
18 MR SETELELE: You are partly correct.
17 MR SEMENYA SC: Do you have the agreement
16 MR SETELELE: It is in the bundle of
15 agreement was correct to them, they give us that we must
14 MR SETELELE: You are partly correct.
13 MR SEMENYA SC: And yet you couldn't
12 MR SEMENYA SC: All proposals
11 CHAIRPERSON: Yes, I can put my
10 MR SEMENYA SC: And yet you couldn't
9 MR SETELELE: That these RDOs are underpaid. Was that a sentiment shared
8 MR SETELELE: Of course, that's what we
7 MR SEMENYA SC: You see where you're going with your question but –
6 MR SEMENYA SC: Now just help me
5 MR SETELELE: Yes, I can see that.
4 MR SEMENYA SC: It says, “All proposals
3 MR SEMENYA SC: And yet you couldn't
2 MR SETELELE: Correct.
1 MR SEMENYA SC: That bundle and in particular clause 12.3 of that

MR Msimang, are you ready to ask questions now?

MR MSIMANG: I can come –

CHAIRPERSON: Mr Senyana, would you like

to ask questions now?

MR SEMENYA SC: Yes, I can put my

questions, Chair.

CROSS-EXAMINATION BY MR SEMENYA SC: Mr

Setelele, we are told by Mr Gcilitshana that NUM's position

that these RDOs are underpaid. That was a sentiment shared

by NUM across the board?

MR SETELELE: Correct.

MR SEMENYA SC: In fact, in two

negotiating periods you have always held that view that

they are unpaid, as NUM, correct, the RDOs?

MR SETELELE: Correct, but not RDOs

alone.

MR SEMENYA SC: In fact you were saying

it is particularly the RDOs that are underpaid.

MR SETELELE: You are correct.

MR SEMENYA SC: So NUM did know that the

complaints of these RDOs are legitimate.

MR SETELELE: Of course they were.

MR SEMENYA SC: And as their

representative, you are the one to assert it within the

industrial framework of labour relations, am I right?
28th January 2013

Mariknaka Commission of Inquiry
Rustenburg

25 can do on their own. It is the representative union which
24 if I understand your question, there is nothing that they
23 MR SETELELE: Actually there is nothing –
22 agreement is legitimate and pressing.
21 further on a demand that they and the union are in
20 now. The poor RDOs have a union that can't press any
19 MR SEMENYA SC: Can we try again, Mr
18 MR SETELELE: Correct.
17 MR SEMENYA SC: For two ways of
16 negotiations, as NUM you knew they were underpaid, these
15 RDOs, so it's not a surprise.
14 MR SETELELE: You're correct.
13 MR SEMENYA SC: And to already have the
12 benefit of Amplats strike action there -
11 CHAIRPERSON: No, I think it was Implats
10 and then Impala.
9 MR SEMENYA SC: You already have the
8 benefit of what the type of complaint they have resulted in
7 unrest at Impala, that you already know. Correct?
6 MR SETELELE: Partly correct but however,
5 you need to also look at – I'm a branch chairperson, I'm
4 MR SEMENYA SC: Of course. Maybe I don't
3 understand you clearly but I think they had to raise the
2 issues so that, as a union, to look in that, in those
1 issues.

1 MR SETELELE: I think you'll find if we
are patient, if you and I are patient and we give Mr
Semena a chance to finish this line of questioning, I
suspect you'll find that he's going to address that
problem. If he doesn't, then you and I can take him on but
let him finish this line of questioning first before we
tackle him further because it may not be necessary for us
to do so.
16 MR TIP SC: My concern, of course, is not
to tackle Mr Semenya, it's merely that the questions that
Mr Semenya put –
19 CHAIRPERSON: I'm speaking
20 metaphorically.
21 MR TIP SC: No –
22 CHAIRPERSON: I mean talking in relation
to a valid upholdable objection to the questions he's
asking.
25 MR SEMENYA SC: Can we try again, Mr

1 MR TIP SC: Chair, forgive me, I
interrupt with reluctance but it is important, with
respect, for the propositions to be put with accuracy and
that there shouldn't be any illusion between the notion of
a demand, an agreement and a component that may have been
part of the demand that hasn't become an agreement, but the
agreement is there and –

1 CHAIRPERSON: I think you'll find if we
9 Setelele? We have tied it up that NUM considers this
demand for higher salaries of RDOs as a very legitimate and
a pressing one. We have gone past that point, haven't we?
8 MR SETELELE: Of course. Maybe I don't
5 understand you clearly but I think they had to raise the
6 issues so that, as a union, to look in that, in those
7 issues.
6 MR SEMENYA SC: And it is one of the
demands that you as a union take up with the employer in
these wage negotiations, right?
5 MR SETELELE: Correct.
4 MR SEMENYA SC: And it is about one of
those on which the parties could not agree.
3 MR SETELELE: Correct.
2 MR SEMENYA SC: And by agreement it is
one of those issues which cannot be the subject matter of a
strike, a protected strike.
1 MR SETELELE: Correct.
19 MR SEMENYA SC: So help me understand
now. The poor RDOs have a union that can't press any
further on a demand that they and the union are in
agreement is legitimate and pressing.
23 MR SETELELE: Actually there is nothing –
24 if I understand your question, there is nothing that they
25 can do on their own. It is the representative union which

1 must assist them. However, what I would like to explain
2 further is that remember that this demand of R12 500 was
3 not brought to the attention of NUM. In other words, NUM
4 was not clearly aware where does this 12 500 come from.
5 That is why NUM want the RDO or any other people to come
6 forward and bring that demand to NUM so that NUM can look
7 into that. Currently, myself I cannot say 15,000, I mean
8 12 500 is correct or incorrect because as my colleague
9 yesterday – if not yesterday, before yesterday - has
10 mentioned that before we make a demand, a salary increase,
11 we look into things like inflation and so on but I'm not at
12 that level of looking into the inflation issues.
11 MR SEMENYA SC: For two ways of
14 negotiations, as NUM you knew they were underpaid, these
13 RDOs, so it's not a surprise.
12 MR SETELELE: You're correct.
11 MR SEMENYA SC: And to already have the
10 benefit of Amplats strike action there -
9 CHAIRPERSON: No, I think it was Implats
8 and then Impala.
7 MR SEMENYA SC: You already have the
6 benefit of what the type of complaint they have resulted in
5 unrest at Impala, that you already know. Correct?
4 MR SETELELE: Partly correct but however,
3 you need to also look at – I'm a branch chairperson, I'm
2 trying to push to – knowing that their claim is legitimate,
1 knowing that the industry is changing, knowing that Implala
is paying better now, knowing that that claim is pressing,
1 you knew that they cannot look to you as a union for
2 resolution of that problem, am I right?
23 MR SETELELE: I don't know whether -
24 MR BURGER SC: Chair -
25 MR SETELELE: I don't know whether Implala
28th January 2013

Marikana Commission of Inquiry

Rustenburg

25 now. The same I think, the same thing must happen when
d they agreed that this is the percentage that we can sign
and at the end of the day we meet in the mass meeting and
addition of, I mean a certain percentage to their salary
our previous wage negotiations. We [inaudible] make an
than compared to the work that they do. We raised this in
especially the RDOs' salaries, we say they are earning less
compared to Lonmin. And the issue of the RDOs, more
the chairperson of Western Plat, not of the whole Lonmin.
whether I'll be answering your question. First of all, I'm
Correct?

Mr Schalk Burger says, you don't say because it is
taken, but because we have the right to amend our own
agreement, we'll go to Lonmin and say, now, these are
circumstances necessary for us to revisit our agreement.
Correct?

Firstly, I don't know
whether I'll be answering your question. First of all, I'm
the chairperson of Western Plat, not of the whole Lonmin.
And secondly, I don't know how much Impala pays the RDOs
compared to Lonmin. And the issue of the RDOs, more
especially the RDOs' salaries, we say they are earning less
than compared to the work that they do. We raised this in
our previous wage negotiations. We [inaudible] make an
addition of, I mean a certain percentage to their salary
and at the end of the day we meet in the mass meeting and
they agreed that this is the percentage that we can sign
now. The same I think, the same thing must happen when
they want another percentage on top of the percentage they
got, they must just come to us so that we can engage
management on that. So they choose to exclude us.

Mr Semenya SC: I'm going to repeat my
question. As NUM, NUM, you don't, with the benefit of what
you then know, go to Lonmin and say, we do have an
agreement, it is binding until 2013 but there are
circumstances now that would compel us to relook at that
agreement and see whether or not we cannot negotiate this
industrial dispute.

Mr Setelele: We actually go to the
management with a mandate from the workers.

Mr Semenya SC: Mr Setelele, I'll ask it
in an open-handed fashion. With the escalating tension of
RDOs going to the mountain in what you know to be an
unprotected strike, but knowing that their demands are
legitimate, you as NUM do not go to Lonmin and say can we
re-negotiate this agreement to accommodate this legitimate
and pressing demand.

Mr Setelele: I think if you can,
somebody can remember, during the strike when people were
on the mountain, we tried to engage with management to look
into how to get the problems get solved and I think you
will remember that management said people must climb off
the mountain and go to work so that we can sit down and
address the issue. And most of the time I attended most of
the meetings when the RDOs were on strike. For myself just
to state my role as the chairperson of Western Plat, what I
did, I can mention this.

[12:18] Mr Semenya SC: Okay, just assist me
then. On the 9th you see the RDOs are on what you call an
unprotected strike - they are only having kieries – about
something you yourself concede is a legitimate demand by
them and there has been –

Mr Tip SC: Mr Chair, I have to – I have
to object to that. The demand that was made was for R12
500. The witness has thus far spoken about the fact that
there demands during the negotiations for improvements in
the RDOs' wages. It never was in the realm of R12 500.
The witness has made it clear that there is a process
within NUM for the vetting of demands and it's not correct,
with respect, to say that you've already conceded that this
was a legitimate demand of 12 500.

Mr Semenya SC: Chair, I have never even
put a rand value on the demand, never, since I started
19
20
21
22
23
24
25
28th January 2013
Marikana Commission of Inquiry
Rustenburg

MR SEMENYA SC: We have repeatedly been told all these people wanted was to say, bring the employer, we want to discuss these matters, but you are the union who's supposed to be doing it for them – for which you take a subscription of 1% of their salaries -

MR SETELELE: I think, Chairperson, here I'm asked a question that gives me a problem also. The reason is, if [inaudible] says - we have no access to talk to the work - the RDOs. The president of this union NUM was chased away from the mountain, so it becomes very difficult to say you have the RDOs mandate and deal with that mandate whereas you know that no-one has sent you to deal with it.

MR SEMENYA SC: The president was not chased on the 10th. So let's just deal with your approach as a representative union in respect of a claim you accept to be legitimate. There's industry shift, I don't understand what could be a compelling difficulty in approaching Lonmin and saying, can we negotiate this problem away?

MR SETELELE: It was difficult also to talk to management. That is why you see that 750 and 250 and 500 rand was not negotiated, it was the offer that was issued by management and need no comment from any union. And the - management, as I understand, was that the people who's supposed to be doing it for them – for which you take a subscription of 1% of their salaries -

MR SEMENYA SC: By that you must mean you would have spoken to your union members, you would have chiselled out the nature of the concerns they have, they would then give you a mandate to go and engage Lonmin on it. Is that what you say?

MR SETELELE: The difficulty was that they were not ready to give us the mandate and their demands.

MR SEMENYA SC: Did you or did you not, as NUM, before the problem escalated, say to Lonmin, please let us sit down, re-negotiate this impasse away, or you didn't?

MR SETELELE: Always when we go to the meeting or the briefings, we were there to get the solution. The calling of the meeting with the RDOs or the workers was to get the solution.

MR SEMENYA SC: Mr Setelele, did you as NUM, before the problem got out of hand, go to Lonmin and say, can we negotiate this problem away? It's either a fact or it's not, you can tell us if I'm wrong or if I'm right.

MR SETELELE: When you say, before - maybe I must ask clarity. When you say before, which day do you specifically refer to?

MR SEMENYA SC: Let's work on the 9th, on the 10th if you like.

MR SETELELE: From the 10th until the negotiations, we were there negotiating with management and engaging with management.

MR SEMENYA SC: Are you saying as fact, on the 10th of August 2012 NUM engaged Lonmin with a view to negotiate the impasse? Are you saying that?

MR SETELELE: If you look into my statement you'll see that I said on the 10th I met the VP to
28th January 2013  
Marikana Commission of Inquiry  
Rustenburg

MR SETELELE: We were told that we must leave the RDOs dealing with their own demands.
MR SEMENYA SC: No –
MR SETELELE: So the problem that we were in was that we were trying to talk to them to say, however you have a demand, we are saying go back to work and we will sit down and collect your demand and see how to deal with your demand.
MR SEMENYA SC: Mr Setelele, this I my last question on this point and I want to put this proposition to you. I’m going to argue that your answer cannot be correct. Mr Gcilitshana, NUM chief negotiator, called it a ticking bomb for a very long time, it’s not something new.
MR SETELELE: You’re correct.
MR SEMENYA SC: I know. Now you say or you reported –
CHAIRPERSON: Are you moving on to another point or are you still busy with this one?
MR SEMENYA SC: Yes, Chair.
CHAIRPERSON: Moving on to another point?
MR SEMENYA SC: Yes, I was going to go to another point.
CHAIRPERSON: I’d like to ask a question on the point you’re busy with. I understood you to say that your – the attitude of NUM was that the RDOs must go back to work, raise the matter with NUM and NUM would then raise it with the employer. Do I understand you correctly?
MR SETELELE: Correct.
CHAIRPERSON: That doesn’t seem to be consistent with what appears in para 4 of your statement.
Let me read it to you. “The issue of this demand” – that’s the demand for R12 500 – “by the RDOs was discussed at various meetings by the NUM branches in Lonmin. NUM’s position was consistently put forward at these meetings, namely, that the wages of RDOs was” – it should be “were” – “covered in the two year collective agreement that had been concluded in December 2011, that it was a breach of this agreement for RDOs to raise fresh demands during the term of that agreement and that NUM was opposed to unprotected and hence illegal strike action.”
MR SETELELE: You’re correct.
[12:38] CHAIRPERSON: I haven’t got a problem with your statement that NUM was opposed to unprotected and hence illegal strike action and in fact it’s clear that this demand could not have been the subject of strike action because it was governed by clause 12.3 of the agreement to which you refer, but I have got a problem with previous part of that sentence, that it was NUM’s position that – let me remind you of what you said – that it was a

MR SETELELE: Ja, they were not prepared to talk to us.
MR SETELELE: How can you talk about something that you don’t have a mandate of?
MR SEMENYA SC: Where are you going to take that feedback, because people on the mountain don’t want you. The only thing that I think is going to be a better thing is to call a meeting and talk to the people to say, go to work, we are here as NUM and we are prepared to assist you on your concern. We don’t even know what informed 12.5.
Did you care to know?
Ja, they were not prepared to talk to us.
28th January 2013  
Marikana Commission of Inquiry  
Rustenburg

At the meeting? Did you tell them there’s room for us to take this demand to management, or did you tell them that by raising this demand you’re acting in breach of the agreement?

MR SETELELE: I’ve told them that if they have a demand they must bring the demand to us.

CHAIRPERSON: But did you tell them what you say here in your statement, that it was a breach of the agreement for the RDOs to raise fresh wage demands during the term of the agreement? Did you tell them that?

MR SETELELE: Yes, I’ve told them.

CHAIRPERSON: Mr Semenya, do you want to move on to your next point?

MR SEMENYA SC: Thank you, Chair. But it compounds the problem, Mr Setelele. We are told that Lonmin also has what it calls a discretionary power to deal with allowances outside the agreement. Did you know that power they have?

MR SETELELE: No.

MR SEMENYA SC: You have never seen any documented policy of Lonmin that gives them the power to offer allowances outside the agreement?

MR SETELELE: In most of that time there are positions or the levels where they can talk about a certain amount of money but not the salaries.

Much, so much per cent, inflation has gone beyond that amount, therefore the climate has changed, it’s appropriate for us to revisit it. That’s the point that’s been dealt with already. Therefore it would’ve been possible for NUM to have gone back to Lonmin, to have said, we want to raise this demand again, despite the fact that the agreement is still operative, because of this change brought about by what happened at Impala. Isn’t that correct?

MR SETELELE: You’re correct.

CHAIRPERSON: In doing so, NUM would not have been acting in breach of the agreement.

MR SETELELE: You’re correct.

CHAIRPERSON: So why did you say that it was – that NUM’s position was, it was a breach of the agreement for RDOs to raise fresh demands during the term of that agreement? That statement was not correct, was it?

MR SETELELE: I think the statement is not correct since the agreement says, is stating against my statement. However, I was giving the people also the opportunity to say however the agreement is saying something that is against what you demand – if it was so that you can meet with management, it’s also appearing in my statement – that means, Chairperson, there was a room for NUM to go and take the demands to the management.

CHAIRPERSON: What did you tell the RDOs
Page 4146

1 want this money, all what we want, we want to go for
2 ourselves and seek money.
3 MR SEMENYA SC: I thought you said you
didn’t discuss this matter with the strikers or your
5 members, that you don’t know where the 12 500 comes from.
6 MR SETELELE: The issue of 12 500 was not
7 I mean discussed or being mandated by the workers as a
demand. When management come with that 750, we went to the
9 workers and told the workers how was management saying as
10 an allowance and management also told us that we’ve got no
11 room to negotiate this. And still on that allowance,
12 they’re showing the management that it’s a small sum of
13 money.
14 MR SEMENYA SC: Oh, this is before the 9th
15 of August?
16 MR SETELELE: Ja, before the 9th and the
17 mass meeting was on the 8th.
18 MR SEMENYA SC: And to tell management,
19 look, this allowance you want to pay is not enough.
20 MR SETELELE: Correct.
21 MR SEMENYA SC: Did you put a proposal of
22 what would constitute a correct amount?
23 MR SETELELE: Sorry, sir?
24 MR SEMENYA SC: Did you put a proposal of
25 what would constitute a proper amount?

Page 4147

1 MR SETELELE: We couldn’t because we’ve
got no mandate.
3 MR SEMENYA SC: You’re confusing me. Did
you go to negotiate an allowance with management for and on
behalf of the members?
6 MR SETELELE: No.
7 MR SEMENYA SC: You could have.
8 MR SETELELE: If we got the mandate.
9 MR SEMENYA SC: Just explain to me what
10 is a mandate?
11 MR SETELELE: By mandate in the union we
talk about being told by the mass that you represent, what
to do. And before you change anything on that mandate you
need to go back to those people who gave you that mandate
to tell what does the management propose – until the
workers say it’s correct, you may sign for that amount.
17 This is a mass meeting to a mandate.
18 MR SEMENYA SC: Did NUM seek the mandate
19 of the RDOs on their demand?
20 MR SETELELE: Always if we want a
21 meeting, a mass meeting for mandate, new issues may come
22 there, then we carry that mandate as we are given.
23 MR SEMENYA SC: And Mr Setelele pretend
24 that I’m Judge Farlam, because you’ve agreed when he was
25 asking you, that your attitude in that meeting was, you’re

Page 4148

1 not negotiating anything, it would be a breach of
2 agreement.
3 MR SETELELE: You’re correct.
4 MR SEMENYA SC: Now you can assume I’m
Judge Farlam. And now –
5 MR SETELELE: I don’t know whether you
want to change your surname or not.
7 MR SEMENYA SC: Because I find your
9 approach to questions put by the Judge quite sensible,
direct and accurate, but anyway I put it to you that you
11 could not have advanced the claim of the RDOs at the same
time that you’re holding the position that it would be in
13 breach of the agreement.
14 MR SETELELE: This is what we said.
15 However, there was a room also, in my statement there is a
16 room that shows that even though it’s a breach of an
17 agreement, we would still engage with management if we are
19 given the mandate or the demand. You see, what I would
19 like also to add on that is that I don’t know whether
20 management with that R750 was responding to the, I mean the
22 demand of the RDOs directly on the meetings that they held
23 or not, but according to me there were demands from workers
23 that they don’t want to include NUM and there was some –
24 there was an allowance that comes with the management. But
25 management said this 750, they wanted to be on the same

Page 4149

1 level with the other companies’ RDOs as they are people
2 with a scarce skill and they are aware that most of them
3 are the old people.
4 MR SEMENYA SC: Chair, would this be a
5 convenient stage for the lunch adjournment?
6 CHAIRPERSON: [Inaudible]
7 [COMMISSION ADJOURNS]
8 [COMMISSION RESUMES]
9 You are still under oath. Mr Semenya, is there more cross-
examination? Do you want to take your jacket off first?
11 MR SEMENYA SC: I was tempted to, Chair.
12 CHAIRPERSON: You can.
13 MALESELA WILLIAM SETELELE (CONTD):
14 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD):
15 Thank you, Chair. Mr Setelele, as labour and capital, you
don’t need the Council, South African Council of Churches
17 to resolve labour disputes, do you?
18 MR SETELELE: My answer will be, if we
19 have a sort of problem then we will need everybody who can
20 come with a solution.
21 MR SEMENYA SC: Do you seriously say
22 that?
23 MR SETELELE: Maybe I need to give an
example. Am I allowed?
25 MR MAHLANGU: He’s asking if he’s allowed
to make, to give an example.

CHAIRPERSON: I suppose it depends what the example is, but if it’s a relevant example you can give it.  

MR SETELELE: For an example, people of Wonderkop they used to have a problem on taxis. We used to interact with the councillors and so on to get the problem, get solved. We even got to the extent where people around Lonmin were on strike of unemployment, then we were part of trying to get the solution. In other words, we work with the community most of the time.

MR SEMENYA SC: You don’t need the South African Council of Churches to resolve payment of RDOs.

MR SETELELE: I think we’ll need them if necessary, but per our collective agreement there is nowhere where it says we need South African Council of Churches. That will depend on the stakeholders, whether they agree on that.

MR SEMENYA SC: The point I’m making is, we have a very effective legal framework for these type of disputes, correct?

MR SETELELE: Correct.

MR SEMENYA SC: So you don’t need the South African Council of Churches to help you resolve the payment to RDOs.

MR SETELELE: I don’t think there was one time a need for us to call them and even those who were, who were present during the strike, were not called by NUM or maybe consulted NUM before they came here.

MR SEMENYA SC: I don’t want to argue against - surely you can, as the union and the employer, resolve your industrial disputes without the intervention of the South African Council of Churches?

MR SETELELE: Yes, we’ve got ways to resolve our problem but if it went to that extent that we would need the assistance from other parties, then we will agree on it. Then it was the first time South African Council of Churches came to the wages.

MR SEMENYA SC: So you’ll allow me to argue at the end that the parties, that is labour and capital, acting responsibly, can resolve within the framework of the law, industrial disputes without the intervention of parties like the South African Council of Churches.

MR SETELELE: As I’ve said, it’s the first time I see the members of the South African Council of Churches in the wages.

MR SEMENYA SC: So your answer is yes, if parties to an industrial dispute act responsibly you do not require external agents like the South African Council of Churches to help you resolve that problem.

MR SETELELE: I don’t think the presence of the South African Council of Churches was that we cannot solve our own problem until their intervention. Therefore I cannot say the problem of Lonmin was resolved by the South African Council of Churches. Whatever what I can say is that they were there when the problem was – we were trying to get the solution about the problem.

MR SEMENYA SC: In fact, you have the tools and the facility to involve structures like the CCMA to help mediate industrial disputes where they’re needed, correct?

MR SETELELE: Most of the time the CCMA will come in as a facilitator or a mediator.

MR SEMENYA SC: It doesn’t have to be after the death of 44 people, correct?

MR SETELELE: I can’t say it wants us to wait for death. Actually we are against any sort of death. Again I ask the question, you’re able to resolve that as labour and capital, without the loss of 44 deaths?

MR SEMENYA SC: You don’t need the South African Police Service to resolve a labour dispute, do you?
28th January 2013
Marikana Commission of Inquiry
Rustenburg

<table>
<thead>
<tr>
<th>Page 4154</th>
<th>Page 4155</th>
<th>Page 4156</th>
<th>Page 4157</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 MR SEMENYA SC:</td>
<td>Most significant is clause 3 which says, “This is an amendment to the original agreement.” Do you see that?</td>
<td>1 we were there present and looking at how to sort the problem and the company by that time was saying people must go to work first so that we can sit down and amend. In other words there is no way I can say the union failed.</td>
<td>1 friend suggest that this agreement should’ve been reached on the kopjie or off the kopjie, with arms or without arms?</td>
</tr>
<tr>
<td>2</td>
<td>MR SETELELE:</td>
<td>MR SEMENYA SC:</td>
<td>2 MR SEMENYA SC:</td>
</tr>
<tr>
<td>3</td>
<td>Correct.</td>
<td>Most significant is</td>
<td>We’ll make the argument at the right stage, Chair.</td>
</tr>
<tr>
<td>4</td>
<td>MR SEMENYA SC:</td>
<td>According to the research the</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>So the parties did know all the time that they can amend that original agreement.</td>
<td>union is or was, and whatever the attitude of Lonmin is or was, it is possible - it was always possible for both</td>
<td>3 What is the argument of the police on this?</td>
</tr>
<tr>
<td>6</td>
<td>MR SETELELE:</td>
<td>Correct.</td>
<td>4 MR SEMENYA SC:</td>
</tr>
<tr>
<td>7</td>
<td>MR SEMENYA SC:</td>
<td>And if you look at the adjustment under paragraph 3.2, “All rock drill operators will be promoted from Paterson grade A4 to B1, effective 1 October 2012.”</td>
<td>We’ll make the argument at the right stage, Chair.</td>
</tr>
<tr>
<td>8</td>
<td>Correct.</td>
<td>MR SEMENYA SC:</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>MR SEMENYA SC:</td>
<td>Just confirm these figures with me. The effect of the accord and the amendment, it meant that the general underground workers were now going to earn 900 and - 9 600. Is that figure more or less correct?</td>
<td>5 MR SEMENYA SC:</td>
</tr>
<tr>
<td>10</td>
<td>MR SETELELE:</td>
<td>I don’t see those figures you talk about here.</td>
<td>Whatever the attitude of</td>
</tr>
<tr>
<td>11</td>
<td></td>
<td>CHAIRPERSON:</td>
<td>whatever the union is or was, and whatever the attitude of Lonmin is or was, it is possible - it was always possible for both</td>
</tr>
<tr>
<td>12</td>
<td></td>
<td>The figures aren’t in the agreement. What’s in the agreement is they were promoted, all the service and underground general workers were</td>
<td>6 MR SEMENYA SC:</td>
</tr>
<tr>
<td>13</td>
<td></td>
<td></td>
<td>People don’t have to go</td>
</tr>
<tr>
<td>14</td>
<td></td>
<td></td>
<td>to the mountain for capital and labour to resolve an industrial dispute.</td>
</tr>
<tr>
<td>15</td>
<td></td>
<td></td>
<td>[13:56] MR BURGER SC: Chair, with respect, this is an unhelpful debate. We have time constraints. The debate is that what is capital and labour going to do, but there are other parties to this agreement. In September there’s a constituency called the workers. Does my learned</td>
</tr>
<tr>
<td>16</td>
<td></td>
<td></td>
<td>friend suggest that this agreement should’ve been reached on the kopjie or off the kopjie, with arms or without arms?</td>
</tr>
<tr>
<td>17</td>
<td></td>
<td></td>
<td>What is the argument of the police on this?</td>
</tr>
<tr>
<td>18</td>
<td></td>
<td></td>
<td>4 MR SEMENYA SC:</td>
</tr>
<tr>
<td>19</td>
<td></td>
<td></td>
<td>We’ll make the argument at the right stage, Chair.</td>
</tr>
<tr>
<td>20</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>22</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>23</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>24</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Tel: 011 021 6457 Fax: 011 440 9119 RealTime Transcriptions Email: realtime@mweb.co.za
MR SETELELE: Correct.

MR SEMENYA SC: That's not correct.

MR SETELELE: That's freedom of choice. If a person wants to go to another union, he's free to do so and we will not call that union a free union. Freedom of choice. If a person wants to go to another union without creating union rivalry or hostility?

MR SETELELE: I think it's possible.

MR SEMENYA SC: Let's deal with something else.

MR SETELELE: I think if you can look into this peace accord, there were unions there and I think the representatives of workers also were there.

MR SEMENYA SC: I'll ask you if I want to.

MR SETELELE: So in other words, if I'm not interrupting with you, in other words there was a link between the workers and the unions who were sitting there in the peace accord.

MR SEMENYA SC: Now the point I'm making is, that link could still have been achieved by all the parties to this agreement before the 9th of August 2012.

MR SETELELE: I think it's possible.

MR SEMENYA SC: Let's deal with something different. Mr Setelele. Floor crossing, the ability of workers to move from one union to the other, that should be possible to do without creating hostilities and inter-union rivalry, am I right?

MR SETELELE: That is freedom of choice.
28th January 2013

Mariknako Commission of Inquiry

Rustenburg

1. complaining about NUM.
2. MR SEMENYA SC: No, I'm sure the Commission would be interested to make recommendations if you were able to identify the causes of the tensions that were there between the members at the lower level of unions. Now I'm asking, were you aware that there such tensions between members, at least at the lower level of officials?
3. MR SETELELE: What I can say is that there is an intimidation that is taking place at the working places.
4. MR SEMENYA SC: Causes?
5. MR SETELELE: I think there are some other people belonging to other unions that are giving challenge or maybe intimidating NUM members.
6. MR SEMENYA SC: About what?
7. MR SETELELE: In most of the time, giving you an example, if you wear a T-shirt of NUM then you'll be in danger.
8. MR SEMENYA SC: But that's precisely why we're here, that it cannot be that you wear a T-shirt and you are in danger. That's not a proper labour environment.
9. That's why I'm asking for your assistance. My clients don't want to bring water cannons because somebody is wearing a T-shirt. Tell us what's the cause of the tension.

10. MR SEMENYA SC: No, I don't want to compromise you in any way. Chair, those are the questions we have for the witness.

11. MR SETELELE: What I can say is that there is an intimidation that is taking place at the working places.
12. MR SEMENYA SC: Causes?
13. MR SETELELE: I think there are some other people belonging to other unions that are giving challenge or maybe intimidating NUM members.
14. MR SEMENYA SC: About what?
15. MR SETELELE: In most of the time, giving you an example, if you wear a T-shirt of NUM then you'll be in danger.
16. MR SEMENYA SC: But that's precisely why we're here, that it cannot be that you wear a T-shirt and you are in danger. That's not a proper labour environment.
17. That's why I'm asking for your assistance. My clients don't want to bring water cannons because somebody is wearing a T-shirt. Tell us what's the cause of the tension.

18. MR SETELELE: Would I also be correct if I say I don't know the reason. What I see is that we have cases of intimidation, of tearing the NUM T-shirt – that one is a fact, we have those, we have those cases.
19. MR SEMENYA SC: NUM has not launched an investigation to see the underlying causes for these tensions?
20. MR SETELELE: Not on my level.
21. MR SEMENYA SC: Are you aware of a level higher than where you are?
22. MR SETELELE: I'm not aware.
23. MR SEMENYA SC: In your statement you mention that NUM members fired shots at the protesters, do you remember?
24. MR SETELELE: Correct.
25. MR SEMENYA SC: And these are the members that you left in the office when you drove away, right?
**28th January 2013**  
**Marikana Commission of Inquiry**  
**Rustenburg**

<table>
<thead>
<tr>
<th>Page 4166</th>
<th>Page 4168</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td>early as – according to him, at least - the 22nd of November 2011, he at that stage intimatted that there’s a time bomb ticking, related to the issues of the RDOs.</td>
</tr>
<tr>
<td><strong>2</strong></td>
<td>MR SETELELE: I’ve heard this statement.</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td><strong>MR MSIMANG:</strong> Do you agree with that assertion, that around November 2011 NUM was aware of a ticking time bomb relating to the RDOs?</td>
</tr>
<tr>
<td><strong>4</strong></td>
<td>MR SETELELE: I think he was referring to the issue of taking the RDO from category A4 to 7 and the agreement – in our agreement we were unable to reach that, what they requested us to, that was their mandate. And he was trying to say if - as I understood him, he was trying to say since the RDOs are not taken to, I mean group, category 7, then that is a time bomb because they will be always sitting, having a concern of their salaries.</td>
</tr>
<tr>
<td><strong>5</strong></td>
<td>MR MSIMANG: Will you agree with me that there were RDOs within NUM who wanted to be upgraded and who felt that the salary or remuneration they received from the employer was not sufficient?</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td>MR SETELELE: I agree.</td>
</tr>
<tr>
<td><strong>7</strong></td>
<td><strong>MR MSIMANG:</strong> The plight of the RDOs was not a new thing within the NUM.</td>
</tr>
<tr>
<td><strong>8</strong></td>
<td><strong>MR SETELELE:</strong> I agree.</td>
</tr>
<tr>
<td><strong>9</strong></td>
<td><strong>MR MSIMANG:</strong> You said to the Chairperson you told the RDOs in your meeting that there was an argument with the employer and that no new demands could be made to the employer in respect of the RDOs, do you recall that?</td>
</tr>
<tr>
<td><strong>10</strong></td>
<td><strong>MR MSIMANG:</strong> I recall.</td>
</tr>
<tr>
<td><strong>11</strong></td>
<td><strong>MR MSIMANG:</strong> What I want to know is, is that your own interpretation at the time, was that your own interpretation at the time that NUM cannot move outside the argument with the employer, the collective agreement, and that was the view held by NUM, the entire structure of the NUM, that once there is an agreement with the employer it cannot be changed until the date when it has expired?</td>
</tr>
<tr>
<td><strong>12</strong></td>
<td><strong>MR SETELELE:</strong> That was my view.</td>
</tr>
<tr>
<td><strong>13</strong></td>
<td><strong>CHAIRPERSON:</strong> According to your statement, as the position of NUM – so it wasn’t just your own view. On your understanding it was the position of NUM itself, is that right?</td>
</tr>
<tr>
<td><strong>14</strong></td>
<td><strong>MR SETELELE:</strong> You’re correct.</td>
</tr>
<tr>
<td><strong>15</strong></td>
<td><strong>MR MSIMANG:</strong> I just want to also refer you to XX1 once more in the statement of Mr Gcilithsana, paragraph 33 he says, “On the 20th and 31st July Lonmin issued an internal communication to its employees stating that the management would not entertain any approaches from groupings of employees concerning wage increases, given the existing two year wage agreement.”</td>
</tr>
<tr>
<td><strong>16</strong></td>
<td><strong>MR SETELELE:</strong> No, I don’t recall.</td>
</tr>
</tbody>
</table>

---

<table>
<thead>
<tr>
<th>Page 4167</th>
<th>Page 4169</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td>I say the majority members at Karee Mine belong to AMCU?</td>
</tr>
<tr>
<td><strong>2</strong></td>
<td>MR SETELELE: You’re correct. However, it doesn’t mean it was AMCU who held meetings of the RDOs.</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td><strong>CHAIRPERSON:</strong> He didn’t ask you that. I suggest you confine your answers to the questions that are asked, otherwise it will prolong matters exceedingly. It won’t help us. If he wants to know about that, he’ll ask you and you can then answer.</td>
</tr>
<tr>
<td><strong>4</strong></td>
<td>MR SETELELE: Point taken.</td>
</tr>
<tr>
<td><strong>5</strong></td>
<td><strong>MR MSIMANG:</strong> Is it correct that the majority of members in Karee Mine are members of AMCU?</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td><strong>MR SETELELE:</strong> Correct.</td>
</tr>
<tr>
<td><strong>7</strong></td>
<td><strong>MR MSIMANG:</strong> Would I be correct that if it did not – if these demands did not arise from NUM structures within Karee Mine, then it's likely to have arisen within NUM structures, within the AMCU structures or AMCU members in Karee?</td>
</tr>
<tr>
<td><strong>8</strong></td>
<td><strong>MR SETELELE:</strong> I can’t say that.</td>
</tr>
<tr>
<td><strong>9</strong></td>
<td><strong>MR MSIMANG:</strong> But doesn't logic dictate that?</td>
</tr>
<tr>
<td><strong>10</strong></td>
<td><strong>CHAIRPERSON:</strong> If the majority are members of AMCU, unless we know that the demand emanated from the majority, then it doesn’t follow because there might have been a minority of 25 of non-union people who raised this point and the others then liked it - so I don't think that</td>
</tr>
</tbody>
</table>

---

<table>
<thead>
<tr>
<th>Page 4169</th>
<th>Page 4170</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td>question takes us any further.</td>
</tr>
<tr>
<td><strong>2</strong></td>
<td><strong>MR MSIMANG:</strong> I’ll rephrase the question.</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td>You go on - I’ll come back to that issue - you go on to say you became aware, in fact you start off by saying that before the strike in August you had become aware of a demand by the workers. When exactly did you become aware of such demand?</td>
</tr>
<tr>
<td><strong>4</strong></td>
<td><strong>MR SETELELE:</strong> Even though I cannot be specific, in some meetings that we had, branches meeting that we had, we heard that there were mine, I mean RDOs who hold meetings and discussing their salary increases.</td>
</tr>
<tr>
<td><strong>5</strong></td>
<td><strong>MR MSIMANG:</strong> So according to you, RDOs within NUM have made a demand for some increase, even though it’s not R12 500?</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td><strong>MR SETELELE:</strong> I don’t know whether you ask in the meetings, or where the question faces.</td>
</tr>
<tr>
<td><strong>7</strong></td>
<td><strong>MR MSIMANG:</strong> I’m asking when did you become aware of the demand by RDOs within NUM?</td>
</tr>
<tr>
<td><strong>8</strong></td>
<td><strong>MR SETELELE:</strong> It’s for – before even we can go, every time when we go to the negotiations RDO gives their demands also as RDO. Then that is why we say the salaries of the RDOs and the other groups are not satisfactory to them.</td>
</tr>
<tr>
<td><strong>9</strong></td>
<td><strong>MR MSIMANG:</strong> According to Mr Gcilithsana in his statement TT1, he has already stated there that as</td>
</tr>
</tbody>
</table>

---

<table>
<thead>
<tr>
<th>Page 4170</th>
<th>Page 4171</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong></td>
<td>argument with the employer and that no new demands could be made to the employer in respect of the RDOs, do you recall that?</td>
</tr>
<tr>
<td><strong>2</strong></td>
<td><strong>MR SETELELE:</strong> I recall.</td>
</tr>
<tr>
<td><strong>3</strong></td>
<td><strong>MR MSIMANG:</strong> What I want to know is, is that your own interpretation at the time, was that your own interpretation at the time that NUM cannot move outside the argument with the employer, the collective agreement, and was that the view held by NUM, the entire structure of the NUM, that once there is an agreement with the employer it cannot be changed until the date when it has expired?</td>
</tr>
<tr>
<td><strong>4</strong></td>
<td><strong>MR SETELELE:</strong> That was my view.</td>
</tr>
<tr>
<td><strong>5</strong></td>
<td><strong>CHAIRPERSON:</strong> According to your statement, as the position of NUM – so it wasn’t just your own view. On your understanding it was the position of NUM itself, is that right?</td>
</tr>
<tr>
<td><strong>6</strong></td>
<td><strong>MR SETELELE:</strong> You’re correct.</td>
</tr>
<tr>
<td><strong>7</strong></td>
<td><strong>MR MSIMANG:</strong> I just want to also refer you to XX1 once more in the statement of Mr Gcilithsana, paragraph 33 he says, “On the 20th and 31st July Lonmin issued an internal communication to its employees stating that the management would not entertain any approaches from groupings of employees concerning wage increases, given the existing two year wage agreement.”</td>
</tr>
<tr>
<td><strong>8</strong></td>
<td><strong>MR SETELELE:</strong> No, I don’t recall.</td>
</tr>
</tbody>
</table>
28th January 2013

Marikana Commission of Inquiry
Rustenburg

Tel: 011 021 6457  Fax: 011 440 9119  RealTime Transcriptions  Email: realtime@mweb.co.za

Page 4170

MR MSIMANG: That's evidence that has been led, that there has been such a communiqué, but what I want to know from you is that if there was such a communiqué, the way I read the communiqué it says management would not entertain any approaches from groupings of employees and – concerning wage increases. In fact what I wanted to know – maybe you are not the correct person to answer that, maybe – or maybe the question is put to a wrong person but was that the understanding, according to you, of Lonmin, that Lonmin as well understood that you cannot go outside the agreement?

CHAIRPERSON: I don't know that you can ask the witness what Lonmin understood. You can ask him about what he understood insofar as is relevant, but Lonmin's understanding is something you can take up with the Lonmin witnesses when they come.

MR MSIMANG: Exactly Mr – maybe the question was clumsily put. Basically what I want to know from you is that when you told the employees that the RDOs cannot re-negotiate outside the agreement, are you aware of any interpretation, according to you at least, now that you say you shared it, are you aware if Lonmin shared the same interpretation?

MR SETELELE: I was not aware.

MR MSIMANG: Today, and after all the cross-examination by the Chairperson and all the people, do you still –

CHAIRPERSON: Chairpersons don't cross-examine, they ask questions. I'd like you to withdraw that. Counsel ask questions.

MR MSIMANG: I'm sorry, I withdraw that but after the cross-examination today that you've gone through and the clarifications that you had to give to the Chairperson and after you yourself over the time had a reflection, do you still share the view that you could not, or NUM could not at that stage negotiate with the employer outside the agreement? Is that what you'd still tell the employees today if you are asked the same question?

MR SETELELE: I won't say that again but the only thing that I will say, I will say however outside that, but I've accommodated you to bring forward your concerns and your demands so that they can be addressed.

MR MSIMANG: In view of your response, do you agree with me that when RDOs were told that they cannot, NUM cannot negotiate outside the agreement and that they would have to wait for 2013, that information given by NUM and yourself to the employees was incorrect?

MR SETELELE: I don't think, Chairperson,

I've stated the issue of 2013. I've said they must bring forward their demands so that we can engage with management.

Page 4171

MR MSIMANG: You told the employees, the RDOs, that they cannot negotiate outside the agreement.

[14:36] [MR SETELELE: I agree. However, it's not the end of my statement. And the other thing, Chairperson, if you may allow me, the meeting of the RDOs at Western Plat in front of the stadium was not their first meeting.

If you can look back you'll see that they've already engaged with management in the absence of the union. And the other thing I would like to also highlight, that I'm the chairperson of Western Plat and again to highlight that we are four branches at Western – I mean at Lonmin. So some other questions of other branches, we are equal in terms of our protocol wht other chairpersons of their branches. So some other questions become difficult for me to respond on behalf of other chairpersons of the branches. So Western Plats was the first time the people hold a mass meeting there.

MR MSIMANG: I understand your lengthy answer and if you could please restrict yourself to the questions that I put. The question is, when you told the RDOs that they cannot, NUM cannot negotiate outside the agreement, that was wrong.

MR BURGER SC: That question is wrong, with respect Mr Chair. My learned friend formulates badly, that's why the witness is struggling. It's incorrect to suggest that they couldn't negotiate outside the agreement and that that's of wrong. Of course they cannot negotiate outside the agreement. I think what my learned friend wants to ask is, should they not have negotiated inside the agreement but made use of the non-variation clause and changed that. The witness has never suggested what my learned friend says. The witness was taken to task because he had suggested that it would be in breach of the agreement for the RDOs to make a demand and he's quite fairly conceded that was wrong, but the difficulty arises from the question, not from the answer.

MR MSIMANG: I'll rephrase the question. When the RDOs approached you and NUM for an increased wage or to ask the employer to increase their salaries –

MR TIP SC: Mr Chair –

CHAIRPERSON: Is it correct that they ever approached the NUM for an increased wage? That's not correct. The whole tenor of the evidence is that they were paddling their own canoe and they didn't want any assistance from the union. So I don't think the way you're formulating the question is correct. There was going to be an objection from Mr Tip. What's your objection, Mr Tip?

MR TIP SC: It was precisely that, Mr Chair, and I just wanted to add also that there's a
28th January 2013 Marikana Commission of Inquiry Rustenburg

<table>
<thead>
<tr>
<th>Page 4174</th>
<th>Page 4176</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 repeated refrain in the questions that are being put -</td>
<td>1 RDOs were consistently told that it's not possible to</td>
</tr>
<tr>
<td>2 CHAIRPERSON: That's not an objection,</td>
<td>2 revisit the agreement and if they believed that, then it</td>
</tr>
<tr>
<td>3 you're making -</td>
<td>3 would mean that going through the structures of NUM would</td>
</tr>
<tr>
<td>4 MR TIP SC: No, no, it's an objectionable</td>
<td>4 not assist. Would you agree with me?</td>
</tr>
<tr>
<td>5 refrain. My learned friend -</td>
<td>5 MR SETELELE:</td>
</tr>
<tr>
<td>6 CHAIRPERSON: When the refrain comes</td>
<td>6 to answer, I would like to advise one thing. There were</td>
</tr>
<tr>
<td>7 again, you can object then but you're objecting now to a</td>
<td>7 several meetings held by the RDOs at Karee before the 9th</td>
</tr>
<tr>
<td>8 specific question -</td>
<td>8 and - the 9th of August, where they even approached</td>
</tr>
<tr>
<td>9 MR TIP SC: It's part of the proposition,</td>
<td>9 management at their unit at Karee. So it's before I can</td>
</tr>
<tr>
<td>10 Mr Chair. He's saying when NUM addressed the RDOs – and</td>
<td>10 even address the meeting at Western Plats on the 11th, on</td>
</tr>
<tr>
<td>11 that conveys the impression that there was a distinct</td>
<td>11 the 10th and 11th, so you can see that there's no influence</td>
</tr>
<tr>
<td>12 meeting of the RDOs that NUM addressed and that is not the</td>
<td>12 of my statement that I said to the people, to the RDOs.</td>
</tr>
<tr>
<td>13 position. There were mass meetings at which information</td>
<td>13 They already took that decision of not including NUM in -</td>
</tr>
<tr>
<td>14 was conveyed about the position of the RDOs and it should</td>
<td>14 CHAIRPERSON: Yes, but that's not the</td>
</tr>
<tr>
<td>15 be put precisely, with respect.</td>
<td>15 question. Do me a favour, answer the question. Don't</td>
</tr>
<tr>
<td>16 CHAIRPERSON: At which RDOs were present.</td>
<td>16 answer other questions you haven't been asked because you</td>
</tr>
<tr>
<td>17 MR TIP SC: At which RDOs were present.</td>
<td>17 only then make difficulties for yourself. Answer the</td>
</tr>
<tr>
<td>18 CHAIRPERSON: But not solely the people</td>
<td>18 question. The question was, never mind what had happened</td>
</tr>
<tr>
<td>19 present were lot solely RDOs.</td>
<td>19 before, once they were consistently told at all these</td>
</tr>
<tr>
<td>20 MR TIP SC: Correct, Mr Chair.</td>
<td>20 meetings you refer to in paragraph 4, that it wasn't</td>
</tr>
<tr>
<td>21 CHAIRPERSON: Right, I think those two</td>
<td>21 possible for them to negotiate or to bring wage demands to</td>
</tr>
<tr>
<td>22 points are correct, so I think you must go back to the</td>
<td>22 Lonmin, would that not have conveyed to them that there was</td>
</tr>
<tr>
<td>23 drawing board and reformulate your question correctly.</td>
<td>23 no point in asking NUM to do anything for them because NUM</td>
</tr>
<tr>
<td>24 MR MSIMANG: Thank you, Chairperson. Let</td>
<td>24 regarded its hands as tied and it wasn't able to help. The</td>
</tr>
<tr>
<td>25 me refer you to paragraph 4 - which you have already</td>
<td>25 answer to that must be yes, I would've thought. Do you</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Page 4175</th>
<th>Page 4177</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 clarified to the Chairperson – of your statement. In that</td>
<td>1 agree?</td>
</tr>
<tr>
<td>2 you say, “The issue of these demands by the RDOs was</td>
<td>2 MR SETELELE:</td>
</tr>
<tr>
<td>3 discussed at various meetings by NUM branches in Lonmin.</td>
<td>3 CHAIRPERSON:</td>
</tr>
<tr>
<td>4 NUM's position was consistently put forward at these</td>
<td>4 a number of meetings the RDOs were told, or the people at</td>
</tr>
<tr>
<td>5 meetings, namely that the wages of RDOs was covered in the</td>
<td>5 the meetings were told that it was a breach of the</td>
</tr>
<tr>
<td>6 two year collective agreement that had been concluded in</td>
<td>6 agreement for RDOs to raise fresh wage demands during the</td>
</tr>
<tr>
<td>7 December 2011, that it was a breach of these RDOs for the</td>
<td>7 term of the agreement. Now that surely would've conveyed</td>
</tr>
<tr>
<td>8 demand to raise fresh wage demands during the term of that</td>
<td>8 to them that it was in breach of the agreement for this to</td>
</tr>
<tr>
<td>9 agreement and that NUM was opposed to unprotected and hence</td>
<td>9 happen, you won't, you can't expect NUM to try to do it for</td>
</tr>
<tr>
<td>10 illegal strike action.” Will I be correct in interpreting</td>
<td>10 you. Doesn't that follow?</td>
</tr>
<tr>
<td>11 this paragraph in your statement to say that what you were</td>
<td>11 MR SETELELE:</td>
</tr>
<tr>
<td>12 conveying to the RDOs was that it was not possible to re-</td>
<td>12 CHAIRPERSON:</td>
</tr>
<tr>
<td>13 approach the employer for negotiation? Am I correct or, if</td>
<td>13 MR MSIMANG:</td>
</tr>
<tr>
<td>14 I'm not correct, how do you – what meaning should I place</td>
<td>14 assertion or not, do you agree with me if the RDOs</td>
</tr>
<tr>
<td>15 to this?</td>
<td>15 believed that the hands of the NUM were tied, they were</td>
</tr>
<tr>
<td>16 MR SETELELE: That is incorrect.</td>
<td>16 then entitled to say if you, if the union can't assist us,</td>
</tr>
<tr>
<td>17 CHAIRPERSON:</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td></td>
</tr>
<tr>
<td>21</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td></td>
</tr>
</tbody>
</table>
Page 4178

1 RDO chap would've said, don't be silly, you're wasting my
time, you heard what they say, they say it can't be done,
it's a breach of the agreement. Isn't it the logical
consequence of what you've said the RDOs were told in the
meeting? Can you imagine an RDO operator seriously
accepting a proposal that, despite what he's been told in
the meeting, that he should rather go to NUM and ask them
please to take this demand to the employer? Does that make
sense?
MR SETELELE: No, I don't see it in that
way, Chairperson. The reason is the RDO has took that
decision to meet with management before this statement.
MR MSIMANG: I won't pursue that -
CHAIRPERSON: No, I think that point has
been taken as far as it can go and possibly a little bit
further. I think you might like to move on to the next
point.
MR MSIMANG: Then you go on in your
statement to say, “On the 8th of August 2012 an NUM report
back meeting was held on this at 16H00. This meeting had
been convened by Daluvuyo Bongo to report back to the
members concerning the allowances that had been decided
upon by Lonmin.”
MR SETELELE: Correct.
MR MSIMANG: This meeting, this report
back meeting, can you elaborate further because I'm trying
to understand who was reporting back to whom?
MR SETELELE: On the 8th of August it was
a meeting whereby the branch should report to the
management about the R750.
MR MAHLANGU: Report to the management?
MR SETELELE: To report to the workers.
MR MSIMANG: In the other statement of Mr
Gcilithsana at paragraph 38 he also makes reference to
these meetings. He says, “A NUM report” - paragraph 38 -
CHAIRPERSON: That’s not an answer to the
question. Repeat the question please, Mr Msimang?
MR MSIMANG: The question simply is the
report back on the 8th of August, who was reporting back to
whom?
MR SETELELE: The branch committee was
reporting to the mass meeting concerning the 750 which was
proposed by management as an allowance.
MR MSIMANG: Maybe before I go to the
other statement, I should go on with what you say here. You
go on to say, “At this meeting some of the RDOs
indicated that they would approach management directly
calling their 12 500 wage demand and that they did not
want to talk to NUM about it.”
MR SETELELE: Correct.

Page 4179

Page 4180

1 convenor thereof was the late Mr Daluvuyo Bongo. At that
stage it was clear to NUM that there was an imminent
prospect of an unprotected strike. The opportunity was
taken at this meeting to caution RDOs against action of
that sort and to warn them of the dangers thereof.
MR SETELELE: Correct. The workers were
talking amongst themselves, were commenting against the
RDOs who want to go for strike. Actually according to my
knowledge they were not talking about the strike, they said
they will go on their own and the others showed them what
is the correct way to take.
MR MSIMANG: That statement refers to two
e-mails, to e-mails between – it says between Mr Bongo and
Larry Diederich. In fact there are three e-mails at page
71, 72 and 73. Unfortunately I do not have page 73.
CHAIRPERSON: You don't need page 73
because page 73 contains an e-mail which was sent on –
sorry, I beg your pardon, I was wrong. Page 73 contained
an e-mail –
MR MSIMANG: Chairperson, Chairperson -
CHAIRPERSON: - which reads –
MR MSIMANG: Excuse me, Chairperson.
CHAIRPERSON: Yes?
MR MSIMANG: In fact it’s 72, if I can
read that of 72. I've got 71 and 73.
28th January 2013

Marikana Commission of Inquiry

Rustenburg

Page 4182

1 CHAIRPERSON: 72, as I see it, doesn't help. 72 contains a request for the mass meeting from the branch committee. That's at the foot of page 72. That's an e-mail sent on the 2nd of August. Then there's an e-mail on the 6th August on the same page, approving the meeting. And then on 71 there is an e-mail sent at 7.40PM on the 8th August by Mr Bongo to Mr Trollip, Mr Hamman and Mr Dietrich saying, “Mass meeting went peaceful. Attendance was very good. We educated the RDOs and showed” – I think it's supposed to be – “the danger they will achieve in their wrongdoing. Some NUM members advised them as well.” And that e-mail is repeated on page 73. I think those are the relevant e-mails, are they? That's followed on page 73 by an e-mail from Mr Hamman to Mr Bongo, sent at 8.13PM on the 8th of August saying, “Thanks Daluvuyo for the feedback. Hope” – I think it should be “they” – “understand and get back to adding value at the shaft. The rumour is they will not be at work tomorrow. Hope your influence is effective.” And then there's something else which is presently irrelevant. Those are the relevant e-mails, aren't they?

2 MR MSIMANG: That's correct, Chairperson.

3 CHAIRPERSON: But now I've read them, it's clear what they're about, I suggest we take the adjournment at this point and you can return to the charge, if that's the right word, after the adjournment.

Page 4183

1 If that's the right word, after the adjournment.

2 [COMMISSION ADJOURNS COMMISSION RESUMES]


4 You're still under oath. Mr Msimang, are you ready now to ask your question based on the e-mails you looked at before the adjournment?

5 MALESELA WILLIAM SETELELE (CONTD):

6 CROSS-EXAMINATION BY MR MSIMANG(CONTD):

7 Thanks, Mr Chairperson, I am ready. Do you agree with me that on the 8th of August NUM was aware that there may be an imminent strike by members, by the RDOs?

8 MR SETELELE: We got that rumours.

9 MR MSIMANG: Do you also agree with me that NUM tried to dissuade the members at the meeting not to go onto an unprotected strike?

10 MR SETELELE: Correct.

11 MR MSIMANG: In fact, it went further than that. The e-mail of the 8th to Mr Dietrich by Bongo, Daluvuyo, actually assured Lonmin that – to use the words, to be precise – that “we educated the RDOs and showed the dangers, the danger they will achieve in their wrongdoing.”

12 MR SETELELE: I agree.

13 MR MSIMANG: At that stage at least the NUM should have followed the other avenues which appear in terms of the agreement - as was pursued by Mr Semenya, that

Page 4184

1 they could have approached - I don't want to take you through that. At that stage at least the NUM could have done something.

2 MR SETELELE: I think the issue of education is one of those routes.

3 MR MSIMANG: Would I be correct in my mind, in view of all the events up until the 16th, particularly where the NUM through its various officials would say, we don't have members at the mountains there, I would be correct in my assumption that the NUM was in denial about the plight of these RDOs?

4 MR SETELELE: I don't remember NUM saying its members is not at the mountain.

5 MR MSIMANG: If that was said by NUM, would you agree that the NUM was washing its hands from the RDOs?

6 MR SETELELE: I may agree, or saying – as I'm not quite sure that they did that, I can't say they were washing their hands.

7 MR MSIMANG: I'll move on. I see your statement, including those - that one of Mr Gcilitshana, you talk about the 8th and the next paragraph you move on to the 9th, to the 10th. Where were you on the 9th and what happened on the 9th?

8 CHAIRPERSON: The 9th was a public holiday, you remember.

9 MR MSIMANG: Yes indeed, but there were activities.

10 MR SETELELE: I think in the early hours I was at home.

11 MR MSIMANG: Do you know what happened, were there any activities on the 9th and what were those activities?

12 MR SETELELE: If I can recall, I was at home on the 9th.

13 MR MSIMANG: Was there a meeting by the RDOs on the 9th?

14 MR SETELELE: Yes, I was told.

15 MR MSIMANG: Would you, have you also been told where was the meeting and what was discussed?

16 CHAIRPERSON: Mr Msimang, is this going to help us? We've already got the logbook which has been put before us as part of XX2, page 21, which tells us that the RDOs gathered at 10 o'clock in front of the Wonderkop Stadium, at least 300 workers gathered. The group eventually dispersed peacefully and the information was that workers will not report for duty tomorrow and that by 7 o'clock they were marched to the LPD. SAPS informed, all stakeholders informed of this information. That's basically what happened. He wasn't there, he says he was
28th January 2013  
Marikana Commission of Inquiry  
Rustenburg

25 employer addressed or spoke to the employees at all or not?
23 their mass meeting was addressed.
22 approached the employer. However, I don't know exactly how
21           MR SETELELE:          I heard that they've
20 workers, do you know?
19 when the workers – did they speak to the employer, the
18           MR MSIMANG:          Do you know what happened
17 raise take the matter any further?
15 and he then informed Mr Dietrich about that at his meeting
14 a strike, that they'd marched to the main offices of Lonmin
13 detail – he received information that there was going to be
12 already confirmed and we don't have to go through it in
11 really, isn't it?  If you read the statement, which he's
10 have decided that they are going to take, to strike
9           MR SETELELE:          I don't have that knowledge
8 are people on strike that you know of?
7 employer contact any of the NUM officials to say that there
6 day, I was in the NUM offices, the branch offices.
5 MR MSIMANG:          Did anyone - did the
4 MR SETELELE:          I was – it was a working
3 MR MSIMANG:          Where were you then?
2 RDOs were going to - approaching the office and they were
1 Chairperson. On the 11th NUM received a report that the

1 Chairperson.  On the 11th NUM received a report that the
2 RDOs were going to - approaching the office and they were
3 armed.  I just want your indulgence, Chairperson, I know
4 I've seen it somewhere – that they were approaching the
5 office and they were armed.  They were actually approached
6 by a security official.  That's what -
7 CHAIRPERSON:          - statement.
8 MR SETELELE:          You're correct.
9 MR MSIMANG:          Did you see any of these
10 employees that were armed or did you see any weapons?
11 MR SETELELE:          I didn't see those people.
12 MR MSIMANG:          You go on to say that, on
13 paragraph –
14 CHAIRPERSON:          We know what he went to
15 say.  Just ask him a question about it, if it's relevant to
16 your case.
17 MR MSIMANG:          That in fact the weapons
18 that you've seen were at the NUM offices.
19 MR SETELELE:          You're correct.
20 MR MSIMANG:          Were these weapons used by
21 NUM members?
22 MR SETELELE:          I think they were – they
23 were from, they were on their possession because they were
24 in our offices.
25 CHAIRPERSON:          The question is whether you
28th January 2013

Marikana Commission of Inquiry

Rustenburg

Mr Setelele: I was not aware.

Mr Msimang: You testified that there were shots that were fired by members of NUM.

Chairperson: He testified he was told there were shots. He didn’t hear them himself, am I correct?

Mr Setelele: You’re correct, sir.

Chairperson: This is hearsay again. I mean I don’t know what the point of traversing the hearsay is. Presumably there’ll be direct evidence, I hope, dealing with these matters. I mean what’s the point of asking, getting hearsay from him?

Mr Msimang: The point I’m asking is that from the cross-examination of Mr Semenya you testified that you may be aware of people who may have used firearms. You testified that on the 10th?

Mr Setelele: I was responding on the issue of shots fired.

Chairperson: I understood his evidence to be that he’d been told about it. He was presumably told, or may well have been told the names of the person who fired shots. He was unwilling to give their names in public because he’s afraid they might have the same fate as Mr Bongo.

Mr Msimang: There were two case dockets opened in Marikana. Would you volunteer whatever information you have to the police?

Chairperson: Is that going to help us answer the questions that we have to determine for the purposes of our work as a Commission? Whether he’s going to give information to the police, how does that take our work any further?

Mr Msimang: I’ll leave that one. Chairperson. You also testified that on the 10th – I forgot, I missed that one – you actually were given a Combi by Lonmin management and you were ferrying employees to and from the shaft.

[15:40] Mr Setelele: That’s incorrect.

Mr Msimang: So you never ferried employees to various shafts on the 10th?

Mr Setelele: We did.

Chairperson: Your question was to and from. The statement that he made, which he’s confirmed, says “to”, in effect.

Mr Msimang: At what stage on the 10th did you engage management or were you given that vehicle by management at all, or –

Chairperson: He doesn’t say that in his statement. What he says is they had this vehicle which had been – which was not owned by NUM but had been made available to them by Lonmin, for which he was responsible and which could only be used for bona fide NUM business. I didn’t understand him to say it was given to them on the 10th, was I correct? It is a longstanding arrangement whereby - in terms of which Lonmin made the vehicle available. Is that correct?

Mr Setelele: You are correct, sir.

Mr Msimang: That will be all, Mr Chairperson.

Chairperson: Thank you, Mr Msimang. Mr Burger, do you want to cross-examine?

Mr Burger SC: No, thank you, sir.

Chairperson: Anyone else who wishes to cross-examine? Re-examination, Mr Tip?

RE-EXAMINATION BY MR TIP SC: Thank you, Mr Chair, I have a few points. Mr Setelele, just in relation to the version, the proposition that was put to you that there was an exhibit which showed that the majority of people who were on the koppie on the 16th of August were NUM members. You were asked one or two questions about that and it wasn’t made clear to you. I just wanted to make it clear to you that that exhibit is a list that had been prepared by Lonmin of persons, of RDOs who were absent for whatever reason, from service. Do you follow?
28th January 2013

Marikana Commission of Inquiry
Rustenburg

It is clear from that definition of the stakeholders that appears from page 91.

Although, for whatever reason, that delegation didn't see fit to sign the peace accord on that day, it is apparent –

That is correct, Mr Chair.

Neither did AMCU, it appears from page 91.

That is correct, Mr Chair.

It is clear from that definition of the stakeholders that
28th January 2013
Marikana Commission of Inquiry
Rustenburg

1 striking employees.
2 MR SETELELE: You're correct.
3 MR TIP SC: Now having regard to all
4 those circumstances I really have just one question to ask
5 and that is, in light of all the circumstances, was there -
6 was it in any way feasible for NUM to put itself forward as
7 the representative of the striking employees for the
8 purpose of negotiations with Lonmin and the conclusion of
9 this addendum?
10 MR SETELELE: No.
11 MR TIP SC: Then thirdly and briefly, in
12 respect of your statement, Mr Setelele, you have already
13 accepted, properly, that in paragraph 4 you did not
14 correctly reflect the terms of paragraph or clause 12.3 of
15 the two year collective agreement. You will recall the
16 questions that were put to you and your acceptance that
17 that was a shortcoming.
18 MR SETELELE: Yes, I recall.
19 MR TIP SC: And in particular you
20 accepted that merely to speak about a breach of the
21 agreement did not properly recognise the provision in
22 clause 12.3 that there could be discussions on terms and
23 conditions, but no strike action, is that right?
24 MR SETELELE: You're correct.
25 MR HANABE: Can you repeat the question

1 again, senior counsel?
2 MR TIP SC: Yes, of course. Yes, I will,
3 with pleasure - that the effect of what you accepted there
4 was that insofar as you spoke only about a breach of this
5 agreement, you did not indicate in that paragraph that
6 there was scope for discussion between parties during the
7 term of a collective agreement, if circumstances warranted
8 it, but that there could not be strike action. There could
9 be discussion, there could be negotiation, but no strike
10 action, in short.
11 MR SETELELE: You're correct.
12 MR TIP SC: And in the course of your
13 evidence today you did, on a few indications, indicate that
14 the door was in fact not entirely closed land I just want
15 to take you to paragraph 23 of your statement. I just to put
16 it in context, you were dealing there with a meeting that
17 you addressed on the afternoon of 11 August 2012 and I'll
18 just read the first few sentences and then ask you about
19 that very briefly. "Later that afternoon I addressed a
20 meeting of about 1 000 workers in the veld near the
21 Wonderkop Stadium. I again outlined NUM's position that it
22 opposed the strike which was unprotected, and that workers
23 should report for duty." And then you go on to say this,
24 "I further emphasised that a wage agreement was already in
25 place and that any wage demands had to be addressed through

1 the proper channels.”
2 MR SETELELE: You're correct.
3 MR TIP SC: And when you set that out in
4 that paragraph, did you have in mind that wage demands
5 could be addressed only at the very end of the collective
6 agreement or that they could be addressed during the
7 collective agreement?
8 [16:00] MR SETELELE: I was aware that at any
9 time we can meet with management and get the solution over
10 the matter that was existing at that time.
11 MR TIP SC: Mr Chair, we've run a minute
12 or so past 4 o'clock. I've only one last set and I'll deal
13 with that briefly.
14 CHAIRPERSON: - sit a little bit longer
15 if it will enable this witness to finish.
16 MR TIP SC: It will, thank you, Mr Chair.
17 The last point, Mr Setelele, you've drawn attention to the
18 - in the context of the attitude of the RDOs, you've drawn
19 attention to the meeting, the report back meeting of the 8th
20 of August 2012, that was a NUM meeting. You recall that?
21 MR SETELELE: Yes, I recall.
22 MR TIP SC: You've explained that the
23 particular point that was raised at that report back
24 meeting concerned the allowances that Lonmin had wished to
25 pay to the RDOs.

11 CHAIRPERSON: It's part of OO17 and it's
12 been filed in these proceedings in respect of Mr Da Costa.
13 It's in - Mr Chair, it's in the Lonmin bundle.
14 CHAIRPERSON: It's part of OO17 and it's
15 page 66 and following.
16 MR TIP SC: And Mr Da Costa, you know who
17 Mr Da Costa is?
18 MR SETELELE: Yes, I know him.
19 MR TIP SC: 3.8 of that paragraph,
20 there's no need to turn to it, I'm just referring it - it
21 identifies a date on which he met certain representatives
22 of the RDOs, being 21 June 2012 and in paragraph 3.17 he
23 identifies that the representatives said that they required
24 a salary increase to 12 500, you accept that?
25 MR SETELELE: I can agree and I agree
26 that there were meetings at Karee and then I'm residing at
Western Plat. What I know is that there were some meetings that Mr Da Costa used to hold with the workers.

MR TIP SC: Then Mr Chair, I have an idea that this has already been read onto the record, paragraph 3.18, and I’m just going to abbreviate it, if I may, just to draw to your attention, Mr Setelele, that the two representatives told Mr Da Costa that they were after this increase and Mr Da Costa says he realised that it was a wage issue and then he says the following, “I consequent told Matlabine and Mofokeng that there was a procedure for negotiating salaries and that the issue that they were raising should be dealt with through the established central bargaining structures. They objected to dealing with the matter in this way because, so they told me, they did not want any union involvement in the matter.”

MR SETELELE: I hear that.

MR TIP SC: And it’s - their position was set out and evidently among the unions that they had no wish to deal with in respect of their demand, would’ve been NUM. Would that be apparent to you from that statement?

MR SETELELE: I think they include NUM.

MR TIP SC: As I said, that was as early as 21 June 2012 and I just want to ask you this, Mr Setelele, the position that Mr Da Costa set out in those terms, did that accord with your later experience of the position and the attitude of RDOs insofar as you heard what it was?

MR SETELELE: That’s correct.

MR TIP SC: Mr Chair, that concludes the re-examination.

CHAIRPERSON: Thank you for your evidence, you’ll be excused. tomorrow, what are you going to do tomorrow, Mr Tip, if I ask –

MR TIP SC: With your leave, we have a second – well, a third NUM witness available.

CHAIRPERSON: So tomorrow morning we’ll start with the video clip and the - which will involve, we have the transcript of what was said -

MR TIP SC: Yes.

CHAIRPERSON: And we’ll see what was happening.

MR TIP SC: Yes.

CHAIRPERSON: And then you’ll call your witness, Mr Gegeleza.

MR TIP SC: Yes.

CHAIRPERSON: And after that?

MR TIP SC: Well, when his evidence is finished, we’ll have available the president, Mr Zokwana.

CHAIRPERSON: We have already a statement from him, I think.

MR TIP SC: There is a statement. I may say at this stage that arising out of the cross-examination that we’ve had thus far, I will do what – similarly to what I did with Mr Gcilitshana, which is, in respect of certain paragraphs to take Mr Zokwana’s attention to other aspects that he can assist the Commission on.

CHAIRPERSON: Thank you, Mr Tip. I have a clearer understanding of what tomorrow holds for us. The Commission will adjourn until 9.30 tomorrow morning.

[COMMISSION ADJOURNED]
28th January 2013

Marikana Commission of Inquiry
Rustenburg

Page 1
Booi 4101:25
booked 4105:16
bottom 4083:19
brackets 4197:4,19
branch 4100:20,23
4101:2 4103:21,22,24
4104:7,15 4108:23,23
4109:1 4122:1
4128:25 4129:1
4139:17 4164:25
4165:2 4179:4,16
4182:2 4186:23
4187:5
branches 4141:9
4167:9 4172:12,13,15
4172:6 4176:15 3
breach 4141:13 4142:1
4142:7,9,16 4143:11
4143:14 4144:3,8
4148:1,13,16 4173:9
4175:7 4177:5,8
4178:3 4198:20
4199:9
briefed 4096:10
briefings 4137:5
briefly 4081:11
4199:19 4200:13
bring 4114:12,15
4119:9,16,20 4128:6
4135:2 4139:18
4144:6 4162:24
4171:16,24 4175:23
4176:21 4188:7
broader 4083:4
broken 4110:4
brought 4094:23
4128:3 4139:17
4143:7
brutal 4115:25
buildings 4098:22
bundle 4124:20 4125:1
4196:7 4202:12
Boor 4101:15
16 4151:8 4129:24
4130:2,14,16,19
4131:9 4156:21
4164:19 4172:24
4192:11,12
Burner's 4157:6
burn 4092:14
bus 4086:22 4090:22
4111:22,23 4112:6
bush 4050:12,13,15
business 4091:11
4100:10 4192:2
busy 4084:16 4103:16
4130:13 4140:19,25
4157:14
BI 4154:10 4155:11

called 4100:4 4122:5
4140:13 4151:3
4156:25

Chairman 4111:4
4117:13 4118:3
4164:20
chairpersons 4171:3
4172:14,16
challenge 4162:15
chance 4111:11
4126:10
change 4144:4,21,23,25
4153:19 4164:24
4143:7 4147:13
4148:7
changed 4118:6,14
4130:12 4142:21
4142:26 4149:11
4173:7
changes 4142:23
changing 4129:19
channels 4099:17
2400:1
chap 4178:1
charged 4182:25
chase 4188:23,25
chased 4135:10,15
check 4089:6
chief 4082:3,22 4085:7
4085:10 4140:12
children 4115:6
chiselled 4134:20
choice 4159:25 4160:14
choose 4132:3
chronologically 4087:16
Churches 4149:16
4150:17,24 4151:8
4151:13,19,22 4152:1
4152:3,6
circulated 4203:13
circumstances 4116:3
4131:12 4132:8
4198:4 4199:7
claim 4224:4 4219:18
4229:20 4215:16
cetera 4092:12
Chair 4082:12,25
4083:8 4084:10,21
4085:1,22 4086:18
4087:12,21 4088:7
4093:1 4094:11,14,17
4101:21 4109:19
4111:6 4115:13
4116:3,13 4120:19
4121:5 4122:2,11,18
4123:6 4126:1
4129:23 4130:22,21
4133:10,19 4140:20
4144:14 4149:4,11,15
4156:21 4157:5,17
4164:16 4172:25
4173:16,25 4174:10
4174:20 4188:3
4192:16 4193:8
4195:24 4197:12
4200:11,16 4201:12

4202:3 4203:4
clients 4162:23
climate 4142:21,22
4143:2
climb 4132:24 4136:21
4136:23
clip 4087:8 4024:7,8,10
4204:18
close 4122:13
closed 4199:14
closer 4084:5
close-up 4084:11
clumsily 4170:18
colleague 4128:8
collect 4105:11 4140:7
collective 4124:7
4125:23 4141:12
4150:15 4169:8
4175:6 4194:20
4198:19 4199:7
4200:5,7
colour 4085:6
coloured 4084:24
Combi 4105:11
4191:10
come 4094:1 4098:10
4098:22 4102:9
4103:2 4104:21
4105:11,12 4118:12
4120:15 4123:2
4128:4,5 4129:3
4132:2 4146:8
4147:21 4149:20
4152:14 4163:3
4167:3 4170:16
4176:5 4177:23
comes 4086:23 4146:5
4148:24 4174:6
coming 4097:6,11
4110:12 4102:22
4160:24
comment 4103:4
4135:24 4158:19,24
commenting 4181:7
Commission 4082:2,15
4083:2 4085:24
4087:24 4115:9,9,10
4115:16 4149:7,7,8
4155:21 4162:3
4183:2,23 4186:3
4191:5 4194:6
4205:12,15,16
commissioners 4111:14
4116:14 4122:24
4193:9
Commission's 4121:10
committee 4100:23
4103:25 4104:7,15
4109:1 4139:17
4164:25 4179:16
4182:3
communication 4169:21
communiqué 4170:2,4
4170:4
community 4150:11
28th January 2013

Marikana Commission of Inquiry

Rustenburg

Page 10
<table>
<thead>
<tr>
<th>Time</th>
<th>References</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 4082:1 4125:9</td>
<td>705-14/12 4087:11</td>
</tr>
<tr>
<td>4132:7 4171:21,24</td>
<td>71 4181:15,25 4182:6</td>
</tr>
<tr>
<td>21 4096:10 4185:18</td>
<td>72 4181:15,24,25</td>
</tr>
<tr>
<td>4201:21 4202:23</td>
<td>4182:1,2,3</td>
</tr>
<tr>
<td>22 4096:25</td>
<td>73 4181:15,15,16,17,18</td>
</tr>
<tr>
<td>22nd 4168:1</td>
<td>4181:25 4182:12,13</td>
</tr>
<tr>
<td>23 4099:8 4199:15</td>
<td>750 4135:22 4145:5,16</td>
</tr>
<tr>
<td>24 4100:1 4103:19</td>
<td>4145:20 4146:8</td>
</tr>
<tr>
<td>25 4108:14,16,21</td>
<td>4148:25 4179:17</td>
</tr>
<tr>
<td>250 4135:22</td>
<td>8 4088:5</td>
</tr>
<tr>
<td>26 4100:25</td>
<td>8PM 4090:2</td>
</tr>
<tr>
<td>27 4101:5</td>
<td>8th 4139:2,8 4146:17</td>
</tr>
<tr>
<td>28 4082:1</td>
<td>4178:19 4179:3,14</td>
</tr>
<tr>
<td>3 3 4083:3 4154:2</td>
<td>4180:19 4182:6,15</td>
</tr>
<tr>
<td>3.17 4201:21</td>
<td>4183:10,18 4184:22</td>
</tr>
<tr>
<td>3.18 4202:5</td>
<td>4200:19 4201:3</td>
</tr>
<tr>
<td>3.2 4154:9</td>
<td>8.13PM 4182:14</td>
</tr>
<tr>
<td>3.8 4201:18</td>
<td>8:30 4092:6</td>
</tr>
<tr>
<td>30th 4125:8</td>
<td>89 4153:7 4195:2</td>
</tr>
<tr>
<td>300 4185:20</td>
<td>9 4088:6 4154:19</td>
</tr>
<tr>
<td>31st 4169:20</td>
<td>4196:11</td>
</tr>
<tr>
<td>33 4169:20</td>
<td>9th 4133:6 4134:3</td>
</tr>
<tr>
<td>35% 4103:7</td>
<td>4137:16 4139:1,8</td>
</tr>
<tr>
<td>38 4179:9,10 4180:20</td>
<td>4146:14,16 4157:25</td>
</tr>
<tr>
<td>4180:23</td>
<td>4158:7 4159:4,6,18</td>
</tr>
<tr>
<td>4 4141:6 4174:25</td>
<td>4176:7,8 4184:23,23</td>
</tr>
<tr>
<td>4176:20 4198:13</td>
<td>4184:24,25 4185:7,10</td>
</tr>
<tr>
<td>4200:12</td>
<td>4185:12 4186:4,7</td>
</tr>
<tr>
<td>4PM 4089:5</td>
<td>9.30 4205:15</td>
</tr>
<tr>
<td>44 4152:16,21</td>
<td>900 4154:19</td>
</tr>
<tr>
<td>5 5:30PM 4099:24</td>
<td>91 4195:23</td>
</tr>
<tr>
<td>500 4089:5 4128:2,4,8</td>
<td>92 4196:6</td>
</tr>
<tr>
<td>4133:12,14,18,21</td>
<td>93 4153:11 4197:9,12</td>
</tr>
<tr>
<td>4135:23 4141:8</td>
<td>94 4196:23</td>
</tr>
<tr>
<td>4146:5,6 4165:9,23</td>
<td>4167:14 4179:23</td>
</tr>
<tr>
<td>4167:14 4179:23</td>
<td>4201:7,23</td>
</tr>
<tr>
<td>55% 4103:6</td>
<td>5 4158:7</td>
</tr>
<tr>
<td>6 6th 4182:5</td>
<td>4159:4,6,18</td>
</tr>
<tr>
<td>600 4154:19</td>
<td>4167:8,9,14 4185:23</td>
</tr>
<tr>
<td>66 4201:14</td>
<td>7 4168:9,14 4185:23</td>
</tr>
<tr>
<td>7 4168:9,14 4185:23</td>
<td>7.40PM 4182:6</td>
</tr>
<tr>
<td>70 4087:9</td>
<td>70 4087:9</td>
</tr>
</tbody>
</table>