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## Essential Services Committee designates certain port services as essential services

### *Essential service – Essential Services Committee – minimum services agreement*

On 26 February 2025, the Essential Services Committee designated certain port services as essential in terms of section 71 of the Labour Relations Act. The application was instituted by the Transnet National Ports Authority (TNPA) and Transnet Port Terminals (TPT), the operating divisions of Transnet SOC Ltd. CTH acted on behalf of the TNPA and TPT.

TNPA administers all commercial ports in South Africa, some of which are national key points. TPT operates the port terminals within seven of the eight commercial ports owned by TNPA. Section 12(h) of the National Ports Act requires TNPA and TPT to “*promote and undertake the necessary measures to enhance safety and security of life and property in ports*”.

On 6 February 2024, the TNPA and TPT applied to the Essential Service Committee (ESC) for a designation that marine, cargo, security, fire and emergency, and dredging services be designated as essential. In terms of section 213 of the LRA, a service will only be designated as essential if its interruption “*endanger[s] the life, personal safety, or health of the whole or any part of the population*”. The application was substantively opposed by the South African Transport and Allied Workers Union and the United National Transport Union.

The principal bases for opposition was that the interruption of the services did not endanger life, personal safety or health, and regardless, replacement labour for these services could be obtained easily during a strike.

The ESC upheld the TNPA and TPT’s application, and designated most of the services as essential. Specifically, it agreed that, if the port services were interrupted, container ships would be unable to berth in South African ports. They would have to anchor outside of the port and may run out of fuel and provisions for crew, or even collide with other vessels.

The ESC also accepted that most container ships carry critical cargo which has to be promptly offloaded. This includes dangerous and hazardous goods which, if not offloaded, could lead to fires or explosions, as well as chronic medication and other pharmaceuticals, the distribution of which the ESC previously designated as essential (ESC Designation No. 469).

The ESC accordingly issued the following designation:

“The following services are designated as essential services:

- (a) Marine Services i.e. marine navigations services, pilotage, towage and berthing;
- (b) Cargo services are designated as essential services only in circumstances where the cargo to be offloaded consists of explosives, gases, compressed, liquified or dissolved under pressure flammable liquids, flammable solids and pharmaceutical products;
- (c) Security services; and
- (d) Firefighting and emergency services.”

In the ruling, the ESC emphasised that the test for the designation of a service as essential is not whether the service provider is essential, but whether the service itself is essential. This accords with the ESC's established jurisprudence. Furthermore, the ESC was satisfied that a link exists between land, waterside, and marine functions within TNPA and TPT. An interruption to any one service would interrupt the entire chain of services.

The effect of this designation is that employees performing these services are prohibited from embarking on industrial action. The ESC further directed the parties to conclude a minimum service agreement, so that only those employees who are absolutely necessary to perform the essential services are prohibited from striking.

The outcome reflects an appropriate balance between the protection of collective bargaining and the right to strike, on the one hand, and the public interest in safety and security.

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