

**REPORT OF THE PUBLIC PROTECTOR IN TERMS OF SECTION 182(1b) OF THE  
CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, 1996 AND SECTION 8(1)  
OF THE PUBLIC PROTECTOR ACT, 1994**



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**INVESTIGATION INTO THE ALLEGATION OF FAILURE BY THE DEPARTMENT  
OF MINERAL RESOURCES AND ENERGY TO COMPEL THE ROYAL BAFOKENG  
PLATINUM MINE TO CHANGE THE REASONS FOR THE TERMINATION OF THE  
COMPLAINANT'S EMPLOYMENT ON THE EXIT CERTIFICATE**

| <b>TABLE OF CONTENTS</b> |   |             |
|--------------------------|---|-------------|
| <b>NO.</b>               | <b>DESCRIPTION</b>  | <b>PAGE</b> |
|                          | <b>LIST OF ACRONYMS</b>   | <b>3</b>    |
| <b>1.</b>                | <b>INTRODUCTION</b>   | <b>4</b>    |
| <b>2.</b>                | <b>THE COMPLAINT</b>  | <b>4</b>    |
| <b>3.</b>                | <b>POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR</b>  | <b>6</b>    |
| <b>4.</b>                | <b>ISSUES IDENTIFIED FOR INVESTIGATION</b>  | <b>7</b>    |
| <b>5.</b>                | <b>THE INVESTIGATION</b>  | <b>8</b>    |
| <b>6.</b>                | <b>THE DETERMINATION OF THE ISSUES IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS</b> | <b>10</b>   |
| <b>7.</b>                | <b>FINDINGS</b>   | <b>23</b>   |
| <b>8.</b>                | <b>CONCLUSION</b>   | <b>24</b>   |

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**LIST OF ACRONYMS**

|                               |   |
|-------------------------------|---|
| <b>CCMA</b>                   | Commission for Conciliation, Mediation & Arbitration  |
| <b>Complainant</b>            | Mr Joseph Lebogang Nameng   |
| <b>Constitution</b>           | The Constitution of the Republic of South Africa, 1996  |
| <b>Department</b>             | Department of Minerals, Resources and Energy  |
| <b>LRA</b>                    | Labour Relations Act, 66 of 1995 (as amended)   |
| <b>Mine</b>                   | Royal Bafokeng Platinum Mine  |
| <b>MHS Act</b>                | Mine Health and Safety Act, 29 of 1996  |
| <b>PII: Inland</b>            | Provincial Investigations and Integration, Inland   |
| <b>Public Protector Act</b>   | Public Protector Act 23 of 1994   |
| <b>The Public Protector</b>   | Public Protector of the Republic of South Africa  |
| <b>Public Protector Rules</b> | Public Protector Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018 as amended |
| <b>UI19 form</b>              | Unemployment Insurance form   |

## 1. INTRODUCTION

- 1.1. This is a Report of the Public Protector in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996, (the Constitution), and sections 8(1) and (3) of the Public Protector Act 23 of 1994 (the Public Protector Act) and Rule 44(4) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018<sup>1</sup>* as amended (Public Protector Rules) as promulgated under section 7(11) of the Public Protector Act.
- 1.2 The report relates to an investigation into allegations of failure by the Department of Minerals, Resources and Energy (the Department) to investigate a complaint lodged by Mr Joseph Lebogang Nameng (the Complainant), against the Royal Bafokeng Platinum Mine (the Mine).
- 1.3 In terms of Rule 44(1), Complainants who are dissatisfied with the decision of any official of the Office of the Public Protector or the Public Protector to close or refuse the investigation of a complaint, may except where the Public Protector has released a final report in terms of section 182(1) (b) of the Constitution, 1996 and section 8(1) of the Act request an internal review of that decision.
- 1.4 The report is submitted to the Complainant in terms of Rule 44(4) of the Public Protector Rules.

## 2. THE COMPLAINT

- 2.1 The complaint was lodged with the Public Protector's Rustenburg Regional Office (the Rustenburg Regional Office) on 06 November 2019.

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<sup>1</sup> Published under Government notice No 945, Government Gazette 41903 of 14 September 2018 and Amended in Government Notice No 1047, Government Gazette 43758 dated 2 October 2020.

- 2.2 In essence the Complainant alleged as follows:
- 2.2.1 That on or about 2006, he was employed by the Royal Bafokeng Platinum Mine as a Belt Attendant.
- 2.2.2 During June 2018, the Mine Doctor (Dr Ebrahim), declared him to be permanently unfit to work.
- 2.2.3 During August 2018, he was dismissed from his employment by the Mine. The Mine recorded the reason for terminating his employment as “*abscondment*” from employment.
- 2.2.4 The Mine declared him permanently unfit to work and according to him it should have recorded the reason for terminating his employment as “*medically boarded*” and not “*abscondment*”.
- 2.2.5 During May 2019, he then approached the Department requesting them to order the Mine to amend its reasons for terminating his employment. However, the Department failed to assist him.
- 2.2.6 The relief which he seeks, is for the Department to order the Mine to amend the reasons for terminating his employment from “*dismissal*” to “*medical boarding*”.
- 2.3 The complaint was investigated and it culminated in a Closing Report issued by the Rustenburg Regional Office on 21 December 2021.
- 2.4 Upon receipt of the Closing Report, on 14 January 2022, the Complainant submitted a request for an internal review of the matter in line with Rule 44(2) of the Public Protector Rules stating as follows:
- “I hereby appeal against the report from Public Protector that is issued by Mr Matsetela about my complaint against DMR.”*

*According to section 20 Act 29 of 1996, it is DMR's duty and responsibility to resolve the issues pertaining the health and safety of the mine workers.*

*As my matter I brought before DMR and your office is in regard of my health and safety. As DMR deals with the matter of the health". [sic]*

### **3. POWERS AND JURISDICTION OF THE PUBLIC PROTECTOR**

3.1. The Public Protector is an independent constitutional body established under section 181(1)(a) of the Constitution of the Republic of South Africa, 1996 (the Constitution), to strengthen constitutional democracy through investigating and redressing improper conduct in state affairs.

3.2. Section 182(1) of the Constitution provides that:

*"The Public Protector has power as regulated by national legislation –*

- (a) to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice,*
- (b) to report on that conduct; and*
- (c) to take appropriate remedial action".*

3.3. Section 182(2) directs that the Public Protector has additional powers and functions prescribed by national legislation.

3.4. In terms of Rule 44(1), *"Complainants who are dissatisfied with the decision of any official of the Office of the Public Protector or the Public Protector to close or refuse the investigation of a complaint, may, except where the Public Protector has released a final report in terms of section 182(1)(b) of the Constitution, 1996 and section 8(1) of the Act request an internal review of that decision if -*

- (a) *the complainant is of the opinion that a decision is wrong because it was made based on incomplete or inaccurate evidence or information that contained inaccurate facts, and he or she can show this using readily available information; or*
- (b) *there is new and relevant information that was not previously available and has a material effect on the decision made.”*

3.5. Rule 44(4) provides that “*after reviewing the matter the Public Protector may:*

- (a) *Uphold the original decision;*
- (b) *Change the original decision; or*
- (c) *Send the matter back to the original or another investigation team for further investigation or a better explanation.”*

3.6. The Department of Minerals, Resources and Energy is an organ of state as contemplated in section 239 of the Constitution and its conduct amounts to conduct in state affairs.

3.7. The Public Protector’s power and jurisdiction to investigate this matter was not disputed by the Department of Minerals, Resources and Energy.

#### **4. ISSUE IDENTIFIED FOR INVESTIGATION**

4.1 Based on an analysis of the complaint, the following issue was identified to inform and focus the investigation:

4.1.1 Whether the Department failed to compel the Mine to change the reasons for the termination of the Complainant’s employment, and if so, whether such conduct constitutes improper in terms of section 182(1) of the Constitution and section 6(4)(b) of the Public Protector Act.

## **5. THE INVESTIGATION**

### **5.1 Methodology**

5.1.1 The investigation was conducted in terms of section 182(1) of the Constitution and sections 6 and 7 of the Public Protector Act.

5.1.2 The Public Protector Act confers on the Public Protector the sole discretion to determine how to resolve a dispute of alleged improper conduct or maladministration.

### **5.2 The investigation approach**

5.2.1 The approach to the investigation commenced with an analysis of the relevant documentation and a consideration and application of the relevant law, regulatory framework and prescripts.

5.2.2 The investigation was approached using an enquiry process that seeks to determine:

- (a) What happened?
- (b) What should have happened?
- (c) Is there a discrepancy between what happened and what should have happened and does that deviation amount to maladministration or other improper conduct?
- (d) In the event of a violation, what action should be taken?

5.2.3 The question regarding what happened is resolved through a factual enquiry relying on the evidence provided by the parties and independently sourced



during the investigation. The factual enquiry principally focused on whether or not the alleged conduct was inconsistent with applicable prescripts.

5.2.4 The enquiry regarding what should have happened, focuses on the law or rules that regulate the standard that should have been met by the Department in dealing with the Complainant's matter.

5.2.5 The enquiry regarding the remedy or remedial action seeks to explore options for redressing the consequences of improper conduct and maladministration; what it would take to remedy the wrong or, where appropriate, to place the Complainant as close as possible to where he would have been, but for the improper conduct.

### **5.3 The Investigation Process**

5.3.1 An investigation was conducted in line with section 182 of the Constitution of the Republic of South Africa, 1996 and sections 6 and 7 of the Public Protector Act, 23 of 1994.

5.3.2 The process that was followed by the Rustenburg Regional Office when conducting the investigation, included the exchange of documents between the Rustenburg Regional Office, the Department and the Mine, which occurred between the period 2019; 2020 and 2021. Furthermore, meetings were held between the Rustenburg Regional Office, the Department and the Mine on 18 February 2020, 14 August 2020, 21 August 2020 and 04 August 2021.

### **5.4 Legislation and other prescripts**

5.4.1 The Constitution of the Republic of South Africa, 1996;

5.4.2 The Public Protector Act, No. 23 of 1994;

5.4.3 The Mine Health and Safety Act, 29 of 1996;

5.4.4 The Labour Relations Act, 66 of 1995 (as amended); and

5.4.5 The Public Protector Rules of, 2018 (as amended in Government Notice No 1047, Government Gazette 43758 dated 2 October 2020).

## **5.5 Notice issued in terms of Rule 41(1) of the Public Protector Rules**

5.5.1 On 12 November 2021, a Notice was issued in terms of rule 41(1) of the *Rules Relating to Investigations by the Public Protector and Matters Incidental thereto, 2018* (the Public Protector Rules) as amended, and as promulgated under section 7(11) of the Public Protector Act, 23 of 1994 (the Act), to the Complainant to provide him an opportunity to make representations on the intended findings and closure of the file. A closing report dated 28 February 2022, was issued to the Complainant. The Complainant lodged an application for an internal review.

## **6. THE DETERMINATION OF THE ISSUE IN RELATION TO THE EVIDENCE OBTAINED AND CONCLUSIONS MADE WITH REGARD TO THE APPLICABLE LAW AND PRESCRIPTS**

**6.1 Whether the Department failed to compel the Mine to change the reasons for the termination of the Complainant's employment, and if so, whether such conduct constitutes improper in terms of section 182(1) of the Constitution and section 6(4)(b) of the Public Protector Act**

### *Common cause issues*

6.1.1 On or about September 2006, the Complainant was employed by the Mine as a Belt Attendant. During 2017, he was declared as permanently unfit to work as a Belt Attendant by Dr Khan, the Mine doctor, who recommended that he be given an alternative job.

6.1.2 During June 2018, the Complainant was again declared permanently unfit to work by another Mine doctor, Dr Ebrahim.

6.1.3 On 27 August 2018, the Complainant was dismissed from his employment by the Mine. The mine recorded the termination of his employment as “abscondment” from employment.

6.1.4 During May 2019, the Complainant approached the Department, requesting them to compel the Mine to amend its reasons for terminating his employment from *abscondment* to *medical boarding*.

*Issue in dispute*

6.1.5 The issue for the Public Protector’s determination is whether the Department was obliged to order the Mine to change its reasons for the termination of the Complainant’s employment.

*Complainant’s version & background to the complaint*

6.1.6 The Complainant provided the following background to his matter to the Rustenburg Investigation Team during the course of the investigation. He alleged that:

6.1.6.1 He was employed by the mine since 2006, as a Belt Attendant. In 2015, he started experiencing health problems resulting in him being in and out of the Mine hospital.

6.1.6.2 In 2017, he was diagnosed as having disc prolapse and particularly in March 2017, he was declared as permanently unfit to work as a Belt Attendant by the Mine doctor, Dr Khan.

6.1.6.3 Dr Khan recommended that he be given an alternative job, but the Mine failed to give him an alternative job. He did not perform any duties for the employer from March 2017.

- 6.1.6.4 During April 2018, he was then referred to a private hospital in Krugersdorp for medical attention by the Mine doctor, Dr Ebrahim. There, he was later operated on in connection with spine-related problems.
- 6.1.6.5 On 31 May 2018, he went back to Krugersdorp for another medical checkup. A medical report was prepared by the hospital, wherein it was recommended that he should be medically boarded from his employment. On 01 June 2018, he then took the medical report from Krugersdorp hospital to Dr Ebrahim, who then gave him a medical certificate, starting from 01 June 2018 until 27 June 2018.
- 6.1.6.6 On 27 June 2018, he went back to Dr Ebrahim, who then declared him permanently unfit to work. Dr Ebrahim prepared a medical report for the attention of the Mine's Human Resource division, recommending that he should be medically boarded. He also gave him another medical certificate starting from 27 June 2018 until 18 July 2018. However, on 19 July 2018, after the expiry of the sick note, he did not report back for duty.
- 6.1.6.7 He first approached the Department of Labour to claim for Unemployment Insurance Fund (UIF). When completing the UI 19 form, the Mine stated on the form that the reason for terminating his employment was dismissal due to "abscondment". As a result, the Department of labour declined his application for UIF.
- 6.1.6.8 In February 2019, he then approached the Commission for Conciliation, Mediation and Arbitration (CCMA). Amongst the issues that were decided by the CCMA, was whether his dismissal was procedurally and substantively unfair.
- 6.1.6.9 The CCMA, ruled that his dismissal was reasonably substantively fair and legally justifiable as he was absent from work from 19 July 2018 until 28 July 2018, without a sick note but the procedure followed by the Mine to dismiss him was unfair.

- 6.1.6.10 That, the relief he sought from the CCMA was for the Commissioner to order the Mine to change its reasons for terminating his employment to be “*medically boarded*” and not “*dismissal*”. However, the CCMA ruled that it did not have the jurisdiction to order the mine to change its reasons for terminating his employment. The CCMA, however, ruled that he should be compensated for the unprocedural manner used by the Mine to dismiss him.
- 6.1.6.11 After losing his bid at the CCMA to compel the Mine to change the reasons for terminating his employment, he then approached the Department during May 2019, for intervention.
- 6.1.6.12 In summation, the Complainant alleged that the Department failed to order the Mine to correct the reason for termination of his employment from “*abscondment*” to “*medical boarding*”.

*Department’s version*

- 6.1.7 The Department furnished the Investigation Team with a letter dated 13 May 2019, in which it had written to the Mine, through Advocate Gezile Masilo (Adv Masilo), raising the issue on behalf of the Complainant. According to the said letter “*..the complaint was with regard to the incorrect recording of his reasons for termination of employment..*” The letter went further to state as follows: “*you are therefore requested to amend your records to align it to medical records of Mr Nameng*”.
- 6.1.8 It is evident from the contents of the aforementioned letter that the objective was that Complainant wanted the Department to compel the Mine to amend its reasons for the termination of his employment.
- 6.1.9 The Mine responded to the Department through a letter dated 17 May 2019, and advised the Department that the Complainant’s employment was terminated in line with the Labour Relations Act 66 of 1995. The Mine stated that the Complainant had deserted his work place, which led to his

dismissal. The Mine informed the Department about the outcome of the CCMA process, which found in favour of the Mine, in so far as the reasons for dismissing the Complainant were concerned.

- 6.1.10 The Mine further advised the Department that they were not prepared to change the reason for terminating the Complainant's employment. They further advised that the Complainant was free to approach the Labour Court to challenge their decision and to review the findings of the CCMA.

*The Mine's version*

- 6.1.11 In a letter dated 25 February 2020, addressed to Mr Bushy Legoale (Mr Legoale) of the Department, (wherein the Public Protector was copied), the Mine indicated after the Complainant was declared as permanently unfit to work as a Belt Attendant by Dr Ebrahim. The Mine further stated that the Complainant deserted his work place while it was still in the process of exhausting all other avenues to accommodate the Complainant's medical condition.
- 6.1.12 The Mine further indicated that even though the Complainant was dismissed, he is currently receiving a monthly payment from the Mine's insurance company, Momentum Life. The said monthly payment is equivalent to his monthly salary and he will receive the said payment until he reaches the age of 60.

*Further intervention by the Public Protector Investigation Team*

- 6.1.13 After the preliminary investigations were conducted into this matter, the Rustenburg Provincial Office found that the complaint was not well substantiated and closed the file in September 2020. During May 2021, the Complainant submitted more documentation relating to the matter for the Public Protector's consideration.

- 6.1.14 It was discovered that during October 2018, the Complainant lodged an appeal in terms of section 20 of the Mine Health and Safety Act 29 of 1996 with the Department's Medical Inspector (Dr Mokoboto), against the Mine's decision to declare him permanently unfit.
- 6.1.15 In his appeal, the Complainant alleged that the Mine had declared him as permanently unfit to work, however, his medical exit certificate did not capture any medical condition.
- 6.1.16 The appeal by the Complainant was upheld by the Medical Inspector. On 09 October 2018, the Medical Inspector issued a directive to the Mine that the Complainant's exit medical certificate should be reconciled with his medical records. However, there was no indication from the documents that the Mine had complied with the directive of the Medical Inspector and the Department did not follow up on this issue.
- 6.1.17 Although the Complainant did not raise this with the Public Protector as an issue which he wanted to be investigated, the Investigation Team decided to enquire from the Department. As a result, a series of meetings were held between the Investigation Team, the Department and the Mine.
- 6.1.18 Subsequent communication between the Complainant and the Investigation Team, revealed that the Complainant was more interested in the issue relating to the changing of the reasons for the termination of his employment by the Mine, as this would entitle him to receive UIF.
- 6.1.19 A meeting was held on 04 August 2021, between the Investigation Team, the Department and the Mine. In the said meeting, the Department once again raised the issue of changing the reasons for terminating the Complainant's employment.
- 6.1.20 In its response, the Mine indicated that they have already made their position clear in that they were not going to change the reason for

terminating the Complainant's employment and that if the Complainant was aggrieved by that he should approach the Labour Court.

6.1.21 In relation to the issue of not complying with the Medical Inspector's directive, the Mine provided the Department and the Public Protector with a report, which stated, *inter alia*, the following:

- i. *"The Occupational Medical Practitioner (OMP) received a request from the DMRE on the 27 June 2018 to provide reasons for unfitness of Mr JL Nameng. The reasons were provided using the template received from the DMRE on the same day, 27<sup>th</sup> June 2018 to the Medical Inspector, to which an acknowledgement was received on the 28<sup>th</sup> June 2018.*
- ii. *The OMP further received a follow up from the Medical Inspector on the 29 August 2018 requesting that Mr Nameng's final date of incapacity be added to the report. This was done and sent to the medical Inspector on the same date, 29 August 2021.*
- iii. *On the 09 October 2018, the Medical Inspector, Dr Mokoboto issued a report on the outcome of the appeal in terms of section 20 of the Mine Health and Safety Act, 1996 (ACT No.29 of 1996). The report requested the OMP to reconcile the exit certificate with the medical report.*
- iv. *The reasons for requesting the reconciliation between the exit certificate and medical report was that, a mistake was done by Dr Khan by marking Yes instead of a No next to the word Occupational on the form. However, the correct explanation was given in the same medical report, indicating that the reasons for Mr Nameng's unfitness was due to a medical condition.*
- v. *An explanatory note was sent to the Medical Inspector (Dr Mokoboto) explaining the mistake mentioned above, apologizing for the mistake*



*and the confusion it may have caused, however, confirming that Mr Nameng's unfitness was due to medical reasons and not an occupational related condition.*

- vi. *The OMP further learned in February 2019 that Mr Nameng might have further complained to the office of the Chief Inspector, and as a result provided a report addressed to the Chief Inspector on the 21<sup>st</sup> February 2019 was also forwarded to the Medical Inspector. The report was explaining facts already clarified in this document.”(sic)*

6.1.22 According to the above report, the Complainant's illness was not caused by the work he was doing at the Mine, but was due to other medical conditions, which were not occupational. Accordingly, these medical non-occupational medical reasons could not be recorded on his Exit Certificate.

6.1.23 During the meeting of the 18 August 2021, Dr Ebrahim indicated that the Complainant was suffering from a medical condition, which the Mine cannot disclose on the Exit certificate or to anybody else, unless the Mine obtains written permission to do so from the Complainant.

#### *Application of relevant legal framework*

#### **Minerals and Petroleum Resources Act, 28 of 2002**

6.1.24 Section 2(h) of the Minerals and Petroleum Resources Act No 28 of 2002, provides that, *“The purpose of this Act is to give effect to section 24 of the Constitution by ensuring that the nation's minerals and petroleum resources are developed in an orderly and ecologically sustainable manner while promoting justifiable and economic development.”*

6.1.25 The Department's objective and mandate is to give effect to the above provision of the Act. The Act does not make provision to also deal with labour related issues between mining companies and their employees.

6.1.26 In this instance, the Department attempted to assist the Complainant to resolve his matter with the Mine. The Department did not have any legal obligation to do so. According to the Act, the objective of the Department is to ensure the sustainable development of the country's minerals, whilst ensuring economic development.

### **Mine Health and Safety Act, 29 of 1996**

6.1.27 Section 20 of the Mine Health and Safety Act (the MHS Act), provides that, an employee may dispute a finding of unfitness to perform work, and further states that:-

1. *"An employee may appeal to the Medical Inspector against-*

*(a) a decision that the employee is unfit to perform any particular category of work; or*

*(b) any finding of an occupational medical practitioner contained in an exit certificate prepared in terms of section 17.*

2. *An appeal under subsection (1) must-*

*(a) be lodged with the Medical Inspector within 30 days of the relevant decision or finding, or such further period as may be prescribed; and state the grounds of the appeal.*

3. *When the Medical Inspector receives an appeal under subsection (1), the Medical Inspector must choose a medical practitioner who is not*

*employed by the employer of the employee, and arrange for that employee to be reexamined by that medical practitioner, at the cost of the Chief Inspector of Mines.*

4. *The medical practitioner referred to in subsection (3) must report to the Medical Inspector, who must then consider the appeal and-*

(a) *confirm, set aside or vary the decision or finding of the occupational medical practitioner; or*

(b) *substitute any other decision or finding for that decision or finding.*

5. *Nothing in this section precludes an employee from-*

(a) *obtaining and paying for a medical opinion from any other medical practitioner; or pursuing any other legal remedy.*

6. *For the purposes of this section, 'employee' includes any applicant for employment who has previously been employed at a mine.*

7. *An employee lodging an appeal under subsection (1) may not be dismissed on any grounds relating to unfitness to perform work, pending the outcome of the appeal”.*

6.1.28 The main purpose for the establishment of the MHS Act, is to provide for the protection of the health and safety of employees and other persons at the mines.

#### **Labour Relations Act no 66 of 1995**

6.1.29 The preamble of the Labour Relations Act (LRA) as amended provides as follows:

*“to provide simple procedure for the resolution of the labour disputes through statutory conciliation, mediation and arbitration, for which purpose the CCMA is created”.*

- 6.1.30 According to the preamble of the Labour Relations Act, the CCMA was established for the purpose of providing resolutions to labour disputes.
- 6.1.31 According to the mission of the CCMA, it is a dispute resolution body established in terms of the LRA. Therefore, the relevant institution to deal with labour disputes in this regard is the CCMA.
- 6.1.32 Accordingly, any employee in the country, such as the Complainant in this matter, can refer a dispute to the CCMA for resolution.

#### *Conclusion*

- 6.1.33 Based on the evidence obtained during the investigation, it is evident that the Complainant’s employment was terminated due to a non-occupational medical condition. According to the Complainant’s own admission to the Investigation Team, he did not report for duty after his medical certificate expired and prior to the finalisation of the medical boarding process.
- 6.1.34 The Mine proceeded to terminate the Complainant’s employment based on his failure to report for duty or abscondment, a decision which was upheld by the CCMA, even though it found the procedure followed was procedurally unfair.
- 6.1.35 The Complainant’s contention that the Department failed to compel the mine to change the reasons for the termination of his employment from dismissal to medical boarding is not supported by evidence. The Department intervened by writing to the Mine to address the Complainant’s matter, however, the Mine referred the Department to the CCMA. Furthermore, the Department did not have the authority to compel the Mine to change its

reasons for terminating the employment of the Complainant and does not have the jurisdiction to interfere in employer-employee disputes.

- 6.1.36 In addition, although the Department did not have the mandate to deal with the Complainant's issue, it intervened in an effort to assist the Complainant. Several meetings were held with the Mine in an attempt to persuade them to reconsider its position, but the Mine refused to concede. The reasons advanced by the Mine for dismissing the Complainant were justified, in that, the Complainant failed to report for duty after the expiry of his sick leave.
- 6.1.37 The Complainant had an obligation to report for duty when his sick leave expired, even if he was not going to physically perform any specific function. The mine was still processing the Complainant's medical boarding which had not yet been concluded. The Complainant's abscondment and subsequent dismissal, suspended the medical boarding process.
- 6.1.38 The investigation established that the disability suffered by the Complainant was due to a medical condition that was unrelated to his occupation at the mine. An explanation was provided to the Mining Inspector regarding the error in the medical exit certificate. The Mining Inspector was satisfied with the explanation of the Mine.
- 6.1.39 The Complainant referred the dispute to the CCMA, which found that the reasons advanced by the Mine in dismissing him, were justified. The Complainant requested the Commissioner to direct the Mine to change its reasons for terminating his employment from a "dismissal" to "medical boarding". However, the Commissioner declined the request and indicated that the CCMA did not have the jurisdiction to do so.
- 6.1.40 The Complainant attempted to indirectly reverse the decision of the CCMA, by lodging a complaint with the Department. The Complainant should have approached the Labour Court if he felt that the ruling by the CCMA was unfair.

- 6.1.41 It is important to note that based on the evidence on file, the Complainant lodged an appeal in 2018, in line with the provisions of section 20(1) of the MHS Act with the Medical Inspector pertaining to the medical exit certificate that was issued by the Mine, which did not contain the Complainant's medical condition.
- 6.1.42 The investigation by the Rustenburg Regional Office established that the Complainant's appeal was upheld by the Medical Inspector on 09 October 2018. The Mine was ordered to reconcile the exit medical certificate with the medical report(s). However, since Complainant's medical condition was found not to be caused by his occupation or employment at the Mine, the Mine was not obliged to record such a medical condition in the Complainant's exit medical certificate.
- 6.1.43 It is therefore concluded that the Department properly dealt with the Complainant's appeal, in line with the MHS Act. Furthermore, the Mine was also found to have complied with the appeal ruling.
- 6.1.44 It is observed that although the Complaint only raised the allegation that the Department failed to comply with section 20 of the MHS Act during the investigation, however, the Rustenburg Regional Office subsequently conducted further investigation into this issue and the outcome was provided to the Complainant in the initial closing report.
- 6.1.45 It is important to highlight that, even though the Complainant did not include the amendment of the U19 form in his application for internal review, it is crucial for the Public Protector to emphasise the following information:
- 6.1.45.1 It is evident that the issue of the incorrect completion of the UI19 form emanates from his dismissal by the Mine, which was adjudicated upon by the CCMA;

- 6.1.45.2 Any dispute that still exists pertaining to the dismissal case should be referred to the Labour Court, in line with section 145 of the LRA, as the Public Protector does not enjoy jurisdiction over matters adjudicated by the CCMA.
- 6.1.46 Based on the analysis of the available information against the Complainant's reasons for requesting a review, the Public Protector could not find any irregularities in the manner in which the Complainant's matter was dealt with by the Rustenburg Regional Office. The investigation approach and the process that was followed by the Rustenburg Regional Office, to investigate the complaint was reasonable and fair.
- 6.1.47 The Public Protector concludes that there was no wrongdoing on the part of the Department. Evidence before the Public Protector indicates that the Department went beyond its mandate prescribed in the Minerals and Petroleum Resources Act, in an attempt to assist the Complainant.

## **7 FINDINGS**

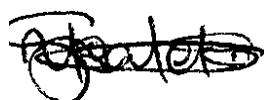
- 7.1 In light of the foregoing, having considered the investigation conducted in this matter and the review application, in line with Rule 44(4) of the Public Protector Rules, the request to review the decision of the Rustenburg Regional Office to close this matter is declined cannot succeed based on the following reasons:
- 7.1.1 The allegation that the Department failed to compel the Mine to change the reasons for the termination of the Complainant's employment is unsubstantiated.
- 7.1.2 The Department intervened by writing to the Mine after the Complainant had lodged a complaint. The Mining Inspector issued a finding that the Mine should amend the Complainant's exit certificate due to an error that was made by Dr Ebrahim.

7.1.3 Furthermore, the CCMA dismissed the Complainant's challenge of his dismissal by the Mine and did not order the Complainant's reinstatement even though it had found his dismissal to have been procedurally unfair, instead the Complainant was awarded compensation. The Complainant should have approached the Labour Court for further recourse.

7.1.4 Accordingly, the conduct of the Department does not constitute improper conduct as envisaged in section 182(1) of the Constitution and section 6(4)(b) of the Public Protector Act.

## **8 CONCLUSION**

8.1 The Public Protector considers this matter finalised and cannot take it further. Should any party wish to challenge this decision, they are at liberty to explore legal remedies at their disposal.



**ADV KHOLEKA GCALEKA  
ACTING PUBLIC PROTECTOR  
OF THE REPUBLIC OF SOUTH AFRICA  
DATE: 30 DECEMBER 2022**