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**MINISTRY**

**PUBLIC WORKS AND INFRASTRUCTURE**

**REPUBLIC OF SOUTH AFRICA**

Department of Public Works l Central Government Offices l 256 Madiba Street l Pretoria l Contact: +27 (0)12 406 1627 l Fax: +27 (0)12 323 7573

Private Bag X9155 l CAPE TOWN, 8001 l RSA 4th Floor Parliament Building l 120 Plain Street l CAPE TOWN l Tel: +27 21 402 2219 Fax: +27 21 462 4592

 [www.publicworks.gov.za](http://www.publicworks.gov.za)

**NATIONAL ASSEMBLY**

**WRITTEN REPLY**

**QUESTION NUMBER: 4333 [NO.** **NW5454E]**

**INTERNAL QUESTION PAPER NO.: 49 of 2022**

**DATE OF PUBLICATION: 18 NOVEMBER 2022**

**DATE OF REPLY: 06 DECEMBER 2022**

**4333 Ms S J Graham (DA) asked the Minister of Public Works and Infrastructure:**

(1) What (a) progress has been made on the disciplinary action against the officials implicated in the 2020 Beitbridge border fence issue, (b) total number of disciplinary hearings have been finalised and (c) are the relevant details around the outstanding disciplinary hearings;

(2) what are the (a) outcomes in terms of the total number of officials (i) found guilty and/or (ii) exonerated and (b) proposed sanctions for those who were found guilty;

(3) what mechanisms have been instituted to recover costs incurred as a result of the acts of those found guilty? **NW5454E**

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**REPLY:**

**The Minister of Public Works and Infrastructure wish to respond as follows:**

1. I have been informed that the disciplinary action of the employees implicated in Beitbridge Border Post Project investigation report were divided into two phases with first phase being an enquiry into members of the National Bid Adjudication Committee (NBAC) and the second phase, an enquiry into conduct of three senior managers. A civil recovery process is being managed by the Special Investigating Unit (SIU) on behalf of the Department of Public Works & Infrastructure (DPWI).

**1.1. DISCIPLINARY ACTION AGAINST THE NBAC MEMBERS:**

1.1.1. The disciplinary enquiry of the NBAC member was proceeded and was finalised during May 2022.

**1.1.2. On 3 June 2022 all implicated NBAC officials were found guilty of the charges against them.**

1.1.3. Mitigating and aggravating arguments commenced on 10 June 2022 by employee party and 20 June 2022 by employer party, whereafter sanction will be handed down.

1.1.4. The employee parties submitted their mitigating arguments requesting for lenient sanction short of dismissal based on their personal circumstances, however, the employer submitted aggravating arguments calling for sanction of dismissal given the seriousness of the charges, the amount involved and the conduct of the employees.

1.1.5. Chairperson delivered the sanction report imposing final written warning and suspension without pay, for between one and two months, to all the employees on the basis that there was no evidence of employees benefiting out of the project.

1.1.6. Employees have accepted the sanction through their Attorneys and the Acting Director General has been apprised about this.

1.1.7. On the 17 October 2022, approval was granted by Acting Director General to give effect to the sanctions with effective date of 01 November 2022 for all employees.

1.1.8. All employees have now began serving their sanctions of suspension without pay with effect from 01 November 2022.

**1.2. DISCIPLINARIES AGAINST SENIOR DPWI OFFICIALS**

1.2.1. The hearings of the Senior Officials were scheduled for 04 – 06 May 2021, however, these were postponed on the first sitting due to failure of the legal representative of one of the officials to attend the hearing, who indicated that he is launching a court application to review the investigation report and the disciplinary enquiry. However, the Department argued that the matter should proceed and the hearing was held on the 05 May 2021.

1.2.2. During the hearing of 5 May 2021, one of the official’s legal representatives, Ka- Mbonani Cooper Incorporated, served the chairperson and the Department with the Court application to amongst others: set aside the investigation report and the disciplinary enquiry.

1.2.3. Furthermore, the Department has prepared and filed the record of the procurement process and the investigation report with the Applicant and the Registrar on 14 June 2021 and the State Attorney is now waiting for the Applicant to serve their supplementary papers in compliance with Rule 53 of the Uniform Rules of the Court.

1.2.4. The Applicant’s Attorneys wrote a letter requesting further information and documents relating to the investigation from the Minister and ADG. The documents were prepared and sent to Senior Counsel for advice to the ADG.

1.2.5. The DPWI has since deposed the founding papers for review of the Chairperson’s ruling postponing the hearing sine die and submitted the papers to State Attorney for service on the Respondent and filing at the Labour Court. The Department is, now, awaiting feedback from the State Attorney on the service and filing at the Labour Court which will be followed by the Respondent filing their opposing papers and DPWI filing its replying papers followed application for hearing date with the Registrar.

1.2.6. Feedback received from Pretoria State Attorney on the 28 January 2022 was that the court application will be served on the 02 February 2022 by Pretoria State Attorney after receiving the instruction letter from the State Attorney: Kimberley who are the instructing Attorneys.

1.2.7. The Chairperson of the Disciplinary Hearing was served with the Labour Court application on the 29 November 2021 in Bloemfontein by State Attorney Kimberley and the application was served on DDG-CPM’s Attorneys in Johannesburg on the **02 February 2022** by State Attorney Pretoria.

1.2.8. The employee party acting through his Attorneys served and filed notice of intention to oppose and his answering affidavit on **06 June 2022** which was replied to by the Department on the **13 June 2022** and the State Attorney has since applied for a hearing date with the Registrar of the Labour Court. The State Attorney undertook to make a follow-up with Registrar via an email on the 14 November 2022.

1.2.9. With regard to the two senior employees, the State Attorney has appointed initiator and chairperson to facilitate the disciplinary enquiry of the two senior managers separate from the DDG-CPM hearing. To this end, the State Attorney is still awaited to convene consultation with initiator to prepare and finalise the charges for service and setting date of hearing.

**1.3. DISCIPLINARIES AGAINST SECTION 12 EMPLOYEES**

 Two (the Director-General and Special Advisor to the Minister) of the thirteen implicated DPWI employees are employed in terms of section 12 and 12A of the Public Service Act 1994. In this regard, their disciplinary processes are not being dealt with by the Department.

 **Regarding the Director-General:**

1.3.1. The disciplinary action against the Director-General is being managed by the Presidency. The DG has subsequently taken early retirement.

 **Regarding the Minister’s Special Advisor:**

1.3.2. The disciplinary action against the Special Advisor is being managed by the State Attorney on behalf of the Minister of Public Works and Infrastructure.

1.3.3. The Minister served a letter to her Advisor, in September 2020 informing her of the intended charges following the findings of the Beitbridge Border Post report.

1.3.4. The Advisor acknowledged receipt of the letter.

1.3.5. The Minister requested the State Attorney to appoint the Initiator and Chairperson for the ensuing disciplinary process. An Initiator and Chairperson have been appointed by the State Attorney.

1.3.6. The Initiator has prepared draft charges.

1.3.7. As reported to SCOPA, the charge sheet was subsequently finalised and served, while the Chairperson and counsel have also been appointed. The Minister is currently awaiting the way forward from the Chairperson.

 **1.4. RECOVERY OF FUNDS:**

1.4.1. On **17 November 2020**, the SIU instituted legal action against Caledon River Properties (Pty) Ltd t/a Magwa and Profteam CC with the Special Tribunal under case number GP17/2020. The application is opposed and the matter has been enrolled to argue jurisdiction which was raised as a point in limine. The matter was heard on **Tuesday 26 January 2021** in the Special Tribunal. The Tribunal on **25 February 2021** dismissed the respondent’s points in limine and the matter will proceed in the absence of any appeal.

1.4.2. On **9 March 2022**, the Special Tribunal judgment was handed down on the matter. The judgment strips the contractor, Magwa and principal agent, Caledon/aka Profteam, of any profits arising from the BeitBridge Border Fence project.

1.4.3. The judgment of the Special Tribunal was appealed on the 19th May by the contractor and principal agent. **Their appeal was dismissed with costs on the 7th September 2022.**

1.4.4. According to the SIU report to DPWI, it would appear that the contractor and principal agent are desirous to appeal the tribunal decision in the High Court, however, DPWI has not yet been provided with further briefing and the papers thereof by SIU.