



CASE NO: 25095/2013

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

PRETORIA 03 October 2014

BEFORE THE HONOURABLE MR JUSTICE MAKGOBA

In the matter between:

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA PRIVATE BAG/PRIVAATSAK X67 PRETORIA 0001 2014 -10- 14 W. MASHAPA REGISTRAR GEMETTER VAN DIE HOOF HOOF VAN SUID AFRIKA GAUTENG AFDDELING, PRETORIA
--

JOHAN PIETER HENDRIK PRETORIUS
JOHAN MICHAEL KRUGER

1ST APPLICANT
2ND APPLICANT

And

TRANSNET SECOND DEFINED BENEFIT FUND
TRANSPORT PENSION FUND
THE METROPOLITAN RETIREMENT
ADMINISTRATORS (PTY) LTD
TRANSNET SOC LIMITED
THE MINISTER OF PUBLIC ENTERPRISES
MINISTER OF FINANCE
THE PRESIDENT OF THE REPUBLIC OF
OF SOUTH AFRICA

1ST RESPONDENT
2ND RESPONDENT
3RD RESPONDENT

4TH RESPONDENT
5TH RESPONDENT
6TH RESPONDENT
7TH RESPONDENT

HAVING HEARD counsel for the parties and having read the application for leave to appeal against the judgment of the Honourable Justice ___ delivered on ___.

IT IS ORDERED

THAT the application for leave to appeal is dismissed with which include costs of two counsel.

BY THE COURT


REGISTRAR
MM

Attorney:

□



"Annexure WC-5"
236

THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

**CASE NO: 20683/14
GP CASE NO: 25096/13**

In the matter between:

TRANSNET SOC LIMITED

APPLICANT

And

JOHAN PIETER HENDRIK PRETORIUS

1ST RESPONDENT

JOHAN MICHAEL, KRUGER

2ND RESPONDENT

COURT ORDER

BRAND JA and FOURIE AJA

ORDERED ON 17 DECEMBER 2014

The application for leave to appeal is dismissed with costs on the grounds that an appeal has no reasonable prospects of success.

By the court

**P S W MYBURGH (Mr.)/SM
REGISTRAR**

"Annexure WC-6"

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 42355/15

In the matter between:

JOHAN PIETER HENDRIK PRETORIUS

First plaintiff

JOHAN MICHAEL KRUGER

Second plaintiff

and

TRANSPORT PENSION FUND

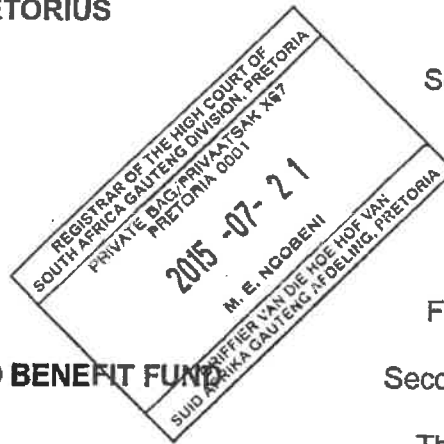
First defendant

TRANSNET SECOND DEFINED BENEFIT FUND

Second defendant

TRANSNET LIMITED

Third defendant



FIRST AND SECOND DEFENDANTS' NOTICE TO REMOVE CAUSE OF COMPLAINT IN TERMS OF RULE 23(1) AND RULE 30(2)(b)

TAKE NOTICE that the body of the combined summons and paragraph 3 of the particulars of claim correctly cite the first defendant as the Transport Pension Fund, but the heading to the combined summons incorrectly cites the first defendant as the Transnet Pension Fund. The citation of the first defendant has been corrected in the heading to this notice.

TAKE NOTICE that the first defendant ("the Transport Fund") and the second defendant ("the Second Fund") consider the plaintiffs' particulars of claim to be irregular *alternatively* vague and embarrassing *further alternatively* lacking in

averments necessary to sustain an action. The grounds of complaint are set out below. The Transport Fund and the Second Fund will be referred to collectively as "the defendants".

CLAIM 1: THE 1989 PROMISE

Breach of contract

- 1 Uniform Rule 18(6) provides that "a party who in his pleading relies upon a contract shall state whether the contract is written or oral and when, where and by whom it was concluded".
- 2 The particulars of claim aver:
 - 2.1 that "the employees and pensioners of SATS, the White Fund and the Black Fund tacitly accepted the promise" (paragraph 21.2);
 - 2.2 that the acceptance of the promise in the manner aforesaid gave rise to contractual obligations (paragraph 21.3).
- 3 The particulars of claim:
 - 3.1 do not identify "the employees and pensioners of SATS, the White Fund and the Black Fund" who are alleged to have accepted the promise;
 - 3.2 do not aver when and where the promise was accepted by "the employees and pensioners of SATS, the White Fund and the Black Fund", or by the plaintiffs;

3.3 therefore do not aver when, where and by whom the contract was concluded as required by Uniform Rule 18(6).

4 Further and in any event:

4.1 The particulars of claim do not allege that the promise in paragraph 14 was made with the intention that it would, upon acceptance, give rise to legally enforceable obligations (*animus contrahendi*).

4.2 In the premises, the allegation in paragraph 21.2 that the promise was accepted by "the employees and pensioners of SATS, the White Fund and the Black Fund" does not in law justify the conclusion in paragraph 21.3 that the White Fund and the Black Fund were "contractually bound to keep the promise".

5 Further and in any event:

5.1 Although the particulars of claim aver that the promise was made "on behalf of" the White Fund and the Black Fund, the particulars of claim do not aver that the persons who made the promise had lawful authority to bind the White Fund and the Black Fund.

5.2 In the premises, the particulars of claim lack averments necessary to sustain the conclusion in paragraph 21.3 that, upon acceptance, the White Fund and Black Fund became "contractually bound to keep the promise".

6 Further and in any event:

6.1 Although the particulars of claim aver that SATS, the White Fund and the Black Fund, and later the defendants, were "contractually bound" to keep the promise, they do not set out the terms of the contract allegedly concluded with sufficient particularity to enable the defendants to plead thereto.

6.2 In particular, they do not allege:

6.2.1 who would decide the rate at which the employees' and members' pensions would increase;

6.2.2 when such decision would be made and when the pensions would be increased;

6.2.3 what particular obligations Transnet, the Transport Fund and the Second Fund each owed to the employees and members, and what obligations they owed one another;

6.2.4 what the concomitant obligations of the plaintiffs were under the alleged contract;

6.2.5 how long the alleged contract was to endure; or

6.2.6 the basis on which the alleged contract could be terminated.

7 Further and in any event:

7.1 The particulars of claim aver, in paragraph 12, that the rules of the White Fund and the Black Fund entitled their members to increases of their pensions by 2% per year.

7.2 Both the Transport Fund and the Second Fund are governed by the Transnet Pension Fund Rules published under Government Notice R2355 in Government Gazette 12772 of 5 October 1990 ("the Rules").

7.3 Rule 32(27) thereof provides that pensions shall be increased by 2%, compounded annually, for each completed year in respect of which the pension has been or is received.

7.4 The terms of the promise, and the contract to which it allegedly gave rise, conflict with the provisions of the Rules, in that they purport to set a minimum increase of 70% of the rate of inflation per annum in perpetuity.

7.5 The particulars of claim do not allege the basis on which the promise, or the alleged contract to which it gave rise, should vary or override the Rules.

7.6 In the premises, the particulars of claim lack averments necessary to sustain a cause of action based on breach of contract.

8 The particulars of claim are therefore irregular and/or vague and embarrassing and/or lacking in averments necessary to sustain an action.

Unlawful administrative action

- 9 The relief sought in paragraph 24 of the particulars of claim is based on the allegations:
- 9.1 that the failure of the Transport Fund and the Second Fund to keep the promise constitutes administrative action (paragraph 22.4.1);
- 9.2 that the failure of the Transport Fund and the Second Fund to keep the promise was unlawful –
- 9.2.1 because the Transport Fund and the Second Fund failed to give effect to the legitimate expectation that had been created (paragraph 22.4.2); and
- 9.2.2 because the conduct of the Transport Fund and the Second Fund was unreasonable within the meaning of section 33(1) of the Constitution and section 6(2)(h) of PAJA.
- 10 The particulars of claim lack averments necessary to sustain the conclusion that the failure of the Transport Fund and the Second Fund to keep the promise amounted to administrative action.
- 11 Further and in any event: the particulars of claim lack averments necessary to sustain the variation, in terms of s 9(1)(b) of PAJA, of the 180-day time period within which a challenge to administrative action must be brought in terms of section 7(1) of PAJA.

2

- 12 Further and in any event: the claim is irregular in that a challenge to administrative action must be brought by way of review in motion proceedings.
- 13 Further and in any event: the averments in paragraphs 22.4.2 and 22.4.3 of the particulars of claim do not justify the relief sought in paragraph 24.2 directing the Transport Fund and the Second Fund to keep the promise.
- 14 In the premises, the particulars of claim are irregular and/or lacking in averments necessary to sustain an action.


Unfair labour practice

- 15 The particulars of claim aver that the failure of the Transport Fund and the Second Fund to keep the promise constitutes an unfair labour practice in breach of section 25(1) of the Constitution (paragraph 23).
- 16 The defendants assume that the plaintiffs intend to refer to section 23(1) of the Constitution.
- 17 The particulars of claim refer to "the employees of Transnet and the members of the Transport Fund and the Second Fund" (paragraph 22.2). The particulars of claim do not aver that the Transport Fund and the Second Fund employed the members. The particulars of claim therefore lack averments necessary to sustain the conclusion that the failure of the Transport Fund and the Second Fund to keep the promise, constitutes an unfair labour practice in breach of section 23(1) of the Constitution.



- 18 Further and in any event: the particulars of claim aver, at paragraphs 1 and 2, that the first and second plaintiffs are pensioner-members of the first and second defendants respectively. The particulars of claim do not aver that they, or any other member of the class, were in a labour relationship with Transnet at the time that the promise was not kept. In the premises, the particulars of claim lack averments necessary to sustain the conclusion that an unfair labour practice was committed against them.
- 19 Further and in any event: it is impermissible for the plaintiffs to rely directly on an alleged breach of section 23(1) of the Constitution in circumstances where the constitutional right to fair labour practices has been given effect to in legislation.
- 20 In the premises, the particulars of claim are irregular and/or vague and embarrassing and/or lacking in averments necessary to sustain an action.

CLAIM 3: THE UNLAWFUL DONATION

- 21 The particulars of claim aver that "Transnet accordingly became liable for repayment of the donation in March 2001" (paragraph 39).
- 22 The particulars of claim do not indicate the source of the alleged obligation on the part of Transnet to repay the donation.
- 23 If the source of the alleged obligation is the law of unjustified enrichment, then the particulars of claim lack averments necessary to sustain the conclusion that Transnet became liable to repay the donation in March 2001.
- 

- 24 If the source of the alleged obligation is not the law of unjustified enrichment, then the source is not identified with adequate particularity and the defendants are embarrassed in pleading to the averment.
- 25 Further and in any event: the particulars of claim aver that "the trustees made the donation in breach of their fiduciary duty" to the Fund and its members (paragraph 38.2). The particulars of claim fail to particularise the manner and respects in which the trustees breached their fiduciary duties.
- 26 In the premises, the particulars of claim are irregular and/or vague and embarrassing and/or lacking in averments necessary to sustain an action.

TAKE NOTICE FURTHER that the first and second defendants:

- (a) hereby afford the plaintiffs the opportunity of removing the causes of complaint based on the averment that the particulars of claim are irregular within ten days of receipt hereof;
- (b) hereby afford the plaintiffs the opportunity of removing the causes of complaint based on the averment that the particulars of claim are vague and embarrassing within fifteen days of receipt hereof.

DATED at SANDTON on this the 21st day of JULY 2015.



EDWARD NATHAN SONNENBERGS INC.

Per:

Attorneys for First and Second Defendants
 150 West Street
 Sandton
 Tel: 011 269 7600
 Fax: 011 269 7899
 E-Mail: shaves@ensafrica.com
 (Ref: S Hayes/S Mbatha/K Chisaka/0395680)
c/o ELOFF BRINK ATTORNEYS
 Lord Charles Office Park
 337 Brooklyn Road
 Building A, 1st Floor, North Wing
 Corner Justice Mahomed & Brooklyn Road
 Brooklyn
 Pretoria

TO:

**THE REGISTRAR OF THE
 ABOVE HONOURABLE COURT
 PRETORIA**

AND TO:

GEYSER & COETZEE ATTORNEYS
 Attorneys for Plaintiffs
 9 Boabab Nook
 Zwartkops
 Centurion
 Tel: (012) 663 5247
 Ref: WW Coetzee/WP1058
geysercoetzeeattorneys@gmail.com

SERVICE PER EMAIL

Steyn 21/7/15
 11:27

GEYSER & COETZEE PROKUREURS
 POBUS 12328
 CENTURION, 0046
 TEL: (012) 663 5247/8

"Annexure WC-7"

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

J 111 247

CASE NO. 42355/15

In the matter between :-

JOHAN PIETER HENDRIK PRETORIUS

First Plaintiff

JOHAN MICHAEL KRUGER

Second Plaintiff

and

TRANSPORT PENSION FUND

First Defendant

TRANSNET SECOND DEFINED BENEFIT FUND

Second Defendant

TRANSNET SOC LTD

Third Defendant

NOTICE IN TERMS OF RULE 30A

WHEREAS on 3 July 2015 the Third Defendant caused a notice in terms of Rule 35(12) and (14) to be served on the Plaintiffs.

AND WHEREAS the Third Defendant listed all the documents which are referred to in the Plaintiffs' particulars of claim and which are in the Plaintiffs' possession and are relevant to a reasonably anticipated issue in the action and which the Third Defendant requires for purposes of pleading.

AND WHEREAS the Plaintiffs have failed to make the documents available for inspection and to allow copies to be made thereof.

TAKE NOTICE THAT the Plaintiffs are hereby called upon to comply with the aforementioned notice within ten (10) days failing which the Third Defendant will apply for an order compelling the Plaintiffs to make such documents available for inspection alternatively that this Honourable Court strike out the Plaintiffs' particulars of claim.



DATED AT SANDTON on this the 16th day of JULY 2015.

248-



BOWMAN GILFILLAN INC.
Third Defendant's Attorneys
165 West Street
Sandton
Tel: 011 669 9000
Fax: 011 669 9001
Email: p.pillay@bowman.co.za
[/d.geral@bowman.co.za](mailto:d.geral@bowman.co.za)
Ref: P Pillay-Shaik/6119495
C/o **ROOTH & WESSELS**
ATTORNEYS
Walker Creek Office Park
90 Florence Ribeiro Avenue
Muckleneuk, Pretoria
Ref: M Van Rooyen

**TO : THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
PRETORIA**

AND TO:

GEYSER & COETZEE ATTORNEYS
Plaintiffs' Attorneys
9 Boabab Nook
Zwartkops
Centurion
Tel: 012 663 5247
Email: [geysercoetzeeattorneys@gmail.com/](mailto:geysercoetzeeattorneys@gmail.com)
lawteam@iafrica.com
Ref: WW Coetzee/WP1058

Service effected by email as agreed



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

In the matter between:-

JOHAN PIETER HENDRIK PRETORIUS

First Plaintiff

JOHAN MICHAEL KRUGER

Second Plaintiff

and

TRANSPORT PENSION FUND

First Defendant

TRANSNET SECOND DEFINED BENEFIT FUND

Second Defendant

TRANSNET SOC LTD

Third Defendant

NOTICE IN TERMS OF RULE 35(12) & (14)

TAKE FURTHER NOTICE THAT the Plaintiffs are required to make available for inspection and to allow a copy or transcription thereof to be made by the Third Defendant within 5 days of the date of delivery of this notice, the following documents or tape recordings referred to in the Plaintiffs' particulars of claim and in their possession which are relevant to a reasonably anticipated issue in the action:-

1. a copy of the "rules of the White Fund", including any amendments thereto, referred to in paragraph 12 of the Plaintiffs' particulars of claim;
2. a copy of the "rules of the...Black Fund", including any amendments thereto, referred to in paragraph 12 of the Plaintiffs' particulars of claim;
3. a copy of the State Actuary's determination, referred to in paragraph 28 of the Plaintiffs' particulars of claim;
4. copies of the T011 bonds allegedly issued by the Third Defendant in its 1990 financial year, referred to in paragraph 30 of the Plaintiffs' particulars of claim;

5. a copy of the "Consolidated Service Conditions", referred to on page 13 of **PC1** to the Plaintiffs' particulars of claim;
6. a copy of the "actuarial calculation of the Pension Fund", referred to on page 13 of **PC1** to the Plaintiffs' particulars of claim;
7. a copy of the "31 October 2000 Special Actuarial Investigation", referred to in **PC2** of the Plaintiffs' particulars of claim;
8. a full copy of the "Board of Trustees Minutes 23 November 2000", referred to in **PC3** of the Plaintiffs' particulars of claim;
9. a copy of the "document, containing the agreement", referred to on page 11 of **PC3** to the Plaintiffs' particulars of claim;
10. if this document differs from the document referred to in paragraph 9 above, a copy of the "agreement document", referred to on page 12 of **PC3** to the Plaintiffs' particulars of claim;
11. a copy of the "amended agreement document", referred to on page 13 of **PC3** to the Plaintiffs' particulars of claim;
12. a copy of "annexure A", referred to on page 13 of **PC3** to the Plaintiffs' particulars of claim; ,
13. a copy of the "valuation report", referred to on page 4 of **PC4** to the Plaintiffs' particulars of claim;
14. a copy of "the agreement of 23 November 2000", referred on page 5 of **PC4** to the Plaintiffs' particulars of claim;
15. if this document differs from the document referred to in paragraph 14 above, a copy of the "agreement reached between Transnet Pension Fund and Transnet Limited on 23 November 2000", referred to on page 6 of **PC4** to the Plaintiffs' particulars of claim.

DATED at SANDTON this 3rd day of July 2015.



BOWMAN GILFILLAN INC.
Third Defendant's Attorneys
165 West Street
Sandton
Tel: 011 669 9000
Fax: 011 669 9001
Email: p.pillay@bowman.co.za
[/d.geral@bowman.co.za](mailto:d.geral@bowman.co.za)
Ref: P Pillay-Shaik/6119495
C/o ROOTH & WESSELS
ATTORNEYS
Walker Creek Office Park
2nd Floor, Walker Creek 2
90 Florence Ribeiro Avenue
Muckleneuk, Pretoria
Ref: M Van Rooyen/MAT25347

**TO : THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
PRETORIA**

AND TO:

GEYSER & COETZEE ATTORNEYS
Plaintiffs' Attorneys
9 Boabab Nook
Zwartkops
Centurion
Tel: 012 663 5247
Email: geysercoetzeeattorneys@gmail.com / lawteam@iafrica.com
Ref: WW Coetzee/WP1058

(Service effected by e-mail as agreed)



"Annexure WC-8"

Geyser & Coetzee
Prokureurs
184
Tel: (012) 663 5247/8
Fax: (012) 663 5719
Docex 13, Centurion

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 42355/15

In the matter between:

JOHAN PIETER HENDRIK PRETORIUS
JOHAN MICHAEL KRUGER

FIRST PLAINTIFF
SECOND PLAINTIFF

and

TRANSNET PENSION FUND
TRANSNET SECOND DEFINED
BENEFIT FUND
TRANSNET LIMITED

FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT

REGISTRAR OF THE HIGH COURT OF
SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG/PRIVAATSAK 757
PRETORIA 0001
2015-06-05
T. MALELE
REGISTRAR'S CLERK
GRIFPER VAN DIE HOF HOOF VAN
SUID AFRIKA GAUTENG AFDDELING, PRETORIA

COMBINED SUMMONS

To: The Sheriff or his deputy

INFORM:

Certified a true copy of the original,

Getuigenis in woorde afgelees aan die ooreenwoordige
getuiseer in hierdie hof.

REGISTRAR OF THE HIGH COURT
SOUTH AFRICA GAUTENG DIVISION, PRETORIA

The **FIRST PLAINTIFF** is Johan Pieter Hendrik Pretorius, a pensioner-member of the first defendant who lives at Eerwaarde Du Plessisstraat 101, Aandrif Wilgehof, Bloemfontein. He acts in this matter in his own interest, in the interests of the members of the first defendant who have not opted out and in the public interest. (herein referred to as the ("**FIRST PLAINTIFF**"));

LEGAL
The **SECOND PLAINTIFF** is Johan Michael Kruger, a pensioner-member of the second defendant who lives at Plot 590, Kameeldrift-Oos, Pretoria. He acts in this matter in his own interest, in the interests of the members of the
SIGNED 13.55

second defendant who have not opted out and in the public interest. (herein referred to as the ("SECOND PLAINTIFF");

The **FIRST DEFENDANT** is the Transport Pension Fund (*the Transport Fund*), a pension fund established with legal personality by s 2 of the Transnet Pension Fund Act 62 of 1990. It comprises the following subfunds:

The Transnet Pension Fund Subfund. Its head office is at 47th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg.

The South African Airways Subfund. Its head office is at Jones Street, Airways Park, Kempton Park.

The Passenger Rail Agency of South Africa Subfund. Its head office is at 12th Floor, 66 Jorrisen Place, Jorrisen Street, Braamfontein, Johannesburg.

(herein referred as the "**FIRST DEFENDANT**");

The **SECOND DEFENDANT** is is the Transnet Second Defined Benefit Fund (*the Second Fund*), a pension fund established with legal personality by s 14B of the Transnet Pension Fund Act. Its head office is at Room 4452, 44th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg. (herein referred as the "**SECOND DEFENDANT**");

The **THIRD DEFENDANT** is Transnet Limited (*Transnet*), a company incorporated in terms of s 2 of the Legal Succession to the South African Transport Services Act 9 of 1989 (*the Succession Act*). Its head office is at

2

47th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg. (herein referred as the "THIRD DEFENDANT") which full and further particulars are not known to the PLAINTIFFS, hereby institutes an action against the DEFENDANTS in which action the Plaintiffs claims the relief and on the grounds set out in the particulars of claim annexed hereto.

INFORM the Defendants further that, if he/she disputes the claim and wishes to defend the action he/she shall:

- (i) Within **10 (ten)** days of the service upon it of the summons file with the Registrar of this Court at Madiba street and Paul Kruger street Notice of Intention to Defend and serve a copy thereof on the Plaintiff's Attorneys which notice shall give an address (not being a post office box or *poste restante*) referred to in Rule 65(b) for the service upon the Defendants of all notices and documentation in the action.
- (ii) Thereafter, and within **20 (twenty)** days after filing and serving of intention to defend as aforesaid, file with the Registrar and serve upon the Plaintiff's Attorney plea, exception or notice to strike out, with or without a counterclaim.

INFORM the Defendants further that if it fails to file and serve notice as aforesaid, judgment as claimed may be given against it without further notice to it, or if, having filed and served such notice, it fails to plead, except, or make an application to strike out or counterclaim, judgment may be given against it.

P

AND immediately thereafter serve on the Defendants a copy of this summons and return the same to the Registrar with whatsoever you have done thereupon.

DATED at PRETORIA on this 4 day June 2015.

GEYSER & COETZEE ATTORNEYS
ATTORNEYS FOR PLAINTIFF

9 Boabab Nook
Zwartkops
Centurion

Tel: (012) 663 5247

Ref: WW Coetzee/WP1058

geysercoetzeeattorneys@gmail.com

Attorney of the above Honourable Court with
Right of appearance in terms of Certificate issued
In terms of Article 4(2) of Law 62 of 1995

TO : **THE REGISTRAR OF THE HIGH COURT**
PRETORIA

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAG /PRIVAATSAK X67 PRETORIA 0001
2015 -06- 05
T. MALELE REGISTRAR'S CLERK
GRIFFIER VAN DIE HOË HOF VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA

PARTICULARS OF PLAINTIFFS' CLAIMS

THE PARTIES

1. The first plaintiff is Johan Pieter Hendrik Pretorius, a pensioner-member of the first defendant who lives at Eerwaarde Du Plessisstraat 101, Aandrif Wilgehof, Bloemfontein. He acts in this matter in his own interest, in the interests of the members of the first defendant who have not opted out and in the public interest.
2. The second plaintiff is Johan Michael Kruger, a pensioner-member of the second defendant who lives at Plot 590, Kameeldrift-Oos, Pretoria. He acts in this matter in his own interest, in the interests of the members of the second defendant who have not opted out and in the public interest.
3. The first defendant is the Transport Pension Fund (*the Transport Fund*), a pension fund established with legal personality by s 2 of the Transnet Pension Fund Act 62 of 1990. It comprises the following subfunds:
 - 3.1. The Transnet Pension Fund Subfund. Its head office is at 47th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg.
 - 3.2. The South African Airways Subfund. Its head office is at Jones Street, Airways Park, Kempton Park.



- 3.3. The Passenger Rail Agency of South Africa Subfund. Its head office is at 12th Floor, 66 Jorrisen Place, Jorrisen Street, Braamfontein, Johannesburg.
4. The second defendant is the Transnet Second Defined Benefit Fund (*the Second Fund*), a pension fund established with legal personality by s 14B of the Transnet Pension Fund Act. Its head office is at Room 4452, 44th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg.
5. The third defendant is Transnet Limited (*Transnet*), a company incorporated in terms of s 2 of the Legal Succession to the South African Transport Services Act 9 of 1989 (*the Succession Act*). Its head office is at 47th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg.

BACKGROUND

6. The transport enterprise of the state successively vested in,
- the South African Railways and Harbours Administration (*SAR&H*) referred to in the Railway Board Act 73 of 1962;
 - the South African Transport Services (*SATS*) referred to in the South African Transport Services Act 65 of 1981; and
 - Transnet in terms of s 3 of the Succession Act with effect from 1 April 1990.
7. Transnet inherited two defined benefit pension funds from SAR&H and SATS:
- 7.1. The New Railways and Harbours Superannuation Fund (*the White Fund*) created under s 3 of the Railways and Harbours Superannuation Fund Act 24

2

of 1925 and continued under s 2 of the Railways and Harbours Pension Act 35 of 1971.

- 7.2. The Railways and Harbours Pension Fund for Non-White Employees (*the Black Fund*) established under s 2 of the Railways and Harbours Pensions for Non-Whites Act 43 of 1974.
8. The Transport Fund is a merger of the White Fund and the Black Fund into a single defined benefit fund by s 2 of the Transnet Pension Fund Act with effect from October 1990.
9. The Transport Fund inherited all the assets, liabilities, rights and obligations of the White Fund and the Black Fund in terms of s 2 of the Transnet Pension Fund Act.
10. The Second Fund is a new defined benefit fund established with effect from 1 November 2000 to house all the pensioner-members of the Transport Fund as at that date. It was established and the pensioner-members were transferred to it by s 14B inserted in the Transnet Pension Fund Act by the Transnet Pension Fund Amendment Act 41 of 2000.
11. The Second Fund inherited all the assets, liabilities, rights and obligations of the Transport Fund relating to the pensioner-members in terms of s 14B of the Transnet Pension Fund Act.



CLAIM 1: THE 1989 PROMISE

12. The rules of the White Fund and the Black Fund entitled their members to increases of their pensions by 2% per year.
13. Both funds however followed a consistent practice over decades, with the concurrence of SAR&H and SATS, of granting higher pension increases of at least 70% of the rate of inflation.
14. In the run-up to the establishment of Transnet, SATS, the White Fund and the Black Fund made a promise to all their employees and members that the funds would continue to increase their pensions as before, that is, at a rate of at least 70% of the rate of inflation.
15. The promise was orally made on their behalf by,
 - Dr Moolman, the General Manager of SATS and the Chair of the boards of trustees of both pension funds, and
 - Mr Louw, the Minister of Transport,at meetings throughout the country with some 80 000 SATS employees in May and June 1989.
16. The promise was repeated in writing in the following terms in a SATS brochure called "*Our compass on the road to change*", annexure PC1, distributed to all SATS employees and pensioners later in 1989:



- 16.1. *"Benefits will be adjusted only if it is to the advantage of the members. The formation of a company will not change our pension fund benefits."* (p 13)
- 16.2. *"Increases in pension in addition to the 2% adjustments that are given to pensioners from time to time, will in future still be given to pensioners by the Transport Services and are not affected by the formation of the company."* (p 13)
- 16.3. *"The transport services will as in the past continue to grant, over and above the usual 2% increases, larger increases, in order to counteract the effects of inflation."* (p 13)
- 16.4. *"The pensioners of the SA Transport Services need not worry. The conversion of the transport services to a public company will have no influence on pensioners."* (p 16)
- 16.5. *"In addition to the usual annual 2% increase in pensions, the transport services will, as in the past, continue to grant higher increases to enable them to counter the effects of inflation."* (p 16)
- 16.6. *"The pensioners of the SA Transport Services need not worry. The conversion of the transport services to a public company will have no influence on pensioners."* (p 16)
17. The promise was one of the means by which SATS persuaded its employees to remain in its employ after its conversion to Transnet.



18. Transnet, the Transport Fund and the Second Fund kept the promise until 2002 by granting annual pension increases of about 80%, on average, of the rate of inflation.
19. Transnet, the Transport Fund and the Second Fund have since 2003 broken the promise in that they have consistently failed to grant any pension increases beyond the minimum of 2% per year.
20. Their failure to keep the promise is unlawful on the following grounds.
21. Breach of contract.
 - 21.1. The promise was an offer made by and on behalf of SATS, the White Fund and the Black Fund.
 - 21.2. The employees and pensioners of SATS, the White Fund and the Black Fund tacitly accepted the promise.
 - 21.3. SATS, the White Fund and the Black Fund were thus contractually bound to keep the promise.
 - 21.4. Transnet, the Transport Fund and the Second Fund inherited the contractual duty to keep the promise.
 - 21.5. Their failure to do so is thus in breach of contract.

R

22. Unlawful administrative action.

22.1. By making the promise and by implementing it for more than a decade, SATS, the White Fund and the Black Fund and later their successors, Transnet, the Transport Fund and the Second Fund, created the legitimate expectation with their employees and members that they would keep the promise.

22.2. The employees of Transnet and the members of the Transport Fund and the Second Fund organised their lives and arranged their affairs on the assumption that Transnet, the Transport Fund and the Second Fund would keep the promise.

22.3. As a result of their failure to keep the promise, their employees and members have suffered untold hardship.

22.4. Transnet's failure to cause the Transport Fund and the Second Fund to keep the promise and their failure to keep it,

22.4.1. constitute administrative action;

22.4.2. are unlawful because they fail to give effect to the legitimate expectation they created; and

22.4.3. are unlawful because their conduct is unreasonable within the meaning of s 33(1) of the Constitution and s 6(2)(h) of the Promotion of Administrative Justice Act 3 of 2000.



23. Unfair labour practice.

Transnet's failure to cause the Transport Fund and the Second Fund to keep the promise and their failure to keep it in the foregoing circumstances also constitute an unfair labour practice in breach of s 25(1) of the Constitution.

24. The plaintiffs ask for the following relief:

24.1. An order declaring that Transnet's failure to cause the Transport Fund and the Second Fund to keep the promise and their failure to keep it are unlawful.

24.2. An order directing Transnet, the Transport Fund and the Second Fund to keep the promise by,

24.2.1. increasing the pensions of all the members of the Transport Fund and the Second Fund by an annual rate of not less than 70% of the rate of inflation with effect from 2003; and

24.2.2. paying the arrear increases to the pensioners of these funds with interest *a tempore morae*.

24.3. An order that the defendants jointly and severally pay the plaintiffs' costs.

24.4. Alternative relief.



CLAIM 2: THE LEGACY DEBT

25. SAR&H and SATS were obliged by s 12(3) of the Railways and Harbours Pensions Act 35 of 1971 and s 11(3) of the Railways and Harbours Pensions for Non-Whites Act 43 of 1974 to pay into the White Fund and the Black Fund such amounts as were necessary to maintain them in a sound financial condition.
26. Transnet inherited these obligations in terms of s 3(2) of the Succession Act.
27. Section 16 of the Succession Act provided expressly or by implication that, on 1 April 1990, Transnet's debt pursuant to these obligations (*the legacy debt*) will be as determined by the State Actuary in consultation with an actuary appointed by the Minister of Public Enterprises and will bear interest at a rate of at least 12% per annum determined by the State Actuary.
28. The State Actuary duly determined the legacy debt in an amount of R17.1806 billion plus interest from 1 April 1990.
29. The Transport Fund and, upon its creation, the Second Fund, inherited the right to receive the legacy debt in terms of ss 2 and 12 of the Transnet Pension Funds Act in the following proportions:
 - 29.1. The Transport Fund 43.1%.
 - 29.2. The Second Fund 56.9%.



30. In its 1990 financial year, Transnet issued T011 bonds to the value of R10.394 billion to the Transport Fund in partial settlement of the legacy debt.
31. On the creation of the Second Fund in 2000, it received its *pro rata* share of the bonds from the Transport Fund.
32. In about February 2001 Transnet, the Transport Fund and the Second Fund agreed to cancel the bonds.
33. In the premises, the whole legacy debt remains outstanding.
34. The plaintiffs ask for the following relief:
 - 34.1. An order declaring that Transnet is indebted to the Transport Fund and the Second Fund for payment of the legacy debt of R17.1806 billion plus interest from 1 April 1990 at a rate of not less than 12% per annum determined by the State Actuary.
 - 34.2. An order that Transnet pay the legacy debt to the Transport Fund and the Second Fund.
 - 34.3. An order that the defendants jointly and severally pay the plaintiffs' costs.
 - 34.4. Alternative relief.



CLAIM 3: THE UNLAWFUL DONATION

35. The trustees of the Transport Fund and Transnet agreed orally and in writing on 23 November 2000 at Johannesburg that the Transport Fund would donate 40% of its members' surplus to Transnet. The written part of their agreement comprised,
- 35.1. annexure PC2, a minute of an agreement reached on 8 November 2000 between Transnet and a sub-committee of the trustees of the Transport Fund; and
 - 35.2. annexure PC3, the minutes of a meeting of the trustees of the Transport Fund held on 23 November 2000.
36. The trustees of the Transport Fund decided on 7 March 2001 to implement the donation by paying an amount of R309 121 000 to Transnet. Annexure PC4 is the minute of this decision.
37. Later in March 2001, the Transport Fund paid the amount of R309 121 000 to Transnet.
38. The donation was unlawful and invalid because,
- 38.1. the trustees did not have the power to make the donation; and
 - 38.2. to the knowledge of Transnet, the trustees made the donation in breach of their fiduciary duty to act in the best interests of the Transport Fund and its members.
39. Transnet accordingly became liable for repayment of the donation in March 2001.



40. The plaintiffs ask for the following relief:

40.1. An order declaring that the donation was unlawful and invalid.


40.2. An order that Transnet pay an amount of R309 121 000 to the Transport Fund with interest *a tempore morae*.


40.3. An order that Transnet and the Transport Fund pay the plaintiffs' costs.

40.4. Alternative relief.

Dated at Sandton on this the 4th day of June 2015.


Wim Trengove SC

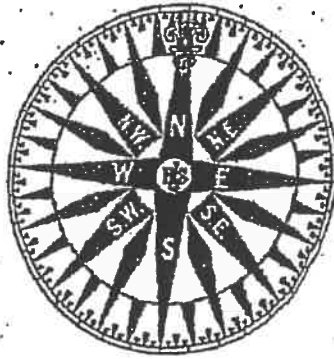

J G Cilliers SC


L Kellermann


S J Coetzee

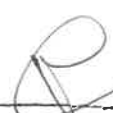


SA Transport Services



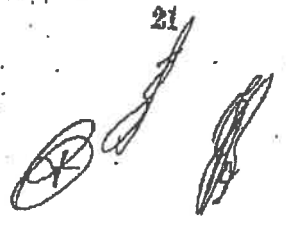
**Our compass
on the road
to change**

1989



Contents

- Message by Minister Eli Louw** 3
- Our compass on the road ahead** 4
 - Our task in the new environment
 - Our value system
- Introduction: why the booklet?** 5
- Deregulation** 6
 - Why deregulation?
 - What are the consequences of deregulation?
- Commercialisation** 7
 - What do we understand by commercialisation?
 - What does the process of commercialisation mean?
 - Is commercialisation for everybody?
- Privatisation** 8
 - What is privatisation?
 - How will privatisation be effected?
- Where does the road ahead lead to?** 9
 - Why change?
 - How will the public company be managed?
 - What does the future hold for us?
- Labour relations** 10
 - What do we mean by labour relations?
 - Why is bargaining so important?
 - What does consolidated service conditions mean to us?
- New disciplinary system** 11
 - Why a new system?
- Communication** 11
 - What is the purpose of communication?
- The work environment** 12
 - Will the work environment also change?
- Opportunities to speak** 12
 - Shall I get the opportunity to speak?
 - With whom shall I be able to speak?
- Service benefits** 13
 - How will the new dispensation influence service benefits?
 - Pension fund
 - Transmed
 - Travel benefits
 - Leave
 - Housing
 - Other service benefits
 - Pensioners
- Questions which may worry personnel** 17
- Notes** 18
- Postcards** 21



Message

THE STATE PRESIDENT, during his opening address of Parliament on 5 February 1988, confirmed that the South African Transport Services would be set on the road towards being managed and operated as an ordinary business enterprise. An announcement was made that forms a part of the Government's accepted policy to decrease the State's share in the national economy by means of privatisation to the advantage of the entire community of South Africa.



Mr. E. L. Louw
Minister of Transport Affairs

The ensuing change may certainly be regarded as the biggest step in the history of the Transport Services since the merging of various railway systems in 1910 to form the South African Railways and Harbours.

The Management of the SA Transport Services, having accepted the changes enthusiastically, was faced with new challenges and opportunities. Together with the employees, Management formed an active compass and set a new course with commendable results. This year the organisation ended the financial year with a profit of R147 million, while initially it headed for an anticipated loss of R15 million. Such is the result of competition in an open transport market.

The future will therefore present new challenges and opportunities. I have always believed in the Management and employees of the South African Transport Services and have no doubt that the road to innovation will lead to great successes.

This booklet is entitled "Our compass on the road to change" and follows Dr Anton Moolman's visits to the regions where more than 80 000 employees were addressed on the road to change. Remember, a compass indicates direction and is not influenced by circumstances. A compass brings hope and provides security. Security creates safety and does not disappoint.

Our compass is directed at the security and safety of our business, but especially at the people who have to sustain the business.

My best wishes accompany the Management and all the employees of the SA Transport Services on this exciting road we are now negotiating. Use this compass and hold your head high.

.....
Minister of Transport Affairs
12 July 1989

PC 1, 4



Dr Anton Moutman
General Manager/Managing Director

Our task

SA Transport Services is an organisation that focuses its attention on the handling and transportation of goods and passengers in the Republic of South Africa and across the borders of our country. To perform this task, we also provide ancillary and supporting services which are cost competitive and of strategic importance.

We believe in dignity in our dealings with all people

The SA Transport Services is a business concern of the State. We believe in the free enterprise system and regard profit in a competitive business environment as a criterion for success. We maintain high ethical standards throughout and recognise our responsibility towards the South African community.

The SA Transport Services' primary commitment is towards its clients. We endeavour to meet the needs of our clients by the rendering of an outstanding service.

To achieve this we employ well-trained, motivated and happy personnel who make use of our infrastructure and equipment as effectively as possible.

The SA Transport Services believes in decentralised management with effective control criteria. We believe in treating all people with dignity and commit ourselves not to discriminate against anybody on the grounds of race, sex or religion.

We strive for market related service conditions and equal opportunities for all our employees so that they may develop to their full potential.

Our compass on the road ahead

Our value system

- Honesty:** This concept refers to unimpeachable conduct in our work, toward colleagues, clients, the public and trade unions.
- Client-oriented:** Our very existence in the free market will depend on the quality of service rendered by each one of us to the satisfaction of our clients.
- Supportive:** We must give our subordinates the power and means to make and execute decisions. We must realise that it will involve risks, but we must trust them and be tolerant if they make mistakes. We must work as a team and trust one another to enable us to render the best service.
- People-oriented:** Our most important asset, our employees, must be treated in a dignified manner financially and non-financially within an environment in which everyone can attain fulfilment and of which they can be proud.

Handwritten signatures and initials at the bottom right of the page.

PCI, 5

Introduction: why the booklet?

DR ANTON MOOLMAN, General Manager / Managing Director, visited all the regions and addressed approximately 80 000 employees of the Transport Services during May and June of this year.

The purpose of the General Manager / Managing Director's visits was to explain at firsthand to all the employees of the Transport Services what changes may be expected in the Transport Services, of how they will affect the personnel and to answer questions which might be troubling employees. It soon became evident that there was insufficient opportunity to explain all matters to the personnel and that thousands could not attend the meetings.

The purpose of this booklet is to explain the changes awaiting the Transport Services in as simple terms as possible, to indicate why these changes are necessary and especially to indicate how they will affect the personnel.

In this booklet the most worrisome questions of the personnel are addressed. A brief summary of these questions and answers is given on page 17.

These questions are among the most important ones, but they, and many others, are explained further and dealt with in the booklet.

The booklet mainly indicates that where protection of the Transport Services was necessary in the past, in order to assist in the development of South Africa, the national economy has developed to such an extent that this protection is no longer required. Therefore the protection which the Transport Services has enjoyed and which ensured that certain traffic had to be transported by rail only, is now disappearing. The transport market is consequently now being deregulated. This process is called deregulation. This matter will be discussed further on the next page.

Since it is no longer necessary for the Transport Services to assist in the development of the country and as we now have to compete

for traffic, it is possible and also essential for the Transport Services to adapt in order to function just as any other business. The Government, therefore, decided that the Transport Services should be converted to a public company. In its new form the Transport Services will have greater freedom of movement in the transport market and will consequently be able to compete more effectively. This process is called commercialisation. Commercialisation is further explained on page 7.

The most important question, however, is how this commercialisation will affect the personnel. The answer to this is that service benefits of the personnel will not be changed by the formation of a company. On pages 10 to 16 service benefits of the personnel are dealt with in detail.

Although the Government has indicated that privatisation is possible in the future, no decision has yet been taken on this matter. Should privatisation become a reality, it would be to the advantage of employees within the organisation.

The purpose of this booklet is to explain more clearly what is currently happening to us, namely, the conversion to a business organisation (commercialisation), and to indicate what the possible consequences of this could be and how these will affect our employees.

The Transport Services is changing into a business concern. Although the Government has indicated that privatisation is possible in the future, NO decision has been taken yet

The formation of a company will have no influence on the existing service benefits of employees

Deregulation

Why deregulation?

In the past it was necessary for the Transport Services to assist in developing the country. To realise this, the volume of traffic that was permitted to be transported by road was limited. Consequently transport was regulated. South Africa has now developed to such an extent that the Transport Services is no longer required to assist with economic development, and regulation of the volume of road transport is therefore no longer necessary. Deregulation of road transport is already well-advanced, and within the next few years there will no longer be restrictions on the volume of road transport. Air transport in South Africa will also be deregulated within the foreseeable future.

What are the consequences of deregulation?

One consequence of deregulation is that Transport Services traffic will no longer be protected. Therefore, we can no longer rely on traffic having to be transported by our services, and consequently we will have to compete for traffic. Railways has already been experiencing tough competition from road carriers for the past few years. This resulted in rail traffic remaining more or less constant during the past seven years whereas road traffic increased appreciably. To balance our books Transport Services' personnel had to be reduced drastically.

To compete effectively with other transport organisations it is necessary for the Transport Services to adapt. Since it is no longer required to assist in developing the country it is possible and also desirable to convert the Transport Services to an organisation which is controlled, managed and operated in the same way as ordinary businesses (commercialisation). Therefore the Government has decided to convert the Transport Services to a public company. This company will be operated on the same basis as any other ordinary business.

Commuter services all over the world, also in SA, are operated at a loss. Consequently, commuter services remain part of the State and a commuter corporation is established for this purpose. When the Transport Services is transformed into a company all personnel, will however, remain with the company.

Deregulation entails the abolition of limitations on the volume of traffic and means that consignors are no longer obliged to make use of rail transport. Therefore the Transport Services must compete for traffic. To compete effectively it is necessary to convert the Transport Services to a public company



Commercialisation

What do we understand by commercialisation?

Commercialisation is the conversion of the Transport Services to a business concern.
The commercialisation of the SA Transport Services is the result of deregulation.

What does the commercialisation process mean?

- The SA Transport Services will be registered as a public company (probably 1 April 1990).
- The State will be the only shareholder after the formation of the company.
- Parliamentary control will be replaced by a Board of Directors which will be composed of experts, mainly from outside the organisation.
- We shall act exactly as a private company.
- Our company will strive for profit.
- We will only invest in assets which render a reasonable return.
- Profit and loss accounts will be compiled in accordance with the Companies Act.
- Auditing will be done by private auditors.
- Our company will handle its own investments.
- All taxes will be paid in full.
- The public company will no longer be obliged to render uneconomical services without full compensation.
- Tariffs will no longer be published, but will be negotiated.
- Tariff adjustments will be kept as low as possible.
- Cross-subsidisation between services will be phased out as far as possible.

Is commercialisation for everybody?

The State will bear the responsibility for the commuter section of our organisation which cannot be operated profitably. Consequently the conversion of the commuter train services to a Commuter Corporation.

No employee of the SA Transport Services will be transferred to the Commuter Corporation, but will remain with the profitable section.

Although commercialisation is an easy transitional process towards privatisation, privatisation will not necessarily follow commercialisation. The Government has by no means yet decided on privatisation. The only thing that the Government has decided on, is that the SA Transport Services shall be converted (*commercialised*) to be operated and managed as an ordinary business.

Commercialisation is the step taken to allow the Transport Services to compete as an ordinary business in the transport market. Therefore, the Government has decided that the Transport Services must convert to a public company doing business as any other commercial enterprise

Privatisation

What is privatisation?

As far as the SA Transport Services is concerned, privatisation will mean that ownership of a part of, or the whole organisation will be sold by the State. This will probably be brought about by the selling of shares.

How will privatisation be effected?

Although the Government has indicated that a possibility of privatisation of the Transport Services does exist, no decision has yet been made as to whether any part of the organisation will be privatised. Only successful business units within the organisation could possibly be privatised. At present the possible privatisation of SA Airways and SA Road Transport is being investigated. Should it in fact be decided to privatise a business unit within the Transport Services it would be to the advantage of the

personnel concerned. Employees would, for example, be given the opportunity to purchase shares under favourable conditions. Should this happen, our employees would consequently benefit since they will then be given the opportunity to purchase shares in a successful business unit.

The Government has not yet decided which successful business units could possibly be privatised. Should such a step be decided on, the employees would derive benefit from it



Where does the road ahead lead to?

Why change?

The Transport Services must keep pace with changes within the transport sector. Private transport businesses endeavour to make profits and they operate their own affairs. To remain competitive in the transport sector, it is essential that the Transport Services adapts itself to this pattern. Therefore, it became necessary for the Government to release the Transport Services from Acts of Parliament which control and protect the organisation.

Consequently the Government decided to convert the Transport Services to a public company (commercialisation). It will probably be registered under the Companies Act as a public company on 1 April 1990. This decision was taken in the interest of the transport industry and the community of South Africa.

A Management Board comprising of the Group General Managers of the Transport Services under chairmanship of the General Manager/Managing Director, will be responsible for the management of the undertaking.

What does the future hold for us?

The Government has not yet decided to privatise any part of the Transport Services. Should it be decided to privatise a successful business unit inside the Transport Services, the employees will derive benefit from it as shares will be made available to them. Our employees can meet the future with peace of mind.

How will the public company be managed?

The Minister of Transport Affairs will retain his role as co-ordinator of all modes of transport in South Africa.

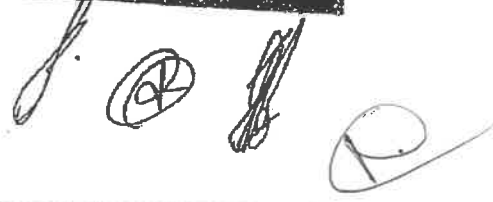
The Minister is empowered to take the necessary steps to ensure that the public company does not act contrary to the strategic and economic interests of the RSA.

Annual statements and the annual report will be submitted to Parliament and will be debated during the Transport vote, instead of a full operating and capital budget. Consequently a separate Transport Services budget debate will no longer be held in Parliament.

A Board of Directors comprising Government and private sector members, as well as the General Manager of the Transport Services, will exercise control over the strategies and financial results of the company.

On the road ahead the Transport Services will be managed in the same way as other public companies

From the following it will be clear that the service benefits of employees will not be impaired and that employees can meet the future with peace of mind



PC-1, 10

The work environment

Will the work environment also change?

The changes within the Transport Services will soon become visible. The outward appearance of the organisation will change and will result in a change of name, calendar, equipment, uniforms and work environment.

The ultimate goal is to increase the pride already present in employees of the Transport Services. This pride will also be expressed when services are rendered to the public.

SA Airways already has an established identity and will proceed to do business under this trade name.

The renewal of the SA Transport Services (when it becomes a public company) will also entail the renewal of the outward image of the organisation. This will involve new uniforms and a positive change in the work environment.

Opportunities to speak

Will I get the opportunity to speak?

The Management of the Transport Services is convinced that the consequences of the formation of a company will not only be to the advantage of its workers corps, but that the undertaking as a whole will function more effectively.

A two-way discussion between the employees and the organisation is a prerequisite and employees must therefore feel free to talk about those things that worry them.

To whom will I be able to speak?

Speak to your colleagues, your supervisor or your head of department, or complete the attached postcard and send it to the Office of the General Manager/Managing Director in Johannesburg.

Page 12

Service benefits

How will the new dispensation influence service benefits?

Pension Fund

The service benefits of employees are linked to the Consolidated Service Conditions and will not in any way be changed by the formation of a company. As far as the Pension Fund is concerned, it was established in terms of an Act of Parliament and the Fund is legally committed to pay the benefits to which a member is entitled at the time of his retirement. Benefits will be adjusted only if it is to the advantage of the members. The formation of a company will not change our Pension Fund benefits: The fact that the cash amount is tax-free at the time of termination of service or retirement with pension is not influenced by the formation of a company. It is therefore unnecessary to resign now merely to enjoy the tax-free benefit.

An actuarial calculation of the Pension Fund showed that the Joint Fund will be self-sustained within a couple of years.

The pension acts were amended so that in future we may invest surplus funds in shares and property. This means that the financial position of the Fund will improve even more rapidly.

Increases in pension in addition to the 2% adjustments that are given to pensioners from time to time, will in future still be given to

pensioners by the Transport Services and are not affected by the formation of a company. The Transport Services has an excellent pension fund. The benefits compare very favourably with those of other pension funds in the private sector. In most cases the benefits of our pension fund are better.

The Pensions Department is available to advise members and to assist them with their retirement planning.

Pensioners need not worry about the formation of a company. The Transport Services will as in the past continue to grant, over and above the usual 2% increases, larger increases, in order to counteract the effects of inflation



PE 412

Service benefits

Transmed

Service benefits are linked to the Consolidated Service Conditions and will not be affected by the formation of a company.

The Transport Services employees have the advantage that Transmed is one of the best medical schemes in South Africa. Members have a free choice of suppliers and in most cases pay only 25 % plus the difference between private fees and the scale of benefits for medical services received, as well as a monthly contribution of only R10.

Full Transmed benefits currently apply to Whites only. Employees of other race groups will, however, also be able to share in these benefits within two years.

The Transport Services employees have in Transmed one of the best medical schemes in South Africa

Travel benefits

Travel benefits will not be affected by the formation of a company. Service benefits are linked to the Consolidated Service Conditions and can only be amended through bargaining.

Should Airways, for example, privatise, the travel benefits that, say, harbour employees have at that stage, will continue to exist.

Leave

As in the case of travel benefits, leave will also not be affected by the formation of a company.

The growth in the value of accumulating leave can hold financial benefits for the employees of the Transport Services. The possibility of converting accumulated leave into cash is being investigated.

Naturally the current conditions of leave are an issue, but employees can rest assured that

whatever is decided upon will have the approval of all the parties concerned at the Labour Council.

Employees have the assurance that Management places the interest of the personnel first. Negotiations will be conducted with all the various trade unions regarding any amendment to the extant conditions.

PC 1,13

Service benefits

Housing

Transport Services will, as in the past, to lend money to employees at a interest rate for the purchase of residences. This money will in future be borrowed from the outside market, and not from the Pension Fund.

When the Transport Services becomes a public company, properties will be registered in employees' name. A first mortgage bond will be registered in favour of the Transport Services as security.

Registration of a property in an employee's name means that it will be much easier for an employee to obtain a loan or a second mortgage bond from a bank or building society for improvements to his residence. Monthly installments will still be recovered as is now the case. Employees will be responsible for the direct payment of municipal rates to the local authority concerned.

This arrangement will at first be applicable only to employees who take up loans after the formation of a company.

It will now be easier for employees to buy residences in independent countries and self-governing states as the properties will be registered in their names.

The loans of present participants in any of the schemes will remain unchanged.

When the Transport Services becomes a public company, properties of new borrowers will be registered in the employee's name. This will make it much easier for the employee to obtain a loan or a second mortgage bond from a bank or building society for improvements to his residence. Present participants can rest assured that their loans under any of the schemes will remain unchanged

Service benefits

Other service benefits

All other service benefits such as bonuses, 13th cheque, etc. not dealt with in this booklet, will not be influenced by the formation of a company. These can be changed by bargaining.

Pensioners

THE PENSIONERS of the SA Transport Services need not worry. The conversion of the Transport Services to a public company will have no influence on pensioners.

As can be deduced from the section on pensions, the company Pension Fund is sound and healthy and there are sufficient funds to pay pensions. In addition to the usual annual 2% increase in pensions, the Transport Services will, as in the past, continue to grant higher increases to enable them to counter the effects of inflation.

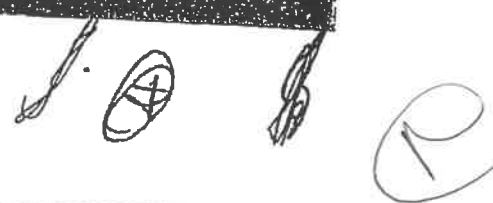
Privatisation

The Government has not yet decided on the privatisation of any business unit. Should any of the successful business units be privatised the pensioners of such a unit will not be "privatised" together with the business unit.

Therefore, the total group of pensioners will continue to exist as a unit. When any of the business units are possibly privatised, sufficient funds will be obtained to provide for pension and TRANSMED benefits for that particular group of pensioners.

All arrangements concerning correspondence and travel benefits will remain unchanged.

The pensioners of the SA Transport Services need not worry. The conversion of the Transport Services to a public company will have NO influence on pensioners



ACHIS

Questions which may worry

Did the Government decide to privatise the Transport Services?

No, the Government did not decide to privatise the Transport Services

What then did the Government decide?

The Government only decided to convert the Transport Services to a public company of which the Government will be the sole shareholder. This process is called COMMERCIALISATION.

Why is it necessary for the Transport Services to convert to a company?

Since the national economy has developed far enough, it is necessary for the Government to abandon control over the volume of transport offered. The result is that the Transport Services loses the protection of its traffic and must compete in a free market for its traffic. The best way in which to do this is to convert to a company.

How will this formation of a company or commercialisation affect the service benefits of the personnel?

The mere fact that the Transport Services will convert to a public company will not change the service benefits.

Is it possible that there will be privatisation in the future?

The Government has indicated that the Airways and Road Transport Service must be investigated with a view to privatising them but no decision on privatisation has been made.

How will possible privatisation in the future affect the personnel?

Since only financially successful units can be privatised the personnel concerned will be better off rather than worse off. It will therefore be to the advantage of the personnel concerned if the Government decide on privatising Transport Services.

APPENDIX 3: TRUSTEE SURPLUS RESOLUTION

Transnet Pension Fund: Surplus Allocation

Introduction

1. The assets of the Transnet Pension Fund were notionally split between members and pensioners as at 1 April 2000 and run as separate accounts since that date. This was done to allow assets to be restructured for both pensioners and members prior to the establishment of a pensioner only fund and a new defined contribution fund. The notional split was based on the proportional liabilities of the members and pensioners as at 31 March 2000 including an allowance for salary increases which were effective from 16 March 2000 but were only negotiated after 31 March 2000. All members who retired since 1 April 2000 have remained in the member account and are considered to be members, as opposed to pensioners, for the purposes of this document.
2. A non-statutory valuation was undertaken of both the member and pensioner accounts as at 30 June 2000. The member account revealed a surplus of R632 million (or about 4% of liabilities) based on the market value of assets. The surplus allocation discussion relates to the member account only.

Agreement

3. A lengthy debate regarding the surplus took place over about three months culminating at a joint meeting between Transnet and a Sub-committee of the Board of Trustees on 8 November 2000. The following agreement was reached:
 - 3.1. All data errors discovered during the conversion process would be rectified and be a first call on the surplus. Any surplus remaining after the correction of data errors will be allocated as set out below.
 - 3.2. The two parties with a claim to the surplus in the member account are the members and Transnet. By virtue of the asset split as at 1 April 2000, the pensioners claim to any surplus has been addressed.
 - 3.3. The balance of the surplus would be split in the following way:
 - 60% would be applied directly for the benefit of members. The Trustees of the Transnet Pension Fund and Transnet Retirement Fund would have to decide how this is applied in the normal course of exercising their fiduciary duties.
 - 40% would revert to Transnet on the understanding that Transnet utilise its share of the surplus around the two defined benefit pension funds that are underwritten by Transnet i.e. the Transnet Pension Fund and the Transnet Second Defined Benefit Fund. The intention is to innovatively use Transnet's share of the surplus to

(Handwritten mark)

enhance these two funds and improve the relationship between Transnet and the members of these funds. The ultimate decision regarding the use of Transnet's share of the surplus will rest with the Board of Transnet.

- 4. It was further agreed that the surplus of R632 million might change significantly before any surplus allocation can be physically implemented but that this would not affect the basis of allocation agreed to above.
- 5. The method of allocating the surplus is a negotiated settlement. The parties listed below are satisfied that it is appropriate.

Signed on this _____ day of _____ 2000

Mr I. Smith
Principal Officer
On behalf of the Trustees of the Transnet Pension Fund

Mr K. Mostert
Trustee

Ms G.T. Serobe
Chairman of the Company Sub-Committee
On behalf of Transnet Limited

Fund for Pensioners must agree to the agreements in the event where the determination of assets takes place before the agreements are signed.

Decision

The Trustees confirmed the decision of the Investment Committee not to reconsider the shareholders agreement and requested that the agreements be concluded before the determination by the State Actuary, anticipated to be 1 December 2000. The Trustees further requested that all parties must make a special effort to be available to sign the agreements.

4.3 Legal Structure

Discussion

Mr Smith provided the Trustees with feedback by indicating that a process has started with the Company to address the issue. Further feedback would be provided when available.

Decision

The Trustees noted the above information and the item was carried over.

4.4 Member Fund Surplus

Discussion

The Trustees noted background by Mr Smith on the negotiation of the surplus. A document, containing the agreement reached between the Company and the DC Sub Committee was circulated to all Trustees. He indicated that the Trustees would be requested to formally authorise someone to accept the resolution on behalf of the Fund.

Upon request Mr Smith confirmed that data errors would be addressed before any amount is distributed between the parties (the Fund and the Company). Both parties would be advised should the amount of R32 million reserved for data errors change. A final evaluation would be done on 1 November 2000, at which stage the surplus would accrue and the actual payment would only occur at a later stage.

The Trustees discussed the agreement document comprehensively and upon request by the Chairman on the acceptance thereof Mr Oosthuizen indicated that he did not support the document and requested that the following be recorded in verbatim:

" I do not agree that Transnet should share in the surplus of the member fund for the following reasons:

1. Transnet's record of maintaining the funding level of the fund is extremely poor many times ignoring the advice of the fund's actuary - additional % payment.
2. Reducing the Company's contribution by 4.5% in 1996 when the funding level was far from satisfactory.
3. Been instrumental in reducing the member benefits substantially when total benefits in many cases were unsatisfactory.
4. Manipulating events at Trustee meetings to achieve what's "good for Transnet".
5. The inadequate 4.9% average increase for pensioners for year 2000 when the funding level was at its highest in the history of the fund."

On the actual distribution of the surplus Mr Smith indicated that the DC Sub. Committee requested guidance on the issues whether the 60% of the surplus should be split proportionately between members converting to the DC Fund and whether a reserve should be created.

Mrs Serobe indicated that the current Trustees should be mindful as to the extend of the discussion and the decision as she believed that the Trustees of the DC Fund should be making this decision.

Mr Mostert supported the view that the surplus be split proportionally between the members.

Messrs. Buck, Hendriks and Geyer supported the suggestion for a reserve to be created in the DC Fund to deal with administration issues.

Mrs Serobe and Mr Van Schoor emphasised that the Trustees should focus on the split of the surplus rather than the actual distribution, which they believe would be the role of the new Trustees of the current and the DC Fund once appointed. Both suggested that the surplus be divided between the members who remained in the current Fund, the members converting to the DC Fund and those who have retired since 1 April 2000. The split must be proportional to conversion.

Decision

The Board noted Mr Oosthuizen's objections and agreed that it was his personal view and the Trustees disassociated them from Mr Oosthuizen's view.

The Trustees approved the amended agreement document relating to the surplus allocation as per Annexure A and mandated Messrs. Smith and Mostert to sign on behalf of the Fund.

The Trustees agreed that the trustees of the various funds must take the decision on the utilisation of the surplus once those trustees are appointed.

P

The split of the surplus must be proportional to members converting to the DC Fund based on liability. The surplus will accrue on 1 November 2000 and physically be distributed on 31 March 2001.

The Trustees commended the DC Sub Committee on a job well done and thanked that Committee for all their efforts.

4.5 Appointment of Auditors

Discussion

The Trustees noted a presentation by Mr Van Schoor on the appointment of auditors for the Fund as requested by the Trustees during the previous meeting. He explained how the rating was determined and proposed based on the results of the investigation that Deloitte and Touche together with APF be appointed as joint auditors of the Fund.

Mr Massey-Hicks requested, in view of the cost aspect, clarity on appointing joint auditors.

Mr Van Schoor confirmed that it might be more expensive to appoint joint auditors but cost is not duplicated and a better service could be obtained.

Decision

The Trustees approved the joint appointment of Deloitte and Touche and APF for the March 2001 auditing cycle. The Trustees further acknowledged that the current auditors would finalise the asset movements between the funds from June 2000 until 31 October 2000.

Handwritten mark or signature in the bottom right corner.

Transnet and that the Trustees would be provided with feedback within the next 4 to 6 months.

Mr Smith confirmed that service level agreements would be concluded between the Administrator and the Trustees of all 3 funds as well as all the Business Units of Transnet. These agreements would address issues such as performance measurement and responsibilities of the different parties. It is expected that discussions on the agreements would commence within the next 6 weeks.

Decision

The Trustees noted the information and approved that the item be suspended rather than removed from the Agenda.

4.3 Distribution of the Surplus

Discussion

Mr Smith explained to the Trustees that this item links up with Item 5.2 and the Trustees agreed to address the issues simultaneously. He indicated that it was necessary to perform an actuarial valuation on 31 October 2000 as a result of the establishment of the Transnet Retirement Fund and the transfer of assets to that Fund. The valuation report inter alia addresses the distribution of the surplus.

The Trustees noted a presentation by Mr Hendriks from NBC on the results of the actuarial valuation as at 31 October 2000 as per Annexure B.

Mr Smith indicated that approval would be required from the Trustees to create the following reserves:

- ◆ R8.5 million for data errors

2

PC47

- ♦ R56.7 million for potential disabilities
- ♦ R16.070 million in respect of over contributions

These reserves would be reviewed on 31 October 2001 and should it not be used by that date, the funds would be distributed according to the agreement of 23 November 2000 reached between the Trustees of Transnet Pension Fund and Transnet.

He also indicated that approval from the Trustees would be required for the physical distribution of the balance of the surplus. He confirmed that the utilisation of the surplus to the Transnet Pension Fund would be addressed at a later stage.

Upon request by Mr Joubert the actuaries confirmed that the draft legislation on the distribution of surpluses would have no effect on the required decision by the Trustees.

Dr Strydom confirmed that although Transnet indicated the intention to utilise its portion (40%) of the surplus around the benefit of the Fund, legally it may utilise the surplus in any way as determined by the Board of Directors.

Mr St Arnaud requested that the Trustees be kept informed on how the Company utilises its share of the surplus.

Decision

After discussion the Trustees resolved that:

Transnet Pension Fund Board of Trustees Minutes 7 March 2001 - 6 -

Based on the Agreement reached between Transnet Pension Fund and Transnet Limited on 23 November 2000 approval is granted for the following:

- A net surplus of R 772.803 million exists in the Fund as at 31 October 2000. This is after the following allowances have been made:
 - R8.5 million for data errors;
 - R 56.7 million for potential disabilities; and
 - R16.070 million in respect of over contributions
 - The above reserves will be reviewed on 31 October 2001 and the unutilised funds will be distributed in accordance to the agreement reached on 23 November 2000 between Transnet Pension Fund and Transnet Limited.
- 40% of this surplus amounts to R309.121 million and is allocated to Transnet.
- The remaining 60% of the surplus represent 2.997% of the liabilities of the Fund. Any transfer of liabilities from the Transnet Pension Fund to the Transnet Retirement Fund will therefore be enhanced by 2.997%.
- R288.818 million must be transferred from the Transnet Pension Fund to the Transnet Second Defined Benefit Fund in respect of pensions commencing between 1 April 2000 and 31 October 2000. The total pensioner account as at 31 October 2000 amounts to R 19 910.736 million and this amount must be transferred to the Transnet Second Defined Benefit Fund as at 1 November 2000.
- The R 16.070 million provision in respect of over-contributions represents 0.298% of the annual pensionable salaries of all members as at 31 October 2000. In respect of members who remained in the Fund this amount should be refunded to Transnet. In respect of members who

R

converted to the Transnet Retirement Fund this amount should be credited to the Transnet Retirement Fund's reserve account

- The above approval is subject to confirmation of auditing by the Fund's auditors- PriceWaterhouse Coopers.
- The amounts transferred to the respective parties must include investment return earned since 31 October 2000.
- The Administrator must keep the Trustees informed as to how the Company ~~is~~ utilises its share of the surplus.

4.4 Conversion Feedback

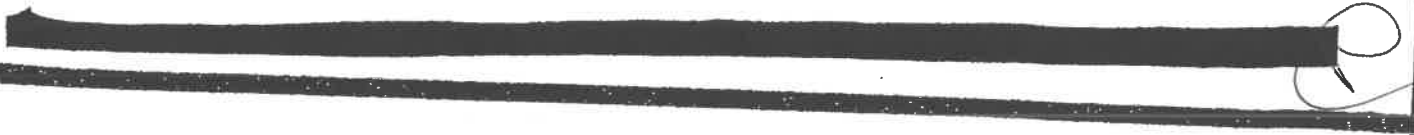
Discussion

The Trustees noted feedback by Mr Mjoli on the conversion process to the Transnet Retirement Fund and the agedistribution of Transnet Pension Fund as per Annexure C.

Mr Mkwanzazi excused himself from the meeting and Capt. Steenkamp continued as Chairman.

Mr Kotze questioned the minutes of the Trustee meeting of 23 November 2000 which indicate that the Trustees of the Transnet Retirement Fund must approve conversion to that Fund.

Mr Smith confirmed that the Trustees of Transnet Pension Fund have the authority to approve conversion to the Transnet Retirement Fund and proposed that the Secretary investigates if the minutes are correct. Should the minutes be correct a further resolution would be recommended to the Trustees at the next meeting.



PARTICULARS OF PLAINTIFFS' CLAIMS

THE PARTIES

1. The first plaintiff is Johan Pieter Hendrik Pretorius, a pensioner-member of the first defendant who lives at Eerwaarde Du Plessisstraat 101, Aandrif Wilgehof, Bloemfontein. He acts in this matter in his own interest, in the interests of the members of the first defendant who have not opted out and in the public interest.
2. The second plaintiff is Johan Michael Kruger, a pensioner-member of the second defendant who lives at Plot 590, Kameeldrift-Oos, Pretoria. He acts in this matter in his own interest, in the interests of the members of the second defendant who have not opted out and in the public interest.
3. The first defendant is the Transport Pension Fund (the Transport Fund), a pension fund established with legal personality by s 2 of the Transnet Pension Fund Act 62 of 1990. It comprises the following subfunds:
 - 3.1. The Transnet Pension Fund Subfund. Its head office is at 47th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg.
 - 3.2. The South African Airways Subfund. Its head office is at Jones Street, Airways Park, Kempton Park.

R

- 3.3. The Passenger Rail Agency of South Africa Subfund. Its head office is at 12th Floor, 66 Jorrisen Place, Jorrisen Street, Braamfontein, Johannesburg.
4. The second defendant is the Transnet Second Defined Benefit Fund (the Second Fund), a pension fund established with legal personality by s 14B of the Transnet Pension Fund Act. Its head office is at Room 4452, 44th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg.
5. The third defendant is Transnet Limited (Transnet), a company incorporated in terms of s 2 of the Legal Succession to the South African Transport Services Act 9 of 1989 (the Succession Act). Its head office is at 47th Floor, Carlton Centre, 150 Commissioner Street, Johannesburg.

BACKGROUND

6. The transport enterprise of the state successively vested in,
 - the South African Railways and Harbours Administration (SAR&H) referred to in the Railway Board Act 73 of 1962;
 - the South African Transport Services (SATS) referred to in the South African Transport Services Act 65 of 1981; and
 - Transnet in terms of s 3 of the Succession Act with effect from 1 April 1990.
7. Transnet inherited two defined benefit pension funds from SAR&H and SATS:
 - 7.1. The New Railways and Harbours Superannuation Fund (the White Fund) created under s 3 of the Railways and Harbours Superannuation Fund Act 24 of 1925 and continued under s 2 of the Railways and Harbours Pension Act 35 of 1971.



- 7.2. The Railways and Harbours Pension Fund for Non-White Employees (the Black Fund) established under s 2 of the Railways and Harbours Pensions for Non-Whites Act 43 of 1974.

8. The Transport Fund is a merger of the White Fund and the Black Fund into a single defined benefit fund by s 2 of the Transnet Pension Fund Act with effect from October 1990.

9. The Transport Fund inherited all the assets, liabilities, rights and obligations of the White Fund and the Black Fund in terms of s 2 of the Transnet Pension Fund Act.

10. The Second Fund is a new defined benefit fund established with effect from 1 November 2000 to house all the pensioner-members of the Transport Fund as at that date. It was established and the pensioner-members were transferred to it by s 14B inserted in the Transnet Pension Fund Act by the Transnet Pension Fund Amendment Act 41 of 2000.

11. The Second Fund inherited all the assets, liabilities, rights and obligations of the Transport Fund relating to the pensioner-members in terms of s 14B of the Transnet Pension Fund Act.

CLAIM 1: THE 1989 PROMISE



12. The rules of the White Fund and the Black Fund entitled their members to increases of their pensions by 2% per year.
13. Both funds however followed a consistent practice over decades, with the concurrence of SAR&H and SATS, of granting higher pension increases of at least 70% of the rate of inflation.
14. In the run-up to the establishment of Transnet, SATS, the White Fund and the Black Fund made a promise to all their employees and members that the funds would continue to increase their pensions as before, that is, at a rate of at least 70% of the rate of inflation.
15. The promise was orally made on their behalf by,
 - Dr Moolman, the General Manager of SATS and the Chair of the boards of trustees of both pension funds, and
 - Mr Louw, the Minister of Transport,at meetings throughout the country with some 80 000 SATS employees in May and June 1989.
16. The promise was repeated in writing in the following terms in a SATS brochure called "Our compass on the road to change", annexure PC1, distributed to all SATS employees and pensioners later in 1989:
 - 16.1. "Benefits will be adjusted only if it is to the advantage of the members. The formation of a company will not change our pension fund benefits." (p 13)



AMENDED PAGES

- 16.2. "Increases in pension in addition to the 2% adjustments that are given to pensioners from time to time, will in future still be given to pensioners by the Transport Services and are not affected by the formation of the company." (p 13)

- 16.3. "The transport services will as in the past continue to grant, over and above the usual 2% increases, larger increases, in order to counteract the effects of inflation." (p 13)

- 16.4. "The pensioners of the SA Transport Services need not worry. The conversion of the transport services to a public company will have no influence on pensioners." (p 16)

- 16.5. "In addition to the usual annual 2% increase in pensions, the transport services will, as in the past, continue to grant higher increases to enable them to counter the effects of inflation." (p 16)

- 16.6. "The pensioners of the SA Transport Services need not worry. The conversion of the transport services to a public company will have no influence on pensioners." (p 16)

- 17. The promise was one of the means by which SATS persuaded its employees to remain in its employ after its conversion to Transnet.

- 18. Transnet, the Transport Fund and the Second Fund kept the promise until 2002 by granting annual pension increases of about 80%, on average, of the rate of inflation.



19. Transnet, the Transport Fund and the Second Fund have since 2003 broken the promise in that they have consistently failed to grant any pension increases beyond the minimum of 2% per year.

20. Their failure to keep the promise is unlawful on the following grounds.

21. Breach of contract.

21.1. The promise was an offer to contract duly made by and on behalf of SATS, the White Fund and the Black Fund.

21.2. All the employees and pensioners of SATS, the White Fund and the Black Fund tacitly accepted the promise by remaining employees and pensioners of SATS, the White Fund and the Black Fund without demur.

21.3. SATS, the White Fund and the Black Fund were thus contractually bound to keep the promise.

21.4. Transnet, the Transport Fund and the Second Fund inherited the contractual duty to keep the promise.

21.5. Their failure to do so is thus in breach of contract.

22. Unlawful state conduct.

22.1. By making the promise and by implementing it for more than a decade, SATS, the White Fund and the Black Fund and later their successors, Transnet, the

Transport Fund and the Second Fund, created the legitimate expectation with their employees and members that they would keep the promise.

22.2. The employees of Transnet and the members of the Transport Fund and the Second Fund organised their lives and arranged their affairs on the assumption that Transnet, the Transport Fund and the Second Fund would keep the promise.

22.3. As a result of their failure to keep the promise, their employees and members have suffered untold hardship.

22.4. Transnet's failure to cause the Transport Fund and the Second Fund to keep the promise and their failure to keep it are unlawful at public law because,

22.4.1. Their conduct is legally and constitutionally unconscionable when tested against the constitutional standards of reliance, accountability and reationality;

22.4.2. They impair the rights of the members of the Transport Fund and the Second Fund of access to social security in terms of s27(1)(c) of the Constitution; and

22.4.3. They fail to give effect to the legitimate pension benefit expectations they created.

23. Unfair labour practice.

Transnet's failure to cause the Transport Fund and the Second Fund to keep the promise and their failure to keep it in the foregoing circumstances also constitute an unfair labour practice in breach of s 23(1) of the Constitution.



24. The plaintiffs ask for the following relief:

24.1. An order declaring that Transnet's failure to cause the Transport Fund and the Second Fund to keep the promise and their failure to keep it are unlawful.

24.2. An order directing Transnet, the Transport Fund and the Second Fund to keep the promise by,

24.2.1. increasing the pensions of all the members of the Transport Fund and the Second Fund by an annual rate of not less than 70% of the rate of inflation with effect from 2003; and

24.2.2. paying the arrear increases to the pensioners of these funds with interest a tempore morae.

24.3. An order that the defendants jointly and severally pay the plaintiffs' costs.

24.4. Alternative relief.

CLAIM 2: THE LEGACY DEBT

25. SAR&H and SATS were obliged by s 12(3) of the Railways and Harbours Pensions Act 35 of 1971 and s 11(3) of the Railways and Harbours Pensions for Non-Whites Act 43 of 1974 to pay into the White Fund and the Black Fund such amounts as were necessary to maintain them in a sound financial condition.

26. Transnet inherited these obligations in terms of s 3(2) of the Succession Act.

27. Section 16 of the Succession Act provided expressly or by implication that, on 1 April 1990, Transnet's debt pursuant to these obligations (the legacy debt) will be as determined by the State Actuary in consultation with an actuary appointed by the Minister of Public Enterprises and will bear interest at a rate of at least 12% per annum determined by the State Actuary.
28. The State Actuary duly determined the legacy debt in consultation with an actuary appointed by the Minister of Transport in an amount of R17.1806 billion plus interest from 1 April 1990.
29. The Transport Fund and, upon its creation, the Second Fund, inherited the right to receive the legacy debt in terms of ss 2 and 12 of the Transnet Pension Funds Act in the following proportions:
 - 29.1. The Transport Fund 43.1%.
 - 29.2. The Second Fund 56.9%.
30. In its 1990 financial year, Transnet issued T011 bonds to the value of R10.394 billion to the Transport Fund in partial settlement of the legacy debt.
31. On the creation of the Second Fund in 2000, it received its pro rata share of the bonds from the Transport Fund.
32. In about February 2001 Transnet, the Transport Fund and the Second Fund agreed to cancel the bonds.



33. In the premises, the whole legacy debt remains outstanding.

34. The plaintiffs ask for the following relief:

34.1. An order declaring that Transnet is indebted to the Transport Fund and the Second Fund for payment of the legacy debt of R17.1806 billion plus interest from 1 April 1990 at a rate of not less than 12% per annum determined by the State Actuary.

34.2. An order that Transnet pay the legacy debt to the Transport Fund and the Second Fund.

34.3. An order that the defendants jointly and severally pay the plaintiffs' costs.

34.4. Alternative relief.

CLAIM 3: THE UNLAWFUL DONATION

35. The trustees of the Transport Fund and Transnet agreed orally and in writing on 23 November 2000 at Johannesburg that the Transport Fund would donate 40% of its members' surplus to Transnet. The written part of their agreement comprised,

35.1. annexure PC2, a minute of an agreement reached on 8 November 2000 between Transnet and a sub-committee of the trustees of the Transport Fund; and

35.2. annexure PC3, the minutes of a meeting of the trustees of the Transport Fund held on 23 November 2000.



36. The trustees of the Transport Fund decided on 7 March 2001 to implement the donation by paying an amount of R309 121 000 to Transnet. Annexure PC4 is the minute of this decision.
37. Later in March 2001, the Transport Fund paid the amount of R309 121 000 to Transnet.
38. The donation was unlawful and invalid because, to the knowledge of the trustees and Transnet,
 - 38.1. The trustees did not have the power to make the donation; and
 - 38.2. The trustees made the donation in breach of their fiduciary duty to act in the best interests of the Transport Fund and its members.
39. Transnet accordingly became liable for repayment of the donation in March 2001.
40. The plaintiffs ask for the following relief:
 - 40.1. An order declaring that the donation was unlawful and invalid.
 - 40.2. An order that Transnet pay an amount of R309 121 000 to the Transport Fund with interest a tempore morae.
 - 40.3. An order that Transnet and the Transport Fund pay the plaintiffs' costs.
 - 40.4. Alternative relief.



40. The plaintiffs ask for the following relief:

40.1. An order declaring that the donation was unlawful and invalid.


40.2. An order that Transnet pay an amount of R309 121 000 to the Transport Fund with interest *a tempore morae*.


40.3. An order that Transnet and the Transport Fund pay the plaintiffs' costs.

40.4. Alternative relief.

Dated at Sandton on this the 4th day of June 2015.


Wim Trengove SC

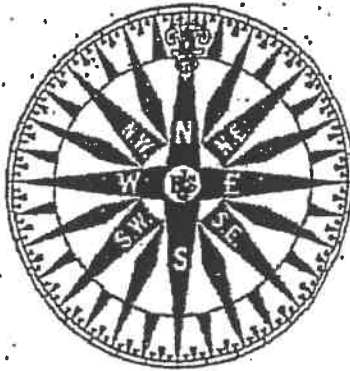

J G Cilliers SC


L Kellermann


S J Goetzee



SA Transport Services



**Our compass
on the road
to change**

1989



PCI, 2
p.8

Contents

Message by Minister Eli Louw	3
Our compass on the road ahead	4
Our task in the new environment	
Our value system	
Introduction: why the booklet?	5
Deregulation	6
Why deregulation?	
What are the consequences of deregulation?	
Commercialisation	7
What do we understand by commercialisation?	
What does the process of commercialisation mean?	
Is commercialisation for everybody?	
Privatisation	8
What is privatisation?	
How will privatisation be effected?	
Where does the road ahead lead to?	9
Why change?	
How will the public company be managed?	
What does the future hold for us?	
Labour relations	10
What do we mean by labour relations?	
Why is bargaining so important?	
What does consolidated service conditions mean to us?	
New disciplinary system	11
Why a new system?	
Communication	11
What is the purpose of communication?	
The work environment	12
Will the work environment also change?	
Opportunities to speak	12
Shall I get the opportunity to speak?	
With whom shall I be able to speak?	
Service benefits	13
How will the new dispensation influence service benefits?	
Pension fund	
Transmed	
Travel benefits	
Leave	
Housing	
Other service benefits	
Pensioners	
Questions which may worry personnel	17
Notes	18
Postcards	21

Message

THE STATE PRESIDENT, during his opening address of Parliament on 5 February 1988, confirmed that the South African Transport Services would be set on the road towards being managed and operated as an ordinary business enterprise. An announcement was made that forms a part of the Government's accepted policy to decrease the State's share in the national economy by means of privatisation to the advantage of the entire community of South Africa.

The ensuing change may certainly be regarded as the biggest step in the history of the Transport Services since the merging of various railway systems in 1910 to form the South African Railways and Harbours.

The Management of the SA Transport Services, having accepted the changes enthusiastically, was faced with new challenges and opportunities. Together with the employees, Management formed an active compass and set a new course with commendable results. This year the organisation ended the financial year with a profit of R147 million, while initially it headed for an anticipated loss of R15 million. Such is the result of competition in an open transport market.

The future will therefore present new challenges and opportunities. I have always believed in the Management and employees of the South African Transport Services and have no doubt that the road to innovation will lead to great successes.

This booklet is entitled "Our compass on the road to change" and follows Dr Anton Moolman's visits to the regions where more than 80 000 employees were addressed on the road to change. Remember, a compass indicates direction and is not influenced by circumstances. A compass brings hope and provides security. Security creates safety and does not disappoint.

Our compass is directed by the security and safety of our business, but especially at the people who have to sustain the business.

My best wishes accompany the Management and all the employees of the SA Transport Services on this exciting road we are now negotiating. Use this compass and hold your head high.

Anton Moolman

.....
Minister of Transport Affairs
12 July 1989



Mr. Ed Luw
Minister of Transport Affairs

Handwritten marks and signatures at the bottom right of the page.



Dr Anton Moolman
General Manager/Managing Director

Our task

SA Transport Services is an organisation that focuses its attention on the handling and transportation of goods and passengers in the Republic of South Africa and across the borders of our country. To perform this

We believe in dignity in our dealings with all people

task, we also provide ancillary and supporting services which are cost competitive and of strategic importance.

The SA Transport Services is a business concern of the State. We believe in the free enterprise system and regard profit in a competitive business environment as a criterion for success. We maintain high ethical standards throughout and recognise our responsibility towards the South African community.

The SA Transport Services' primary commitment is towards its clients. We endeavour to meet the needs of our clients by the rendering of an outstanding service.

To achieve this we employ well-trained, motivated and happy personnel who make use of our infrastructure and equipment as effectively as possible.

The SA Transport Services believes in decentralised management with effective control criteria. We believe in treating all people with dignity and commit ourselves not to discriminate against anybody on the grounds of race, sex or religion.

We strive for market-related service conditions and equal opportunities for all our employees so that they may develop to their full potential.

Our compass on the road ahead

Our value system

Honesty: This concept refers to unimpeachable conduct in our work, toward colleagues, clients, the public and trade unions.

Client-oriented: Our very existence in the free market will depend on the quality of service rendered by each one of us to the satisfaction of our clients.

Supportive: We must give our subordinates the power and means to make and execute decisions. We must realise that it will involve risks, but we must trust them and be tolerant if they make mistakes. We must work as a team and trust one another to enable us to render the best service.

People-oriented: Our most important asset, our employees, must be treated in a dignified manner financially and non-financially within an environment in which everyone can attain fulfilment and of which they can be proud.

Introduction: why the booklet?

DR ANTON MOOLMAN, General Manager / Managing Director, visited all the regions and addressed approximately 80 000 employees of the Transport Services during May and June of this year.

The purpose of the General Manager / Managing Director's visits was to explain at firsthand to all the employees of the Transport Services what changes may be expected in the Transport Services, of how they will affect the personnel and to answer questions which might be troubling employees. It soon became evident that there was insufficient opportunity to explain all matters to the personnel and that thousands could not attend the meetings.

The purpose of this booklet is to explain the changes awaiting the Transport Services in as simple terms as possible, to indicate why these changes are necessary and, especially, to indicate how they will affect the personnel.

In this booklet the most worrisome questions of the personnel are addressed. A brief summary of these questions and answers is given on page 17.

These questions are among the most important ones, but they, and many others, are explained further and dealt with in the booklet.

The booklet mainly indicates that where protection of the Transport Services was necessary in the past, in order to assist in the development of South Africa, the national economy has developed to such an extent that this protection is no longer required. Therefore the protection which the Transport Services has enjoyed and which ensured that certain traffic had to be transported by rail only, is now disappearing. The transport market is consequently now being deregulated. This process is called deregulation. This matter will be discussed further on the next page.

Since it is no longer necessary for the Transport Services to assist in the development of the country and as we now have to compete

for traffic, it is possible and also essential for the Transport Services to adapt in order to function just as any other business. The Government, therefore, decided that the Transport Services should be converted to a public company. In its new form the Transport Services will have greater freedom of movement in the transport market and will consequently be able to compete more effectively. This process is called commercialisation. Commercialisation is further explained on page 7.

The most important question, however, is how this commercialisation will affect the personnel. The answer to this is that service benefits of the personnel will not be changed by the formation of a company. On pages 10 to 16 service benefits of the personnel are dealt with in detail.

Although the Government has indicated that privatisation is possible in the future, no decision has yet been taken on this matter. Should privatisation become a reality, it would be to the advantage of employees within the organisation.

The purpose of this booklet is to explain more clearly what is currently happening to us, namely, the conversion to a business organisation (commercialisation), and to indicate what the possible consequences of this could be and how these will affect our employees.

The Transport Services is changing into a business concern. Although the Government has indicated that privatisation is possible in the future, NO decision has been taken yet

The formation of a company will have no influence on the existing service benefits of employees

Handwritten signatures and initials at the bottom of the page.

Deregulation

Why deregulation?

In the past it was necessary for the Transport Services to assist in developing the country. To realise this the volume of traffic that was permitted to be transported by road was limited. Consequently transport was regulated. South Africa has now developed to such an extent that the Transport Services is no longer required to assist with economic development, and regulation of the volume of road transport is therefore no longer necessary. Deregulation of road transport is already well-advanced, and within the next few years there will no longer be restrictions on the volume of road transport. Air transport in South Africa will also be deregulated within the foreseeable future.

What are the consequences of deregulation?

One consequence of deregulation is that Transport Services' traffic will no longer be protected. Therefore, we can no longer rely on traffic having to be transported by our services and consequently we will have to compete for traffic. Railways has already been experiencing tough competition from road carriers for the past few years. This resulted in rail traffic remaining more or less constant during the past seven years whereas road traffic increased appreciably. To balance our books Transport Services' personnel had to be reduced drastically.

To compete effectively with other transport organisations it is necessary for the Transport Services to adapt. Since it is no longer required to assist in developing the country it is possible and also desirable to convert the Transport Services to an organisation which is controlled, managed and operated in the same way as ordinary businesses (commercialisation). Therefore the Government has decided to convert the Transport Services to a public company. This company will be operated on the same basis as any other ordinary business.

Commuter services all over the world, also in SA, are operated at a loss. Consequently, commuter services remain part of the State and a commuter corporation is established for this purpose. When the Transport Services is transformed into a company all personnel, will however, remain with the company.

Deregulation entails the abolition of limitations on the volume of traffic and means that consignors are no longer obliged to make use of rail transport. Therefore the Transport Services must compete for traffic. To compete effectively it is necessary to convert the Transport Services to a public company

Commercialisation

What do we understand by commercialisation?

Commercialisation is the conversion of the Transport Services to a business concern.

The commercialisation of the SA Transport Services is the result of deregulation.

What does the commercialisation process mean?

The SA Transport Services will be registered as a public company (probably 1 April 1990).

The State will be the only shareholder after the formation of the company.

Parliamentary control will be replaced by a Board of Directors which will be composed of experts, mainly from outside the organisation.

We shall act exactly as a private company.

Our company will strive for profit.

We will only invest in assets which render a reasonable return.

Profit and loss accounts will be compiled in accordance with the Companies Act.

Auditing will be done by private auditors.

Our company will handle its own investments.

All taxes will be paid in full.

The public company will no longer be obliged to render uneconomical services without full compensation.

Tariffs will no longer be published, but will be negotiated.

Tariff adjustments will be kept as low as possible.

Cross-subsidisation between services will be phased out as far as possible.

Is commercialisation for everybody?

The State will bear the responsibility for the commuter section of our organisation which cannot be operated profitably. Consequently the conversion of the commuter train services to a Commuter Corporation.

No employee of the SA Transport Services will be transferred to the Commuter Corporation, but will remain with the profitable section.

Although commercialisation is an easy transitional process towards privatisation, privatisation will not necessarily follow commercialisation. The Government has by no means yet decided on privatisation. The only thing that the Government has decided on, is that the SA Transport Services shall be converted (*commercialised*) to be operated and managed as an ordinary business.

Commercialisation is the step taken to allow the Transport Services to compete as an ordinary business in the transport market. Therefore, the Government has decided that the Transport Services must convert to a public company doing business as any other commercial enterprise

Privatisation

What is privatisation?

As far as the SA Transport Services is concerned, privatisation will mean that ownership of a part of, or the whole organisation will be sold by the State. This will probably be brought about by the selling of shares.

How will privatisation be effected?

Although the Government has indicated that a possibility of privatisation of the Transport Services does exist, no decision has yet been made as to whether any part of the organisation will be privatised. Only successful business units within the organisation could possibly be privatised. At present the possible privatisation of SA Airways and SA Road Transport is being investigated.

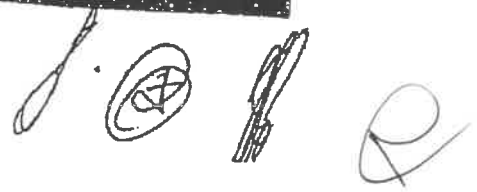
Should it in fact be decided to privatise a business unit within the Transport Services it would be to the advantage of the

personnel concerned.

Employees would, for example, be given the opportunity to purchase shares under favourable conditions.

Should this happen, our employees would consequently benefit since they will then be given the opportunity to purchase shares in a successful business unit.

The Government has not yet decided which successful business units could possibly be privatised. Should such a step be decided on, the employees would derive benefit from it



Where does the road ahead lead to?

Why change?

The Transport Services must keep pace with changes within the transport sector. Private transport businesses endeavour to make profits and they operate their own affairs. To remain competitive in the transport sector, it is essential that the Transport Services adapts itself to this pattern. Therefore, it became necessary for the Government to release the Transport Services from Acts of Parliament which control and protect the organisation.

Consequently the Government decided to convert the Transport Services to a public company (commercialisation). It will probably be registered under the Companies Act as a public company on 1 April 1990. This decision was taken in the interest of the transport industry and the community of South Africa.

A Management Board comprising of the Group General Managers of the Transport Services under chairmanship of the General Manager/Managing Director, will be responsible for the management of the undertaking.

What does the future hold for us?

The Government has not yet decided to privatise any part of the Transport Services. Should it be decided to privatise a successful business unit inside the Transport Services, the employees will derive benefit from it as shares will be made available to them. Our employees can meet the future with peace of mind.

How will the public company be managed?

The Minister of Transport Affairs will retain his role as co-ordinator of all modes of transport in South Africa.

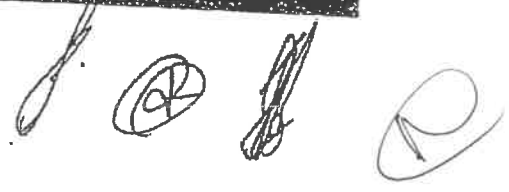
The Minister is empowered to take the necessary steps to ensure that the public company does not act contrary to the strategic and economic interests of the RSA.

Annual statements and the annual report will be submitted to Parliament and will be debated during the Transport vote, instead of a full operating and capital budget. Consequently a separate Transport Services budget debate will no longer be held in Parliament.

A Board of Directors comprising Government and private sector members, as well as the General Manager of the Transport Services, will exercise control over the strategies and financial results of the company.

On the road ahead the Transport Services will be managed in the same way as other public companies

From the following it will be clear that the service benefits of employees will not be impaired and that employees can meet the future with peace of mind



The work environment

Will the work environment also change?

The changes within the Transport Services will soon become visible. The outward appearance of the organisation will change and will result in a change of name, emblem, equipment, uniforms and work environment. The ultimate goal is to increase the pride already present in employees of the Transport Services. This pride will also be expressed when services are rendered to the public. SA Airways already has an established identity and will proceed to do business under this name.

The renewal of the SA Transport Services (when it becomes a public company) will also entail the renewal of the outward image of the organisation. This will involve new uniforms and a positive change in the work environment.

Opportunities to speak

Will I get the opportunity to speak?

The Management of the Transport Services is convinced that the consequences of the formation of a company will not only be to the advantage of its workers corps, but that the undertaking as a whole will function more effectively.

A two-way discussion between the employees and the organisation is a prerequisite and employees must therefore feel free to talk about those things that worry them.

To whom will I be able to speak?

Speak to your colleagues, your supervisor or your head of department, or complete the attached postcard and send it to the Office of the General Manager/Managing Director in Johannesburg.

Page 16
[Handwritten signatures and initials]

Service benefits

How will the new dispensation influence service benefits?

Pension Fund

The service benefits of employees are linked to the Consolidated Service Conditions and will not in any way be changed by the formation of a company. As far as the Pension Fund is concerned, it was established in terms of an Act of Parliament and the Fund is legally committed to pay the benefits to which a member is entitled at the time of his retirement. Benefits will be adjusted only if it is to the advantage of the members. The formation of a company will not change our Pension Fund benefits. The fact that the cash amount is tax-free at the time of termination of service or retirement with pension is not influenced by the formation of a company. It is therefore unnecessary to resign now merely to enjoy the tax-free benefit.

An actuarial calculation of the Pension Fund showed that the Joint Fund will be self-sustained within a couple of years.

The pension acts were amended so that in future we may invest surplus funds in shares and property. This means that the financial position of the Fund will improve even more rapidly.

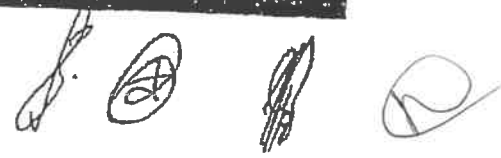
Increases in pension in addition to the 2% adjustments that are given to pensioners from time to time, will in future still be given to

pensioners by the Transport Services and are not affected by the formation of a company.

The Transport Services has an excellent pension fund. The benefits compare very favourably with those of other pension funds in the private sector. In most cases the benefits of our pension fund are better.

The Pension Department is available to advise members and to assist them with their retirement planning.

Pensioners need not worry about the formation of a company. The Transport Services will as in the past continue to grant, over and above the usual 2% increases, larger increases, in order to counteract the effects of inflation



Service benefits

Transmed

Service benefits are linked to the Consolidated Service Conditions and will not be affected by the formation of a company.

The Transport Services employees have the advantage that Transmed is one of the best medical schemes in South Africa. Members have a free choice of suppliers and in most cases pay only 25 % plus the difference between private fees and the scale of benefits for medical services received, as well as a monthly contribution of only R10.

Full Transmed benefits currently apply to Whites only. Employees of other race groups will, however, also be able to share in these benefits within two years.

The Transport Services employees have in Transmed one of the best medical schemes in South Africa

Travel benefits

Travel benefits will not be affected by the formation of a company. Service benefits are linked to the Consolidated Service Conditions and can only be amended through bargaining.

Should Airways, for example, privatise, the travel benefits that, say, harbour employees have at that stage, will continue to exist.

Leave

As in the case of travel benefits, leave will also not be affected by the formation of a company.

The growth in the value of accumulating leave can hold financial benefits for the employees of the Transport Services. The possibility of converting accumulated leave into cash is being investigated.

Naturally the current conditions of leave are an issue, but employees can rest assured that

whatever is decided upon will have the approval of all the parties concerned at the Labour Council.

Employees have the assurance that Management places the interest of the personnel first. Negotiations will be conducted with all the various trade unions regarding any amendment to the extant conditions.

PE 1,13

Service benefits

Housing

Transport Services will, as in the past, continue to lend money to employees at a low interest rate for the purchase of residences. This money will in future be borrowed from the outside market, and not from the Pension Fund.

When the Transport Services becomes a public company, properties will be registered in employees' name. A first mortgage bond will be registered in favour of the Transport Services as security.

Registration of a property in an employee's name means that it will be much easier for an employee to obtain a loan or a second mortgage bond from a bank or building society for improvements to his residence. Monthly installments will still be recovered as is now the case. Employees will be responsible for the direct payment of municipal rates to the local authority concerned.

This arrangement will at first be applicable only to employees who take up loans after the formation of a company.

It will now be easier for employees to buy residences in independent countries and self-governing states as the properties will be registered in their names.

The loans of present participants in any of the schemes will remain unchanged.

When the Transport Services becomes a public company, properties of new borrowers will be registered in the employee's name. This will make it much easier for the employee to obtain a loan or a second mortgage bond from a bank or building society for improvements to his residence. Present participants can rest assured that their loans under any of the schemes will remain unchanged

[Handwritten signatures and initials]

PC 1, 14

Service benefits

Other service benefits

All other service benefits such as bonuses, 13th cheque, etc. not dealt with in this booklet, will not be influenced by the formation of a company. These can be changed by bargaining.

Pensioners

THE PENSIONERS of the SA Transport Services need not worry. The conversion of the Transport Services to a public company will have no influence on pensioners.

As can be deduced from the section on pensions, the company Pension Fund is sound and healthy and there are sufficient funds to pay pensions. In addition to the usual annual 2% increase in pensions, the Transport Services will, as in the past, continue to grant higher increases to enable them to counter the effects of inflation.

Privatisation

The Government has not yet decided on the privatisation of any business unit. Should any of the successful business units be privatised the pensioners of such a unit will not be "privatised" together with the business unit.

Therefore, the total group of pensioners will continue to exist as a unit. When any of the business units are possibly privatised, suffi-

cient funds will be obtained to provide for pension and TRANSMED benefits for that particular group of pensioners.

All arrangements concerning correspondence and travel benefits will remain unchanged.

The pensioners of the SA Transport Services need not worry. The conversion of the Transport Services to a public company will have NO influence on pensioners

Questions which may worry

Did the Government decide to privatise the Transport Services?

No, the Government did not decide to privatise the Transport Services

What then did the Government decide?

The Government only decided to convert the Transport Services to a public company of which the Government will be the sole shareholder. This process is called COMMERCIALISATION.

Why is it necessary for the Transport Services to convert to a company?

Since the national economy has developed far enough, it is necessary for the Government to abandon control over the volume of transport offered. The result is that the Transport Services loses the protection of its traffic and must compete in a free market for its traffic. The best way in which to do this is to convert to a company.

How will this formation of a company or commercialisation affect the service benefits of the personnel?

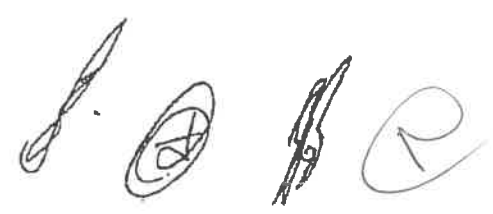
The mere fact that the Transport Services will convert to a public company will not change the service benefits.

Is it possible that there will be privatisation in the future?

The Government has indicated that the Airways and Road Transport Service must be investigated with a view to privatising them but no decision on privatisation has been made.

How will possible privatisation in the future affect the personnel?

Since only financially successful units can be privatised the personnel concerned will be better off rather than worse off. It will therefore be to the advantage of the personnel concerned if the Government decide on privatising Transport Services.



APPENDIX 3: TRUSTEE SURPLUS RESOLUTION

Transnet Pension Fund: Surplus Allocation

Introduction

1. The assets of the Transnet Pension Fund were notionally split between members and pensioners as at 1 April 2000 and run as separate accounts since that date. This was done to allow assets to be restructured for both pensioners and members prior to the establishment of a pensioner only fund and a new defined contribution fund. The notional split was based on the proportional liabilities of the members and pensioners as at 31 March 2000 including an allowance for salary increases which were effective from 16 March 2000 but were only negotiated after 31 March 2000. All members who retired since 1 April 2000 have remained in the member account and are considered to be members, as opposed to pensioners, for the purposes of this document.
2. A non-statutory valuation was undertaken of both the member and pensioner accounts as at 30 June 2000. The member account revealed a surplus of R632 million (or about 4% of liabilities) based on the market value of assets. The surplus allocation discussion relates to the member account only.

Agreement

3. A lengthy debate regarding the surplus took place over about three months culminating at a joint meeting between Transnet and a Sub-committee of the Board of Trustees on 8 November 2000. The following agreement was reached:
 - 3.1. All data errors discovered during the conversion process would be rectified and be a first call on the surplus. Any surplus remaining after the correction of data errors will be allocated as set out below.
 - 3.2. The two parties with a claim to the surplus in the member account are the members and Transnet. By virtue of the asset split as at 1 April 2000, the pensioners claim to any surplus has been addressed.
 - 3.3. The balance of the surplus would be split in the following way:
 - 60% would be applied directly for the benefit of members. The Trustees of the Transnet Pension Fund and Transnet Retirement Fund would have to decide how this is applied in the normal course of exercising their fiduciary duties.
 - 40% would revert to Transnet on the understanding that Transnet utilise its share of the surplus around the two defined benefit pension funds that are underwritten by Transnet i.e. the Transnet Pension Fund and the Transnet Second Defined Benefit Fund. The intention is to innovatively use Transnet's share of the surplus to

enhance these two funds and improve the relationship between Transnet and the members of these funds. The ultimate decision regarding the use of Transnet's share of the surplus will rest with the Board of Transnet.

- 4. It was further agreed that the surplus of R632 million might change significantly before any surplus allocation can be physically implemented but that this would not affect the basis of allocation agreed to above.
- 5. The method of allocating the surplus is a negotiated settlement. The parties listed below are satisfied that it is appropriate.

Signed on this _____ day of _____ 2000

Mr I. Smith
Principal Officer
On behalf of the Trustees of the Transnet Pension Fund

Mr K. Mostert
Trustee

Ms G.T. Serobe
Chairman of the Company Sub-Committee
On behalf of Transnet Limited

Fund for Pensioners must agree to the agreements in the event where the determination of assets takes place before the agreements are signed.

Decision

The Trustees confirmed the decision of the Investment Committee not to reconsider the shareholders agreement and requested that the agreements be concluded before the determination by the State Actuary, anticipated to be 1 December 2000. The Trustees further requested that all parties must make a special effort to be available to sign the agreements.

4.3 Legal Structure

Discussion

Mr Smith provided the Trustees with feedback by indicating that a process has started with the Company to address the issue. Further feedback would be provided when available.

Decision

The Trustees noted the above information and the item was carried over.

4.4 Member Fund Surplus

Discussion

The Trustees noted background by Mr Smith on the negotiation of the surplus. A document, containing the agreement reached between the Company and the DC Sub Committee was circulated to all Trustees. He indicated that the Trustees would be requested to formally authorise someone to accept the resolution on behalf of the Fund.

2

Upon request Mr Smith confirmed that data errors would be addressed before any amount is distributed between the parties (the Fund and the Company). Both parties would be advised should the amount of R32 million reserved for data errors change. A final evaluation would be done on 1 November 2000, at which stage the surplus would accrue and the actual payment would only occur at a later stage.

The Trustees discussed the agreement document comprehensively and upon request by the Chairman on the acceptance thereof Mr Oosthuizen indicated that he did not support the document and requested that the following be recorded in verbatim:

" I do not agree that Transnet should share in the surplus of the member fund for the following reasons:

1. Transnet's record of maintaining the funding level of the fund is extremely poor many times ignoring the advice of the fund's actuary - additional % payment.
2. Reducing the Company's contribution by 4.5% in 1996 when the funding level was far from satisfactory.
3. Been instrumental in reducing the member benefits substantially when total benefits in many cases were unsatisfactory.
4. Manipulating events at Trustee meetings to achieve what's "good for Transnet".
5. The inadequate 4.9% average increase for pensioners for year 2000 when the funding level was at its highest in the history of the fund."

On the actual distribution of the surplus Mr Smith indicated that the DC Sub Committee requested guidance on the issues whether the 60% of the surplus should be split proportionately between members converting to the DC Fund and whether a reserve should be created.

10

Mrs Serobe indicated that the current Trustees should be mindful as to the extend of the discussion and the decision as she believed that the Trustees of the DC Fund should be making this decision.

Mr Mostert supported the view that the surplus be split proportionally between the members.

Messrs. Buck, Hendriks and Geyer supported the suggestion for a reserve to be created in the DC Fund to deal with administration issues.

Mrs Serobe and Mr Van Schoor emphasised that the Trustees should focus on the split of the surplus rather than the actual distribution, which they believe would be the role of the new Trustees of the current and the DC Fund once appointed. Both suggested that the surplus be divided between the members who remained in the current Fund, the members converting to the DC Fund and those who have retired since 1 April 2000. The split must be proportional to conversion.

Decision

The Board noted Mr Oosthuizen's objections and agreed that it was his personal view and the Trustees disassociated them from Mr Oosthuizen's view.

The Trustees approved the amended agreement document relating to the surplus allocation as per Annexure A and mandated Messrs. Smith and Mostert to sign on behalf of the Fund.

The Trustees agreed that the trustees of the various funds must take the decision on the utilisation of the surplus once those trustees are appointed.

R

The split of the surplus must be proportional to members converting to the DC Fund based on liability. The surplus will accrue on 1 November 2000 and physically be distributed on 31 March 2001.

The Trustees commended the DC Sub Committee on a job well done and thanked that Committee for all their efforts.

4.5 Appointment of Auditors

Discussion

The Trustees noted a presentation by Mr Van Schoor on the appointment of auditors for the Fund as requested by the Trustees during the previous meeting. He explained how the rating was determined and proposed based on the results of the investigation that Deloitte and Touche together with APF be appointed as joint auditors of the Fund.

Mr Massey-Hicks requested, in view of the cost aspect, clarity on appointing joint auditors.

Mr Van Schoor confirmed that it might be more expensive to appoint joint auditors but cost is not duplicated and a better service could be obtained.

Decision

The Trustees approved the joint appointment of Deloitte and Touche and APF for the March 2001 auditing cycle. The Trustees further acknowledged that the current auditors would finalise the asset movements between the funds from June 2000 until 31 October 2000.

2

Transnet and that the Trustees would be provided with feedback within the next 4 to 6 months.

Mr Smith confirmed that service level agreements would be concluded between the Administrator and the Trustees of all 3 funds as well as all the Business Units of Transnet. These agreements would address issues such as performance measurement and responsibilities of the different parties. It is expected that discussions on the agreements would commence within the next 6 weeks.

Decision

The Trustees noted the information and approved that the item be suspended rather than removed from the Agenda.

4.3 Distribution of the Surplus

Discussion

Mr Smith explained to the Trustees that this item links up with Item 5.2 and the Trustees agreed to address the issues simultaneously. He indicated that it was necessary to perform an actuarial valuation on 31 October 2000 as a result of the establishment of the Transnet Retirement Fund and the transfer of assets to that Fund. The valuation report inter alia addresses the distribution of the surplus.

The Trustees noted a presentation by Mr Hendriks from NBC on the results of the actuarial valuation as at 31 October 2000 as per Annexure B.

Mr Smith indicated that approval would be required from the Trustees to create the following reserves:

- ◆ R8.5 million for data errors

- ♦ R56.7 million for potential disabilities
- ♦ R16.070 million in respect of over contributions

←

These reserves would be reviewed on 31 October 2001 and should it not be used by that date, the funds would be distributed according to the agreement of 23 November 2000 reached between the Trustees of Transnet Pension Fund and Transnet.

He also indicated that approval from the Trustees would be required for the physical distribution of the balance of the surplus. He confirmed that the utilisation of the surplus to the Transnet Pension Fund would be addressed at a later stage.

Upon request by Mr Joubert the actuaries confirmed that the draft legislation on the distribution of surpluses would have no effect on the required decision by the Trustees.

←

Dr Strydom confirmed that although Transnet indicated the intention to utilise its portion (40%) of the surplus around the benefit of the Fund, legally it may utilise the surplus in any way as determined by the Board of Directors.

Mr St Arnaud requested that the Trustees be kept informed on how the Company utilises its share of the surplus.

Decision

After discussion the Trustees resolved that:

(Handwritten mark)

Based on the Agreement reached between Transnet Pension Fund and Transnet Limited on 23 November 2000 approval is granted for the following:

- A net surplus of R 772.803 million exists in the Fund as at 31 October 2000. This is after the following allowances have been made:
 - R8.5 million for data errors;
 - R 56.7 million for potential disabilities; and
 - R16.070 million in respect of over contributions
 - The above reserves will be reviewed on 31 October 2001 and the unutilised funds will be distributed in accordance to the agreement reached on 23 November 2000 between Transnet Pension Fund and Transnet Limited.
- 40% of this surplus amounts to R309.121 million and is allocated to Transnet.
- The remaining 60% of the surplus represent 2.997% of the liabilities of the Fund. Any transfer of liabilities from the Transnet Pension Fund to the Transnet Retirement Fund will therefore be enhanced by 2.997%.
- R288.818 million must be transferred from the Transnet Pension Fund to the Transnet Second Defined Benefit Fund in respect of pensions commencing between 1 April 2000 and 31 October 2000. The total pensioner account as at 31 October 2000 amounts to R 19 910.736 million and this amount must be transferred to the Transnet Second Defined Benefit Fund as at 1 November 2000.
- The R 16.070 million provision in respect of over-contributions represents 0.298% of the annual pensionable salaries of all members as at 31 October 2000. In respect of members who remained in the Fund this amount should be refunded to Transnet. In respect of members who

converted to the Transnet Retirement Fund this amount should be credited to the Transnet Retirement Fund's reserve account.

- The above approval is subject to confirmation of auditing by the Fund's auditors- PriceWaterhouse Coopers.
- The amounts transferred to the respective parties must include investment return earned since 31 October 2000.
- The Administrator must keep the Trustees informed as to how the Company ~~is~~ utilises its share of the surplus.

4.4 Conversion Feedback

Discussion

The Trustees noted feedback by Mr Mjoli on the conversion process to the Transnet Retirement Fund and the age distribution of Transnet Pension Fund as per Annexure C.

Mr Mkwanazi excused himself from the meeting and Capt. Steenkamp continued as Chairman.

Mr Kotze questioned the minutes of the Trustee meeting of 23 November 2000 which indicate that the Trustees of the Transnet Retirement Fund must approve conversion to that Fund.

Mr Smith confirmed that the Trustees of Transnet Pension Fund have the authority to approve conversion to the Transnet Retirement Fund and proposed that the Secretary investigates if the minutes are correct. Should the minutes be correct a further resolution would be recommended to the Trustees at the next meeting.

(P)