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Ambit of inspector powers under Section 54 of the Mine Health and Safety Act 29 of 1996 clarified

7 December 2016 *3 min read*

At its core the Mine Health and Safety Act No 29 of 1996 ("MHSA") aims to promote a culture of health and safety and protect the health and safety of all persons employed by or at a mining operation.

INTRODUCTION

As commendable as these aspirations are, it has been a bone of contention between the mining industry and the Inspector of Mines as to when it may be justifiable for an inspector to issue a notice in terms of section 54 of the MHSA shutting down an entire mining operation. A decision that falls squarely within the bounds of an administrative action for purposes of the Promotion of Administrative Justice Act 2000.

Some clarity in this regard has been afforded by the recent judgment (4 November 2016) given in the labour court matter of AngloGold Ashanti Limited v Xolile Mbonambi and 6 Others case number J2459/16. The labour court enjoys concurrent jurisdiction with the High Court.

The material facts of the matter are that an inspection occurred on 17 October 2016 of a small area of AngloGold Ashanti's Kopanang Mine in Orkney resulting in six instructions being issued in terms of section 54(1) of the MHSA, the effect of which was to shut down the entire mine site with effect from 17 October 2016 at a loss to AngloGold Ashanti of some R9.5 million per day. The representations made by AngloGold Ashanti fell on deaf ears and on 18 October 2016 three additional instructions were issued. An appeal was lodged on 19 October 2016 with an urgent application being launched on 21 October 2016.

The provisions of section 54(1) require the inspector concerned to establish objectively that a state of affairs would lead a reasonable person to believe that it may endanger the health and safety of any person at the mine and contemplates an instruction that is limited by the extent to which it is necessary to protect the health and safety of persons at the mine.

The standard required of an employer in terms of section 2 of the MHSA is one of reasonable practicality. This standard is compliant with the general common law duty of all employers to provide a reasonably safe work environment. It is accordingly not an absolute standard but one that by its nature and scope requires an objective assessment of the work concerned and the hazards associated with it.

In making the administrative order that works cease at the mine (whether in whole or in part), the inspector must apply a sanction that is proportional to the offence. It was this aspect of proportionality which was lacking in the present case. An objective state of affairs did not exist that would lead a reasonable person to believe that the health and safety of any person at the mine was in jeopardy. The court accordingly suspended the operation of the instructions issued by the inspector pending the outcome of AngloGold Ashanti's appeal.

CONCLUSION

The stance of the inspectorate that it is entitled to close mines on account of minor safety infractions in a single area, without specific reference to objective facts and circumstances that render the entire mining operation unsafe, is incorrect. Those charged with the enforcement of the MHSA must act within the limits of rationality.

Should you have any questions regarding this judgment or any other element of the MHSA, please do not hesitate to contact our offices.

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