

Anton I Minnaar

RECORD OF EVENTS – BRIAN MOLEFE EARLY RETIREMENT

THE DEPARTMENT EXECUTIVE SUPPORT

I am Anton Minnaar.

I nearly have 28 years' service with Eskom.

Currently I am the manager of the department Executive Support

I have been in this position for nearly 17 years.

The exclusive function of the Executive Support Department is to provide an administrative support service to:

- The Eskom Board
- The Chief Executive
- The executive committee (EXCO)
- In addition to the above, to all senior executives in the top grading category (F-bands) and this includes:
 - ✚ Group Executives
 - ✚ Divisional Executives
 - ✚ Senior General Managers
- This represents a total of approximately 24 individuals.

The department's duties comprise the following key activities:

- Board remuneration and benefits.
- Executive (F-band) remuneration, benefits
- Executive (F-band) compact management for the short term incentive scheme.
- Management of the long term incentive scheme.
- Executive recruitment, placements and movements (F-band only).
- Exit and separation arrangement for F-Bands
- Executive Health services.
- Ad-hoc support.

During my 17 year tenure in this department, we have successfully provided a service to 7 Chairmen and 12 Chief Executives (10 in the last 10 years).

BACKGROUND ON APPOINTMENT OF MR MOLEFE and THE EARLY RETIREMENT ISSUE

Mr. Tsediso Matona was suspended and his employment was finally terminated with Eskom after a period of only six months. Since 2007, Eskom has had a mixture of permanent / acting / Interim Chief Executives (10 over a period of 10 years).

Mr. Molefe's appointment process:

Similarly to all Eskom's executives, the Eskom Board originally indicated that Mr. Molefe should be appointed on a permanent basis to qualify for all Eskom benefits. This ruling was later changed to a 5 year contract at the minister's request. Although three to five year term contracts appear to be the norm in Government, this is not standard practice in Eskom, or in the general business environment for that matter. In Eskom all executives are employed on permanent employment contracts to ensure continuity of the business.

There was a clear understanding in my mind that Mr. Molefe will be treated as a permanent employee with the only change that his termination date will be specified. This is the only way he would be able to participate in the standard Eskom benefits i.e.:

- Short Term Incentive Bonus
- Long Term incentive Bonus
- Pension
- Medical aid and top-up
- Group life cover
- Death benefit

Should he not have been appointed as permanent employee he would have been treated in Eskom as a contractor (independent) and would not qualify to participate in any Eskom benefits. In this scenario all the above needed to be funded out of the negotiated remuneration. The implication of this would mean that his offer of employment would at least be doubled of what his approved guaranteed package was. It is doubtful that Mr. Molefe would have accepted this offer as variable pays i.e. Short Term and Long Term incentive would have been excluded. The risk to Eskom not to link his performance to the short and long term could have a negative impact on the organisation as there would have been no incentive in meeting the required Eskom targets.

It is further important to highlight that Eskom had permanent employed executive's who was put on 5 year term contracts for operational reasons during the late 1990's and early 2000's. That was later changed again back to permanent employment and they all stayed on the EPPF.

The risk of pure term fixed term contracts outside the government environment can be seen for example in the Colman Andrews case in 2001 where he was paid R232 000 000.00 after only serving around 20 months.

The People and Governance Committee discussed the term issue and considered how this will negatively impact the Chief Executive. I made it clear to the committee that the only impact was his ability to have the option to retire from Eskom. Early retirement with penalties start at age 55 and Mr. Molefe would only be 54 at the end of his term. Eskom stopped in the early 2000 post-retirement medical aid and that would have no effect on him.



The committee requested me to consider further options relating to retirement and past practices in Eskom. I had numerous meetings with the Chairperson of the People and Governance Committee (P&GC) on this issue. Early retirement within rule 28 of the Eskom Pension and Provident Fund (EPPF) was exercised with previous Executives in Eskom i.e. a Chief Executive age 53, former FD 52 etc. This rule states that a person must be 50 and have 10 years' service. All these individuals were under 55 but had 10 years' service. On the P&GC Chairpersons request I contacted the EPPF to determine the possibilities of early retirement should the individual be 50 but does not have 10 years' service. It was made clear by the fund that additional service can be bought even if the individual does not have the 10 years' service. This information was shared with the Chairperson of the P&GC and it was decided to present it to the committee for consideration.

The proposal was considered at the P&GC meeting and approved after receiving written confirmation from the EPPF that it is possible to do.

RECORD OF EVENTS

3 April 2015	Letter from the Minister to the Chairman confirming acting arrangement of Mr. Khoza as interim CE. Reference is also made to verbal discussions that are not followed up by detailed briefings and evidence – see Appendix 1
20 April 2015	Mr. Molefe seconded from Transnet to Eskom.
	I was not involved in any of the discussions with regards to his secondment to Eskom
	I had no sight of the contractual arrangements related to the secondment
	I was later requested to manage the payments due to Transnet related to the secondment
	I requested the secondment contract from Eskom secretariat which to date I have never received.
	I was informed by secretariat that the payments was based on actual costs based on his Transnet package and that payments will be made as per Transnet invoices
	I contacted Transnet to obtain more information on which I was informed that Eskom will pay all costs uncured per month to Transnet.
	I was put in contact with their finance department and monthly payments were made based on invoices received from Transnet.
25 September 2015	I was advised by secretariat to appoint Mr. Molefe. Appointment was done on SAP. (<i>Eskom communication – Minister announcement dated 28 September 2015</i>) – see Appendix 2
24 September 2015	Discussion with Chairperson of P&GC – Chairperson of the People and Governance Committee of the Board regarding the appointment of the GCE and remuneration. Requested to do a draft letter to the minister for her review. This letter was done based on permanent employment. Important to note that all executives in Eskom are appointed on permanent contracts. This was also the understanding that he would be appointed on a full time basis – See Appendix 3
1 October 2015	Formally appointed as Group Chief Executive of Eskom. The understanding was based on a full time employment contract
2 October 2015	Letter from Minister to Chairman confirming CE appointment. No mention of a contract – See Appendix 4
2 October 2015	Letter from Minister to Mr. Molefe confirming his appointment. No mention of a contract – See Appendix 5
7 October 2015	Discuss and present standard F band contract to chair of People and Governance committee – See Appendix 6
11 Sept 2015	Eskom sent a letter to the minister relating to the appointment of the CE and CFO – see Appendix 7 I do not have this letter
7 Oct 2015	Discussions with Chairperson of P&GC on the contract issue for both Mr. Molefe and the CFO and the possibilities for retirement and or other benefits. I was specifically requested to look at precedents that had been set in the past.

16 Oct 2015	Letter to the Minister from the Chairman requesting approval of remuneration of the CE <i>see Appendix 8</i>
19 Oct 2015	Further discussions with Chairperson of P&GC on the contract issue for both Mr. Molefe and the CFO and the possibilities for retirement and or other benefits.
1 Nov 2015	A standard draft permanent employment contract was presented to Chairperson of P&GC for consideration. This was also shared with Mr. Molefe – <i>see Appendix 6</i>
1 Nov 2015	Minister responded to the letter of 16 October 2015 where she approved the remuneration. She further advised and expresses her view that the period of employment be stipulated as 5 years subject to annual performance reviews. The 5 years was also apparently the view of cabinet. This letter was received a month after his appointment. Our offices received it on 9 November 2015 – <i>see Appendix 9</i>
9 Nov 2015	I was informed by Chairperson of P&GC that the Minister instructed the Board that the contract must be based on a fixed term of 5 years. This was also discussed with the company secretary. I drafted new appointment letters reflecting the term – <i>see Appendix 10</i>
9 Nov 2015	The appointment letter based on a fix term was given to the company secretary and signed by the chairman on the same date – <i>see Appendix 11</i>
11 Nov 2015	Mr. Molefe signed the appointment letter. This letter did not state the specific term. – <i>see Appendix 11</i>
	Example of DPE contract - <i>see Appendix 12</i>
16 Nov 2015	Retirement issues were discussed between Mr Molefe and the Chairman which I was not part to. I was requested by Chairperson of P&GC, Chairperson of the P&GC to identify benefits i.e. early retirement that could be considered should Mr Molefe's contract not be renewed to ensure that he is not penalized by the term contract.
16 Nov 2015	I phoned the Client Liaison Manager of the Eskom Pension and Provident Fund (EPPF) to find out if Mr. Molefe will be able to retire. I was well aware of the age 50 rule and 10 years' service and that additional years' service could be bought. I was however not sure if service can be bought if an individual did not have 10 years' service. <i>see Appendix 13</i>
	The EPPF Client Liaison Manager made it clear that service can be bought without having 10 years' service and those penalties can be waived within the rules of the fund.
18 Nov 2015	I forward a request for calculation of potential costs to the EPPF as I needed to provide Chairperson of P&GC with feedback by 20 November 2015. The calculation was still based on 55. - <i>see Appendix 13</i>
20 Nov 2015	I requested the EPPF Client Liaison Manager to provide me with possible monthly estimates as requested by Chairperson of P&GC - <i>see Appendix 14</i>
20 Nov 2015	The issue of early retirement was discussed with P&GC members. I informed the Chairperson of the P&GC that it would be important to get ministerial input on this issue before we finalize any issues on the retirement. I drafted a letter to the minister for Chairperson of P&GC's review and inputs as discussed - <i>see Appendix 15</i>
25 Nov 2015	I finalised the letter to the Minister as discussed with Chairperson of P&GC. This was signed by the Chairman of Eskom and delivered through secretariat to the Minister which acknowledged receipt thereof - <i>see Appendix 16</i>

10 Dec 2015	I requested the fund again to provide us with an actuarial value as this issue needed to be finalised with the minister - see Appendix 17
21 Dec 2015	I followed up with another mail to the EPPF requesting recalculated values in order to discuss with the Minister. I was under the impression that these discussions happened - see Appendix 18
19 Jan 2016	Mailed the conformation of the estimated amounts to Chairperson of P&GC - see Appendix 19
19 Jan 2016	In a separate mail I referred to the outstanding items that need to be discussed at the next P&GC i.e. no feedback on the retirement issues from the department and that there was no contract in place with the GCE. There was no contract in place at this time - Appendix 20
9 Feb 2016	The P&GC resolved that the early retirement will be approved within the rules of the fund with the benefit of buying the 10 years plus additional years service – see Appendix 21
	The presentation on early retirement with separation benefits is reflected in Appendix 22
	The resolution on early retirement with separation benefits is reflected in Appendix 23
23 Feb 2016	I prepared a discussion document for the company secretary Ms. S Daniels to discuss with the Minister. I raised the issue of retirement again in section B. I have received no feedback on the outcome of this discussion - see Appendix 24
7 March 2016	The contract was drafted earlier awaiting feedback from the Minister. Only signed in March 2016 - see Appendix 25
27 June 2016	I was also requested to look at the CFO contract on how we can possibly 'improve' it. I advised the Chairperson of P&GC that he was under 50 and the only way would be to request an extension on his contract with the Minister - see Appendix 26
18 Aug 2016	Requested the EPPF again to do the calculations at age 50 – see Appendix 27
27 Sept 2016	The pension issue of the GCE and CFO was discussed at the P&GC as a follow up item that arose from the board. The extension of the CFO contract was also discussed. I was not present at this meeting – see Appendix 28
6 Sept 2016 	It was also decided to increase the Long Term Incentive (LTI) awards for both Mr. Molefe and Singh to 2 times their annual pensionable Earnings. This increase was backdated to April 2015 for both - see Appendix 29
24 Oct 2016 	The ratification of the additional awards was approved at the P&GC - see Appendix 30
11 Nov 2016	Mr Molefe requested early retirement in a letter to the Chairman. He also attached the resolution of the board approving the separation benefits for early retirement - see Appendix 31
14 Nov 2016	I mailed the Chairperson of P&GC again the rationale from the P&GC around the approval of the early retirement. I also included a presentation on Chief Executive moves over the last 9 years - see Appendix BLUE 1
15 Nov 2016	I received as requested the early retirement estimates from the fund. This was shared with the Chairperson of the P&GC - see Appendix RED 2
21 Nov 2016	The GCE retirement letter was discussed at a special P&GC meeting and the terms of the letter was supported by the attendees - see Appendix YELLOW 3
21 Nov 2016	After the committee discussed the early retirement I was requested by the Chairperson of P&GC to finalise the letter and give it to the Chairman.

The following are important issues related to term contracts and should be noted:

- The term 'fixed term' is also misleading – since either employer or employee can give usually three months' notice in order to terminate the appointment.
The reason why successive terms are defined is that this defines eligibility for an end of term achievement bonus or gratuity, which will fund the retirement savings of the incumbent should they not participate in a Fund.
- successive fixed term employment contracts applying to senior executives were fairly common in the 1980s – mainly to establish a foundation for restraint of trade agreements, the compensation for which was tax-free. Changes to the tax laws and the development of the popularity of share-based long-term incentives internationally saw this practice die out in the 1990s. Today nearly all senior executive appointments in the private sector include provision for a long-term incentive, which may be a share-based 'scheme' or a deferred bonus plan.
- Notice periods differ and range typically from three months up to twelve months.
- Fixed term contracts are generally speaking only found where either a restraint of trade agreement has been reached or some other once-off amount of compensation is payable upfront to the incumbent.
- As far as the respective approval processes appertaining to fixed term contracts are concerned –
 - - King II provided that a fixed term contract of three or four years should ideally be entered into in the case of the first appointment of a chief executive officer facilitating and providing for dismissal with a negotiated severance amount payable during that period, the arrangements reverting to the entity's standard terms and conditions following this. King III was however silent on this subject, as is King IV.
- Where such special contractual arrangements are in place, the severance compensation and/or achievement bonuses payable should be disclosed to shareholders in the annual report.

24 Nov 2016	The Chairman of Eskom signed the acceptance letter. - see Appendix GREEN 4
24 Nov 2016	Our offices (Executive Support) informed the EPPF of the early retirement decision and that was actioned by the fund.
	Important to note that Eskom is not involved in any of the administration further except paying the penalties over to the fund once calculated by the EPPF
23 March 2017	Once calculated the fund raised a journal to Eskom and Eskom made the payment to the EPPF - see Appendix GREY 5
	No additional monies were paid to Mr. Molefe up to December 2016. The following were paid: his salary up to December 2016 - R 575 679.91; leave due to him - R 226 278.84; pro rata short term bonus to end December 2016 – R 2 110 185.00. The total amount paid to him was R 2 912 143.75
	Within the rules of the LTI Mr. Molefe still qualifies for Grant 11 and 12 that will vest in 2018 and 2019
13 April 2017	On this evening, I received a call from Chairperson of P&GC informing me that a journalist claimed to have proof of the payment made to the EPPF regarding Mr. Molefe and that the amount reflected was R30.1 million.
18 April 2017	I was not aware of the actual amount as we are not involved in the actuarial calculations and informed Chairperson of P&GC that we must first confirm before we act. This was confirmed on 18 April 2017.
	An internal investigation was launched immediately to determine where this information leaked. The investigation is headed by EY Fraud and investigation department
19 April 2017	Requested to meet the Minister. In the meeting was Dr Ngubane (Chairman of Eskom), Chairperson of P&GC, the Company secretary, The minister, the Director General and three advisors from DPE and myself. The rationale behind the decision was discussed and the Minister was adamant that the monies to the EPPF will not be paid - see Appendix BLUE 6
20 April 2016	On 20 April 2016 a special meeting was called at the Protea hotel in Midrand in preparation for the discussions with Mr. Molefe. Attending the meeting was Chairperson of P&G , the EPPF Client Relations Officer, Aadil Patel from Cliffe Dekker attorneys and myself.
	I was requested after the meeting with the Minister to determine if the monies paid to the EPPF can be paid back to Eskom. Should this be possible the intent was to start negotiations with Mr. Molefe on possible scenarios, i.e. return to Eskom, resign or take the issue to court – see Appendix RED 7
	Discussions took place between Chairperson of P&GC , Mr. Molefe and Ms. Daniels on his possible return.
23 April 2017	Minister declines Mr Molefe's pension agreement - see Appendix YELLOW 8
2 May 2017	Minutes of a special Board meeting discussion of the retirement decision and possible options - see Appendix GREEN 9
11 May 2017	Mr. Molefe signed a contract to be re-appointed as GCE - see Appendix GREY 10
	Other F band Executives that retires below the age of 55 under rule 28 - see Appendix BLUE 11
	Eskom Pension Fund members guide. 3.2 refer to retrenchment and 3.3 d to retirement with separation benefits age 50. - see Appendix RED 12
	EPPF Benefits presentation page 5 early retirement without penalty age 50 – 65 - see Appendix YELLOW 13

May 2017	Communication from the EPPF related to the early retirement issue- see Appendix GREEN 14
	Eskom Remuneration and Benefit Practices. Eskom does not refer to retrenchments but separation as reflected in clause 39 - see Appendix GREY 15
	Eskom's separation procedure for non-executive employees - see Appendix BLUE 16
	Revised rules of the EPPF - see Appendix RED 17
	Chairman's messages to Eskom gives effect to ministers directive - see Appendix YELLOW 18
	Old F band TERN (5 YEAR TERM AGREEMENT)- see Appendix A
	Adjusted FULL TIME EMPLOYMENT CONTRACT- see Appendix B
	Previous CE term contract (November 1999) - see Appendix C
	Mr. Matona full time employment contract - see Appendix D
	Mr. Matona Suspension letter and Settlement agreement - see Appendix E
	Ms. Molefe Suspension letter and Settlement agreement - see Appendix F
	Mr. Marokane Suspension letter and Settlement agreement - see Appendix G
	March 1990 F Band retirement agreement - see Appendix HI
	Mr. Molefe re-instatement agreement - see Appendix JK

On the minister's decision not to agree on the retirement issue, Eskom found itself in a difficult position. The option was to convince Mr. Molefe to return to Eskom. In doing this Eskom had to show that the retirement issue was a mistake or wrongly interpreted. Eskom's lawyers CDH built a case on the interpretation and rule 28 which is referred to in the EPPF members guide as early retirement with separation benefits and in the revised EPPF rules as retrenchment.

The only option to consider was the early retirement with separation benefits. I dealt with this option before in 4 cases and was very clear on the conditions i.e. age 50 and 10 years' service. I was however also aware that additional service can be bought and that the penalties can be waived. I shared this with the chairperson of the people and governance committee and she requested me that I must determine from the Eskom Pension and Provident Fund (EPPF) if service can be bought even if the person did not have the 10 years' service.

I contacted the EPPF Client Relations Officer (our support from the EPPF) and he advised me that it can be done. I shared this with the chairperson of the P&GC.

Important to note that a lot of meetings happened between board members and I assume the minister on different issues where some of these issues must have also been discussed.