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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON
MR TOKOTA SC
MS HEMRAJ SC

HELD ON

DAY 21 27 NOVEMBER 2012 PAGES 2239 TO 2287

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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1 [PROCEEDINGS ON 27 NOVEMBER 2012]
 2 [09:35] CHAIRPERSON: The Commission resumes. Mr
 3 Bruinders, are you in a position to lead your witness this
 4 morning?
 5 MR BRUINDERS SC: Ja.
 6 CHAIRPERSON: Good. Have you got copies
 7 of the statement for us?
 8 MR BRUINDERS SC: We do.
 9 CHAIRPERSON: Ms Pillay will tell us the
 10 exhibit number, I hope.
 11 MS PILLAY: Chair, I think it's Exhibit
 12 NN
 13 CHAIRPERSON: Thank you, NN. Mr
 14 Bruinders, do you want to make some introductory remarks
 15 before you call your witness or do you just want to put
 16 him, send him to the witness stand?
 17 MR BRUINDERS SC: No, Chair, we call Mr
 18 Mathunjwa.
 19 CHAIRPERSON: Mr Mathunjwa, are you
 20 prepared to take the oath or do you wish to affirm?
 21 MR MATHUNJWA: Yes, I'm prepared to take
 22 an oath.
 23 CHAIRPERSON: Would you stand, please?
 24 Do you swear that the evidence you will give before this
 25 Commission will be the truth, the whole truth and nothing

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1 but the truth. Please raise your right hand and say, I
 2 swear, so help me God.
 3 MR MATHUNJWA: Help me God.
 4 CHAIRPERSON: I swear, so help me God.
 5 JOSEPH VUSI MATHUNJWA: I swear, so help
 6 me God.
 7 CHAIRPERSON: Thank you, you may be
 8 seated.
 9 MR MATHUNJWA: Thank you.
 10 CHAIRPERSON: Yes, Mr Bruinders?
 11 EXAMINATION BY MR BRUINDERS SC: Thank
 12 you. Good morning again, Mr Mathunjwa.
 13 MR MATHUNJWA: Good morning.
 14 MR BRUINDERS SC: Mr Mathunjwa, can I ask
 15 you, when you do give your answers, to speak up
 16 sufficiently so that you can be heard over the system.
 17 MR MATHUNJWA: Thank you.
 18 MR BRUINDERS SC: Mr Mathunjwa, you are –
 19 CHAIRPERSON: What are your full names?
 20 MR MATHUNJWA: My full name is Joseph
 21 Vusi Mathunjwa.
 22 CHAIRPERSON: Thank you.
 23 MR BRUINDERS SC: Mr Mathunjwa, you are
 24 the President of AMCU?
 25 MR MATHUNJWA: That's correct.

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1 MR BRUINDERS SC: You made a statement
 2 which we handed up to the commissioners this morning, did
 3 you not?
 4 MR MATHUNJWA: That's correct.
 5 MR BRUINDERS SC: Is your statement true
 6 and correct?
 7 MR MATHUNJWA: Yes, it's true and
 8 correct.
 9 MR BRUINDERS SC: Do you confirm that
 10 under oath?
 11 MR MATHUNJWA: Yes, I do confirm.
 12 MR BRUINDERS SC: I would like to start
 13 this morning by asking you a few questions about the demand
 14 of the rock drill operators, may I?
 15 MR MATHUNJWA: Yes, you may proceed.
 16 CHAIRPERSON: Mr Bruinders, where is that
 17 in the statement or is it not – I just ask you that because
 18 if it isn't in the statement then I must write it down but
 19 if it's somewhere in the statement, if you can refer us to
 20 the relevant paragraph number so we can follow.
 21 MR BRUINDERS SC: It's referred to
 22 peripherally in the statement, sir. I suppose you'd better
 23 take a note about this.
 24 CHAIRPERSON: Thank you.
 25 MR BRUINDERS SC: We've all heard that

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1 the demand was a demand for an increase to R12 000,00,
 2 R12 500,00 a month, not so?
 3 MR MATHUNJWA: Yes, we heard about it.
 4 MR BRUINDERS SC: Whose demand was that?
 5 MR MATHUNJWA: That was workers' demand.
 6 MR BRUINDERS SC: Which workers?
 7 MR MATHUNJWA: Lonmin workers.
 8 MR BRUINDERS SC: And what category of
 9 workers were they?
 10 MR MATHUNJWA: Those were referred to as
 11 rock drill operators.
 12 MR BRUINDERS SC: The rock drill
 13 operators who are employed at Lonmin, are they members of
 14 trade unions?
 15 MR MATHUNJWA: Yes, I believe that some
 16 they belong to trade unions.
 17 MR BRUINDERS SC: And when you say some
 18 belong to trade unions, which trade unions are those?
 19 MR MATHUNJWA: I'll refer to our trade
 20 union, AMCU, Association of Mineworkers and Construction
 21 Union, and I also believe some they belong to National
 22 Union of Mineworkers.
 23 MR BRUINDERS SC: When did you first hear
 24 – I beg your pardon, before I ask that – you say that the
 25 demand was the demand of the rock drill operators.

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1 MR MATHUNJWA: That's correct.
 2 MR BRUINDERS SC: Who formulated the
 3 demand?
 4 MR MATHUNJWA: I believe the workers
 5 themselves.
 6 MR BRUINDERS SC: What role did AMCU play
 7 in the formulation of that demand?
 8 MR MATHUNJWA: No role whatsoever AMCU
 9 played into those demands.
 10 MR BRUINDERS SC: When was the first time
 11 that you got to hear about the demand for an increase to
 12 12 500 a month by rock drill operators at Lonmin?
 13 MR MATHUNJWA: I first heard on the 13th
 14 of August 2012.
 15 MR BRUINDERS SC: Before we deal with
 16 what you heard on the 13th, can I ask you to go back just a
 17 little bit please?
 18 MR MATHUNJWA: Okay.
 19 MR BRUINDERS SC: Before the 13th, were
 20 there exchanges between you and Lonmin management about
 21 rock drill operators?
 22 MR MATHUNJWA: Yes. Towards the end of
 23 July I received a call coming from one of the senior
 24 managers by the name of Barnard Mokwena, alerting me that
 25 he heard the rumour that there will be workers who will be

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1 marching, bringing the memorandum.
 2 MR BRUINDERS SC: Did you say –
 3 CHAIRPERSON: I'm sorry to interrupt you,
 4 Mr Bruinders. What the witness is now testifying about
 5 appears to be covered by paragraphs 5 and – sorry, 12 and
 6 following –
 7 MR BRUINDERS SC: Correct.
 8 CHAIRPERSON: On page 5.
 9 MR BRUINDERS SC: That's correct. You do
 10 have your statement in front of you?
 11 MR MATHUNJWA: Yes, I do.
 12 CHAIRPERSON: Could I interpose for a
 13 moment and just ask him a question about something that
 14 happened before that, before you then carry on with the
 15 narrative? Were you aware of the fact that there had been
 16 an earlier increase granted by another platinum mine in the
 17 area, Implats, in respect of which I think was – we'll have
 18 evidence on it, presumably but I think it was in respect of
 19 rock drill operators. Do you know anything about that?
 20 MR MATHUNJWA: Yes, I heard about that.
 21 CHAIRPERSON: Mr Interpreter, it's not
 22 Amplats, it's Implats - Impala Platinum, not Anglo American
 23 Platinum. Am I correct in thinking it was an increase
 24 granted to rock drill operators?
 25 MR MATHUNJWA: That is what I heard, yes.

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1 CHAIRPERSON: As far as you're aware, did
 2 that lead to a desire on the part of rock drill operators
 3 at other platinum mines to get a similar increase?
 4 MR MATHUNJWA: I cannot testify to that
 5 effect, it would be just a speculation.
 6 CHAIRPERSON: Thank you, Mr Bruinders,
 7 that was the matter I wanted to cover before you proceed
 8 with the evidence you're now going to lead.
 9 MR BRUINDERS SC: Thank you, Chair. I
 10 asked whether you had your statement in front of you.
 11 MR MATHUNJWA: Yes, I do have.
 12 MR BRUINDERS SC: And as the Chair
 13 pointed out, we're now dealing with that part of your
 14 statement that you find at paragraphs 12 through to 14 of
 15 your statement. I'm not going to ask you to read that, I
 16 simply want to pick up on a few things that arose out of
 17 your exchange with Mr Mokwena. Now you say this was a
 18 telephone call?
 19 MR MATHUNJWA: That's correct.
 20 MR BRUINDERS SC: And after he alerted
 21 you to the fact that there was possibly going to be a march
 22 where people were going to deliver a memorandum, what did
 23 you say to him?
 24 MR MATHUNJWA: I advised him that he
 25 should arrange an urgent meeting with all stakeholders,

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1 referring to AMCU, NUM, Solidarity and UASA.
 2 MR BRUINDERS SC: The stakeholders that
 3 you talk of are all trade unions at Lonmin?
 4 MR MATHUNJWA: Yes.
 5 MR BRUINDERS SC: What was Mr Mokwena's
 6 response to your request?
 7 MR MATHUNJWA: In actual fact I – sorry,
 8 in fact he said to me he will communicate with the general
 9 secretary of National Union of Mineworkers, Mr Frans
 10 Baleni, and then he will revert back to me.
 11 MR BRUINDERS SC: Did Mr Mokwena come
 12 back to you about this meeting that you proposed he call?
 13 MR MATHUNJWA: No, he never returned back
 14 to me.
 15 MR BRUINDERS SC: Now when you say he
 16 never returned back to you, do you mean he never returned
 17 back to you about that proposal or that he never returned
 18 back to you at all during this period?
 19 MR MATHUNJWA: He never returned back to
 20 me with the proposal of the meeting.
 21 MR BRUINDERS SC: This was an exchange in
 22 late July, not so?
 23 MR MATHUNJWA: That's correct.
 24 MR BRUINDERS SC: When did you next hear
 25 from Mr Mokwena?

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1 MR MATHUNJWA: I heard from Mr Mokwena on
 2 the 10th of August 2012.
 3 MR BRUINDERS SC: Did he telephone you
 4 again?
 5 MR MATHUNJWA: Indeed.
 6 MR BRUINDERS SC: What did he tell you?
 7 MR MATHUNJWA: Mr Mokwena advised me that
 8 there are people who will be marching, that will be
 9 bringing the memorandum to them.
 10 MR BRUINDERS SC: Did he say anything
 11 else about this memorandum or the march?
 12 MR MATHUNJWA: He said he was not in the
 13 position to receive that memorandum, it will be received by
 14 the SAPS.
 15 MR BRUINDERS SC: When he told you that
 16 there was a march that day, did he tell you who was on the
 17 march?
 18 MR MATHUNJWA: No, he said he doesn't
 19 know those people who are at the march.
 20 MR BRUINDERS SC: Did you say anything to
 21 Mr Mokwena?
 22 MR MATHUNJWA: Yes, and then I reminded
 23 him of my earlier discussion around July, saying you phoned
 24 me and subsequent to that I made a proposal for an urgent
 25 meeting, which that meeting never took place. And I

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1 therefore again requested him that upon receipt of such
 2 memorandum, would you please arrange an urgent meeting
 3 again with all the stakeholders, namely, our union AMCU,
 4 NUM, Solidarity and UESA and I also advised him that we
 5 needed to meet and this must not set any precedents that
 6 the memorandum will be received by police. He must tell
 7 the police that he will be receiving that memorandum, must
 8 tell those workers that this does not set any precedents
 9 whatsoever. It should have to be dealt with in the
 10 structures within the company and I therefore –
 11 CHAIRPERSON: In your career as a trade
 12 unionist, have you ever come across a situation before
 13 where an employer has refused to receive a memorandum from
 14 workers and said it must be received by the police instead?
 15 MR MATHUNJWA: That was my first
 16 experience. After that I then wrote him a letter.
 17 MR BRUINDERS SC: Can we stop there and
 18 ask the interpreter to interpret and make sure that the
 19 Commission gets copies of your letter.
 20 CHAIRPERSON: This will be Exhibit OO,
 21 unless you want to make it – are there more letters? In
 22 which case we could make it OO1 and then run through. No,
 23 we've already got NN, so the next exhibit number is OO but
 24 what I'm saying to you is, if you're going to hand in a
 25 number of letters or documents that all relate to the same

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1 topic, it might be – otherwise we'll run out of letters –
 2 we might make it OO1 through to OO7 and beyond.
 3 MR BRUINDERS SC: There won't be a lot
 4 but there will be some more letters, not on the same topic
 5 but I suppose it is a very reasonable suggestion you made,
 6 Chair, so we –
 7 CHAIRPERSON: I always try to make
 8 reasonable suggestions, I don't always succeed.
 9 [09:55] MR BRUINDERS SC: Can we hand up three
 10 copies for the Commission and then one for Mr Mathunjwa, he
 11 doesn't have a copy. Commissioner, do you have a copy? Mr
 12 Mathunjwa, is that the letter that you sent off on 10
 13 August 2012?
 14 MR MATHUNJWA: That's correct.
 15 MR BRUINDERS SC: Please read it into the
 16 record?
 17 MR MATHUNJWA: Thank you. The letter
 18 dated the 10th of August 2012, attention Mr Barnard Mokwena,
 19 EVP Human Capital and External Affairs, Lonmin Platinum,
 20 Karee Mine and the e-mail, "Dear Sir, Re employees marching
 21 at Lonmin. The above matter refers. Our telephonic
 22 conversation today, the 10th of August 2012 refers. As AMCU
 23 we are not aware of any march directed to the employer. We
 24 only knew about this when you made this telephonic
 25 conversation. However, as AMCU we propose that whoever

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1 will be receiving the memorandum must inform marshals that,
 2 by receiving such memorandum, does not set any precedent."
 3 Bullet 2, "Any employee who forms part of this gathering we
 4 believe belongs to an a) trade union which is recognised by
 5 management and its branch structure. For non-unionised
 6 employees there are management structures dealing with
 7 grievances. Hence, if there are issues of concern, should
 8 be communicated via such structures. This memorandum will
 9 be communicated by management to respective recognised
 10 unions and a meeting will be co-ordinated to discuss the
 11 content of the memorandum." Turn over the page.
 12 "Thereafter, the outcome of such consultation will be
 13 communicated back to the members through union structures,
 14 including mass meetings. We urge management not to take
 15 extreme measures in addressing this predicament by not
 16 giving undue recognition to these sinister forces which are
 17 not known to ourselves. As AMCU we suspect that there are
 18 forces behind this which, as leaders, we must address
 19 amicably. All our rights and that of our members are
 20 reserved. Yours in social justice, Mr Joseph Mathunjwa,
 21 President."
 22 MR BRUINDERS SC: Commissioners, the
 23 letter is at page 106 of the AMCU bundle.
 24 CHAIRPERSON: Yes, I assumed that because
 25 I see the letter is 106 in the – or rather the number is

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1 106 on the top right hand corner.
 2 MR BRUINDERS SC: You might, but I don't
 3 think that the rest of my colleagues have a copy of it in
 4 front of them, so it's for their benefit that I mention -
 5 CHAIRPERSON: Do they have copies of the
 6 bundle?
 7 MR BRUINDERS SC: They do.
 8 CHAIRPERSON: I see.
 9 MR BRUINDERS SC: Yes. Mr Mathunjwa, you
 10 sent this letter off to Mr Mokwena?
 11 MR MATHUNJWA: That's correct.
 12 MR BRUINDERS SC: Did Mr Mokwena, in
 13 response to this letter, organise a meeting as you
 14 proposed?
 15 MR MATHUNJWA: No, there was no response
 16 from this letter.
 17 MR BRUINDERS SC: Can I now ask you to -
 18 whether, I beg your pardon, I can ask you some questions
 19 about a strike by the rock drill operators that started, it
 20 appears, on the 10th of August 2012. Lonmin brought an
 21 application to interdict what it called an unlawful strike
 22 on 10 August 2012, not so?
 23 MR MATHUNJWA: That's correct.
 24 MR BRUINDERS SC: When did you hear that
 25 Lonmin had brought that application?

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1 MR MATHUNJWA: The office phoned me on
 2 the very same day, maybe during lunch time if I'm not
 3 mistaken.
 4 MR BRUINDERS SC: Where were you when you
 5 were telephoned?
 6 MR MATHUNJWA: I was not at the office.
 7 MR BRUINDERS SC: What were you told by
 8 your office?
 9 MR MATHUNJWA: They informed me that they
 10 have received a document from Lonmin with - an application.
 11 MR BRUINDERS SC: Did you get to see
 12 those documents on the 10th?
 13 MR MATHUNJWA: No, I didn't see the
 14 documents on the 10th.
 15 MR BRUINDERS SC: Did you get to see them
 16 on that weekend?
 17 MR MATHUNJWA: No, I never returned back
 18 to the office.
 19 MR BRUINDERS SC: I asked whether you saw
 20 them on the weekend because if I'm not mistaken the 10th
 21 would've been a Friday, not so?
 22 MR MATHUNJWA: That is correct.
 23 MR BRUINDERS SC: What, if anything, did
 24 AMCU do about this application that had been brought by
 25 Lonmin?

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1 MR MATHUNJWA: Can you repeat your
 2 question again?
 3 MR BRUINDERS SC: What, if anything, did
 4 AMCU do about this application brought by Lonmin?
 5 MR MATHUNJWA: From our - among ourselves
 6 we phoned the respective structures referring to the NEC
 7 members, that we have received such document and as AMCU we
 8 will never oppose it.
 9 MR BRUINDERS SC: Why not?
 10 MR MATHUNJWA: The reason was to prevent
 11 the ongoing unlawful strike.
 12 MR BRUINDERS SC: When you say the reason
 13 was to prevent the unlawful strike, what do you mean?
 14 MR MATHUNJWA: Yes, we couldn't stand in
 15 the way where the company wants to prevent something that
 16 is not lawful.
 17 CHAIRPERSON: You are saying that you
 18 didn't- that you decided not to oppose the application
 19 because you were not aware that there was any defence that
 20 could be raised to it because the strike was unprotected?
 21 MR MATHUNJWA: Yes and also as AMCU we
 22 never called any strike, as far as the union is concerned.
 23 MR BRUINDERS SC: Do you know who called
 24 a strike at Lonmin on the 10th?
 25 MR MATHUNJWA: I don't know who called

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1 the strike but I will believe it's the workers themselves.
 2 MR BRUINDERS SC: What role did AMCU play
 3 in the calling of that strike started on that Friday by the
 4 workers?
 5 MR MATHUNJWA: We never played any role
 6 in calling of the strike.
 7 MR BRUINDERS SC: When did you get to
 8 know more about the strike?
 9 MR MATHUNJWA: I think I happened to know
 10 more in detail on the 13th of August 2012.
 11 MR BRUINDERS SC: That was the Monday?
 12 MR MATHUNJWA: That's correct.
 13 MR BRUINDERS SC: And what - well, did
 14 you hear from Lonmin on that Monday?
 15 MR MATHUNJWA: No, on Monday we received
 16 a call again from Lonmin, yes.
 17 MR BRUINDERS SC: I see. Who received
 18 the call?
 19 MR MATHUNJWA: I received the call.
 20 MR BRUINDERS SC: And from whom did you
 21 receive the call?
 22 MR MATHUNJWA: The call I received from
 23 Mr Jomo Kwadi.
 24 MR BRUINDERS SC: And what did he tell
 25 you?

<p style="text-align: right;">Page 2255</p> <p>1 MR MATHUNJWA: He asked for the 2 intervention and said that there's violence at the mine, so 3 we – 4 MR BRUINDERS SC: Commissioners, for your 5 benefit, we're now at paragraph 23 of the statement. 6 CHAIRPERSON: Thank you. 7 MR BRUINDERS SC: So he phoned and asked 8 for your intervention because there was violence. So what 9 did you say? 10 MR MATHUNJWA: Then I asked him about 11 other leaders, where were other leaders of other 12 organisations and then he said to me they had those leaders 13 on the previous day, which was on Sunday the 12th of August 14 2012, and therefore I asked him why we were not invited 15 because we requested the meeting, we even sent the letter 16 to yourselves on the 10th. Then there was no answer, but 17 subsequent to that, since there were other few comrades in 18 the office, I called an urgent meeting quickly. Then I 19 explained the call that I've received from Lonmin by Mr 20 Kwadi, Jomo Kwadi. 21 MR BRUINDERS SC: Can I, before we deal 22 with the rest of the events of the 13th, ask you this - did 23 Lonmin make an attempt to try and get hold of you on the 24 weekend? 25 MR MATHUNJWA: I would say, but I</p>	<p style="text-align: right;">Page 2257</p> <p>1 call from Mr Kwadi. 2 MR MATHUNJWA: That's correct. 3 MR BRUINDERS SC: And what did you decide 4 as a result of those discussions? 5 MR MATHUNJWA: Then I recommended that 6 comrade general secretary and the national organiser should 7 leave for Lonmin. 8 MR BRUINDERS SC: And who are these two 9 people? 10 MR MATHUNJWA: The general secretary is 11 Jeffrey Mphahlele. 12 CHAIRPERSON: Could you spell that, 13 please? 14 MR BRUINDERS SC: Could you spell 15 Mphahlele, please? 16 MR MATHUNJWA: It's M-P-H-A-H-L-E-L-E. 17 The second one was Dumisane Nkalitshani, national 18 organiser. 19 MR BRUINDERS SC: You'll have to spell 20 that as well, I'm afraid. You're going to have to spell 21 that as well. 22 MR MATHUNJWA: Dumisane or Nkalitshani, 23 which? 24 MR BRUINDERS SC: Nkalitshani. 25 MR MATHUNJWA: It's N-K-A-L-T-S-H- sorry</p>
<p style="text-align: right;">Page 2256</p> <p>1 realised that there was an SMS that was forwarded to 2 myself, I think that was on Sunday but I only realised that 3 SMS in the course of the week. It happened not for me to 4 see it. That was from Mr Barnard Mokwena. 5 MR BRUINDERS SC: Did you not see the SMS 6 on Sunday, you say? 7 MR MATHUNJWA: Yes, that's correct. 8 MR BRUINDERS SC: And you say you saw it 9 later in the week. Do you recall when that was? 10 MR MATHUNJWA: I cannot specifically 11 recall. 12 MR BRUINDERS SC: And do you remember 13 what the SMS said? 14 MR MATHUNJWA: Yes, I think I could 15 remember. 16 MR BRUINDERS SC: Will you tell the 17 Commission what it said? 18 MR MATHUNJWA: The SMS, if I could 19 recall, was saying, "Hey broer, there are four people shot 20 at Wonderkop, so therefore call an urgent meeting with your 21 members," something to that effect. I might not be 100% 22 but it was to that effect. 23 MR BRUINDERS SC: Can we go forward to 24 the 13th again? You say that you spoke to your, some of the 25 members of your trade union at the head office about the</p>	<p style="text-align: right;">Page 2258</p> <p>1 – it's N-K-A-L-I, Nkali, T-S-H-A-N-I. 2 MR MADLANGA SC: They are mentioned in 3 paragraph 20(a) of his statement, Mr Chairman. 4 [10:15] MR BRUINDERS SC: Sir – 5 MR MATHUNJWA: Yes, on page 7, thank you. 6 MR BRUINDERS SC: You asked them to go to 7 Lonmin? 8 MR MATHUNJWA: That's correct. 9 MR BRUINDERS SC: For what purpose? 10 MR MATHUNJWA: To go and find out about 11 the call we received from management and then I also 12 mentioned that they must, they need to meet the branch 13 committee and also meet the management as per their 14 request. 15 MR BRUINDERS SC: Did you go with them to 16 Lonmin? 17 MR MATHUNJWA: No, didn't go with them. 18 MR BRUINDERS SC: Did they report back to 19 you on their visit to Lonmin on the 13th? 20 MR MATHUNJWA: Yes, they did report on 21 the following day which was on the 14th, the morning of the 22 14th of August 2012. 23 MR BRUINDERS SC: We're now moving on to 24 paragraph 27 of the statement. On that day, Mr Mathunjwa, 25 what did they report to you?</p>

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1 MR BURGER SC: Chair, just before that
 2 question is answered, may I ask through you, my learned
 3 friend and I have agreed that the witness will give
 4 evidence on the basis that my side will file statements
 5 which might deal with his evidence. Can I ask whether
 6 these witnesses referred to are to be called and whether we
 7 will see statements from them or whether this is hearsay
 8 from the witness? I don't object but in fairness, I'd like
 9 to know what I'm facing.

10 CHAIRPERSON: It seems a fair request, Mr
 11 Bruinders, are you able to respond to it now?

12 MR BRUINDERS SC: We haven't file
 13 statements for those two witnesses.

14 CHAIRPERSON: We wish to know – we know
 15 that – the question is, are you going to because Mr Burger
 16 says he needs to know that so he can arrange his affairs
 17 accordingly, as I understand it.

18 MR BRUINDERS SC: I'd have to take an
 19 instruction on whether we're going to file because the
 20 purpose of filing a statement would be because we're going
 21 to call them –

22 CHAIRPERSON: No, no, but there's a
 23 further point that arises. What Mr Burger is also saying
 24 is, if you're not going to file such statements and
 25 presumably call the witnesses if necessary, if there's a

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1 dispute, then the evidence that the witness is now going to
 2 give will be hearsay and you will object to it on that
 3 basis, as I take it. He nods his head, so I'm correct. So
 4 it's important to know whether, what you're going to do in
 5 this regard otherwise I will have to deal with an objection
 6 based on the fact that the evidence he's now going to give
 7 is hearsay. Obviously he can give hearsay if the people
 8 whose statements he's reporting are going to be called, or
 9 if statements are presented, filed from them with which Mr
 10 Burger's side agree, in which case obviously there won't be
 11 a problem. That's the point Mr Burger raises and I don't
 12 know how we can deal with it. One way to deal with it
 13 might be, I suppose, to go on to something else for the
 14 moment until you receive those instructions during the tea
 15 adjournment, but also it may not be possible for you, in
 16 presenting the narrative, to do it that way. I don't know.

17 MR BRUINDERS SC: Well, the other way to
 18 deal with it, Mr Chair, is that he gives evidence about not
 19 the report, not because he wants to prove the truth of its
 20 contents but because he wants to give evidence as to what
 21 happened as a result of that report being given which is,
 22 at this stage, the point of the narrative.

23 CHAIRPERSON: Mr Burger?

24 MR BURGER SC: We'll object to that.
 25 We're in the public eye and we've had unfortunate

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1 experiences of statements being published here and we
 2 haven't seen any supporting evidence. So if my learned
 3 friend wants to lead evidence –

4 CHAIRPERSON: I'll tell you what, I'll
 5 take a short adjournment, Mr Bruinders and you can then
 6 discuss the matter, he will tell you what the report is
 7 that is going to be given by his client – it won't
 8 obviously be part of the formal proceedings of the
 9 Commission. You may well find that it's not of a nature to
 10 cause you concern, in which case he can carry on,
 11 alternatively we can deal with it further in the light of
 12 the discussion that you have.

13 MR BURGER SC: Chair, that's not going to
 14 be of assistance. I know what the report is, it's in the
 15 statement. I would object to that, if that evidence was to
 16 be tendered without a supporting statement. That's why –
 17 we realised last night that we haven't seen these
 18 statements and that's why I raise it before the evidence is
 19 given into the open. Paragraph 28 –

20 CHAIRPERSON: Mr Bruinders, I think as a
 21 matter of fairness, Mr Burger is correct and I must uphold
 22 his objection. Do you wish to take the instructions that
 23 you were talking about now, in which case I'll give you a
 24 short adjournment to do that?

25 MR MADLANGA SC: Mr Chairman, may I ask

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1 to make a submission on this subject, please?

2 CHAIRPERSON: Yes.

3 MR MADLANGA SC: Thank you. Mr Chairman,
 4 I take a different view to the submission made by Mr
 5 Burger. My understanding is that in Commission hearings
 6 hearsay evidence is admissible. The only issue would just
 7 be the question of the weight to be attached to the
 8 evidence. May I refer to a decided case on the matter, the
 9 case of –

10 CHAIRPERSON: You are correct –

11 MR MADLANGA SC: Yes.

12 CHAIRPERSON: But it's a question of
 13 weight. Also in terms of the regulations, I have a
 14 discretion to disallow evidence and so I would be able to
 15 rule, even though it's hearsay - even though it technically
 16 could be admissible in the Commission, it wouldn't be
 17 appropriate to do so, depending upon the prejudicial nature
 18 of the statement. But I don't want to interrupt you but
 19 that's just my –

20 MR BRUINDERS SC: Can I make –

21 CHAIRPERSON: - response to what you
 22 said.

23 MR BRUINDERS SC: Can I relieve all of
 24 you of your pain? I'll move on and we'll deal with that
 25 later on. I don't want to – I'm not going to lead that

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1 evidence, the report, I'll move on to the next issue and
 2 insofar as we –
 3 CHAIRPERSON: Well, that's what I
 4 suggested. You carry on with something else and you can
 5 come back to this after tea if you've sorted out the
 6 problem that's been referred to.
 7 MR BRUINDERS SC: Yes.
 8 CHAIRPERSON: Mr Madlanga, I don't know
 9 if there's anything further you want to say. I didn't want
 10 to be discourteous to you.
 11 MR MADLANGA SC: Yes. No, I just wanted
 12 to say I hear you, Mr Chairman, when you say you have a
 13 discretion. That's a totally different matter and Mr
 14 Burger's approach was not addressing itself to the
 15 discretion that you have, it was proceeding on the basis
 16 that hearsay evidence can be objected to in the same way as
 17 - at least as I understood the submission – the same way
 18 that one can do that in a court of law. All that I wanted
 19 to place before the Commission is that that is the wrong
 20 way of going about it, hearsay evidence is admissible.
 21 Then the issue of a colleague then saying, but because this
 22 will be prejudicial for A, B, C, D reasons and I ask the
 23 Commission to then exercise a discretion, totally different
 24 matter and I was at the point where I wanted to refer to
 25 the decided case. I don't know whether that's worth

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1 anything, seeing that the Commission can –
 2 CHAIRPERSON: It may be, seeing the point
 3 has been raised now, to refer to the case.
 4 MR MADLANGA SC: Yes.
 5 CHAIRPERSON: This problem may well arise
 6 from time to time in the future of the Commission and let's
 7 get the law on the point.
 8 MR MADLANGA SC: It's the matter of
 9 Bongoza, that's B-O-N-G-A-Z-A, v Minister of Correctional
 10 Services & Others 2002 (6) SALR 330 (Tk), it's a judgment
 11 of Mr Justice Jafta in which he relies on an oldish
 12 judgment by Innes, I'm not sure whether Innes JA or Innes
 13 CJ, I'm not sure what he was at the time but basically –
 14 CHAIRPERSON: Any judgment of Innes JA or
 15 CJ is always of the highest authority.
 16 MR MADLANGA SC: Yes, yes but – yes, what
 17 the principle really in those two cases is, that virtually
 18 anything goes – you can admit newspaper cuttings, hearsay
 19 evidence and so on and so it will just be a question of
 20 weight. Thank you, thank you commissioners.
 21 CHAIRPERSON: The point doesn't need
 22 further discussion at the moment but I'm glad that you
 23 raised the point as you did. It may require consideration
 24 after the tea adjournment. Yes, Mr Bruinders, continue
 25 then on the basis that you've suggested, avoiding this

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1 section of the evidence including the direct –
 2 MR BRUINDERS SC: Thank you, Chair, and
 3 we are indebted to Mr Madlanga for pointing that out. Mr
 4 Mathunjwa, you say that you met with your colleagues who'd
 5 gone off to Lonmin on the morning of the 14th.
 6 MR MATHUNJWA: That's correct.
 7 MR BRUINDERS SC: What did you decide to
 8 do at the end of that meeting?
 9 MR MATHUNJWA: We decided to call a press
 10 conference.
 11 MR BRUINDERS SC: Why?
 12 MR MATHUNJWA: It was based on the report
 13 and based on what is being said on the media.
 14 MR BRUINDERS SC: Did you, for the
 15 purpose of your press conference, release a media
 16 statement?
 17 MR MATHUNJWA: Yes indeed.
 18 MR BRUINDERS SC: Commissioner, can I ask
 19 that the media statement be handed up?
 20 CHAIRPERSON: Yes. That'll be OO7, it's
 21 OO2. I don't know why I –
 22 MR BRUINDERS SC: You're rather quick on
 23 the draw this morning, sir.
 24 CHAIRPERSON: Pardon?
 25 MR BRUINDERS SC: You're rather quick on

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1 the draw this morning.
 2 CHAIRPERSON: Yes, I'm afraid so. OO2.
 3 MR MADLANGA SC: You've got a licence to
 4 kill, Mr Chairman.
 5 CHAIRPERSON: No, yesterday's evidence.
 6 MR BRUINDERS SC: Thank you. Do you have
 7 the media statement in front of you, Mr Mathunjwa?
 8 MR MATHUNJWA: That's correct.
 9 MR BRUINDERS SC: Could I please ask you
 10 to read it out?
 11 MR MATHUNJWA: "Date 14 August 2012,
 12 Media release statement. Good morning ladies and
 13 gentlemen, you are welcome to this urgent media briefing
 14 following the violent incident that took place at Lonmin
 15 platinum mine which left nine people murdered and others
 16 severely injured. We want to apologise for the short
 17 notice but due to the numerous enquiries from various media
 18 representatives wanting to know our position on the matter,
 19 we felt it is proper that we react quickly than later,
 20 hence we organised this gathering. Before we address you
 21 on the incident let me, on behalf of AMCU NEC and members
 22 at large pass our sincere condolences to the families,
 23 friends, relatives and colleagues of these employees who
 24 were unfortunately killed. As AMCU we condemn these
 25 killings with the strongest terms it deserves. We do not

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1 believe that any form of violence can bring about changes
 2 at the workplace, nor it can benefit anyone. May their
 3 souls rest in peace. Now let me deal with the issue of
 4 Lonmin workers' demands. During mid-July we received a
 5 telephone call from the middle management of Lonmin
 6 Platinum who stated that they got rumours that RDOs were
 7 planning to make salary adjustment demands on their own.
 8 We immediately advised the management not to set a
 9 precedent by trying to entertain these individual demands
 10 but urged management to be proactive and co-ordinate an
 11 urgent meeting for all recognised unions so that this issue
 12 will be dealt with speedily to avoid similar situations as
 13 it happened at Impala Platinum.

14 Subsequent to that call, Mr Barnard Mokwena, who
 15 is a senior group HR director, also phoned saying the same
 16 thing. We again urged him to arrange a meeting but
 17 unfortunately mid-management kept quiet afterwards. All of
 18 a sudden, we were informed by our branch executive members
 19 at Lonmin that management is urging RDOs on the matter and
 20 that some offers have been made, which was rejected by
 21 RDOs. This happened despite our appeal to Lonmin
 22 management to deal with the trade unions on the matter.

23 Last week Friday we received information that all
 24 RDOs had decided to submit a memorandum to Lonmin
 25 management in the form of a march. They all gathered

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1 together at Karee and proceeded to Wonderkop Mine to meet
 2 with the RDOs there so that they will all proceed to the
 3 stadium where the memorandum will be handed over. While
 4 passing at Wonderkop Mine, we were told that people who
 5 came out of NUM office wearing NUM T-shirts opened fire to
 6 marchers and one worker was killed on the spot, while
 7 others were wounded and taken to hospital. Workers have
 8 seen the culprits and can identify them by names. That
 9 incident led to the eruption of the violence and more
 10 deaths at the mine.

11 AMCU has got nothing to do with neither the
 12 killings nor behind the demands by the RDOs. We have got
 13 nothing to do with the demands. However, since the demands
 14 are there, it is our belief that the parties should
 15 constructively engage on them and find a common ground in
 16 order for the mine to resume its operation.

17 As stated on the numerous occasions in the past,
 18 we as AMCU believe in peaceful engagement in whatever
 19 labour related matters. Where parties do not agree, they
 20 should follow a legitimate dispute resolution mechanism
 21 involving CCMA or other agreed private processes. We
 22 always make use of these processes. We cannot all of a
 23 sudden resort to violent tactics to pursue our demands in
 24 the platinum mines.

25 Without laying any blame to anyone, but it is

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1 important to state that we also suspect some sinister
 2 forces behind this situation. Before the report about
 3 RDOs' demands, we learn that NUM started an intensive
 4 campaign where they said, reclaiming Lonmin back. This
 5 campaign is ongoing and it is even involving top officials
 6 from the ruling party. These top officials have been
 7 conducting mass meetings with workers, saying all bad
 8 things about AMCU and urging workers to go back to NUM.
 9 Who knows, maybe it is part of the strategy and later blame
 10 AMCU for all the bad things in order for AMCU to be
 11 portrayed as a bad union. For your information, Lonmin
 12 management has served NUM with notice to terminate their
 13 recognition agreement in October 2012 should they be unable
 14 to obtain majority status" –

15 CHAIRPERSON: Mr Bruinders, is it
 16 necessary for him to read the following section dealing
 17 with Aquarius Platinum? I would have thought that that's
 18 not directly relevant, unless you want to persuade me that
 19 it is, in which case he can pick up the letter on the
 20 following page –

21 MR BRUINDERS SC: Yes.

22 CHAIRPERSON: - the paragraph beginning
 23 "In conclusion."

24 [10:35] MR BRUINDERS SC: Yes, Chair. Could you
 25 please go to the second last paragraph of your statement

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1 and then resume reading from that paragraph onwards, Mr
 2 Mokwena – Mr Mathunjwa?

3 MR MATHUNJWA: Sorry, can you repeat
 4 yourself please?

5 MR BRUINDERS SC: Sorry, I beg your
 6 pardon. I suppose I'm thinking about the tea adjournment.
 7 I'm talking about your press release and I'm talking about
 8 the second last paragraph of your press release. Can you
 9 resume reading from there?

10 CHAIRPERSON: The paragraph beginning "In
 11 conclusion," which is the fourth line on page 4.

12 MR MATHUNJWA: "In conclusion, we want to
 13 call upon all stakeholders in the platinum industry to
 14 accept the reality that AMCU is one of the major
 15 stakeholders that need to be respected, accommodated and
 16 learnt to work with. Trying to sideline AMCU and using
 17 dirty tricks in labelling AMCU as a hard line union which
 18 uses violence will not assist the situation. We have been
 19 into the mining industry for about 12 years. If we were
 20 destructive and violent, how come that other companies
 21 where we operate still exist and are doing extremely well?
 22 Employers in the platinum industry need to accept the fact
 23 that there are real changes of salary discrepancies which
 24 require honest attention. The majority of the employees in
 25 the industry are paid very little, while owners are making

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1 a fortune. This shortfall will not disappear simply
 2 because you dismiss workers and re-employ them on new
 3 conditions. It is better to seek long-lasting solutions
 4 that will assist the industry, rather than to resort to
 5 short term solutions that will make the situation worse.
 6 It is high time we think out of the box and pull together
 7 in saving jobs and stopping violence. This is not about
 8 individuals, it is about the nation.”
 9 MR BRUINDERS SC: Mr Mathunjwa, you said
 10 earlier that it was decided to call a press conference, do
 11 you remember that?
 12 MR MATHUNJWA: Yes, I do remember.
 13 MR BRUINDERS SC: Did you participate in
 14 that press conference?
 15 MR MATHUNJWA: Yes, I did participate.
 16 MR BRUINDERS SC: And for how long did
 17 that carry on?
 18 MR MATHUNJWA: It continued until the
 19 late hours of the afternoon, to the afternoon, yes –
 20 dinner, lunch time.
 21 MR BRUINDERS SC: Can I please ask you
 22 now to turn your attention to the 15th of August and you
 23 deal with this in your statement from paragraph 30 onwards,
 24 do you see that?
 25 MR MATHUNJWA: Yes, I do see it.

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1 MR BRUINDERS SC: Now, did you
 2 participate in an SAfm programme on that day?
 3 MR MATHUNJWA: Indeed I did.
 4 MR BRUINDERS SC: And who else
 5 participated in the programme?
 6 MR MATHUNJWA: It was the President of
 7 National Union of Mineworkers, Mr Zokwana.
 8 MR BRUINDERS SC: And who was the SAfm
 9 interviewer?
 10 MR MATHUNJWA: That was Mr Xolani Gwala.
 11 MR BRUINDERS SC: Chair, can we ask that
 12 the interview be played so that we can listen to it?
 13 CHAIRPERSON: We've been given a
 14 transcript, of course, which is Exhibit LL but I suppose it
 15 might be helpful if we listen to The Forum@Eight. We'll
 16 listen to the first quarter of an hour of it and perhaps
 17 the adverts can be left out and we'll just hear the main
 18 part of the debate – and the news and the insert about the
 19 traffic and the programmes later in the morning, just the
 20 material parts.
 21 MR BRUINDERS SC: Yes, we will ask the IT
 22 man to do that. The evidence leaders have kindly, I think,
 23 set this up for us so it's ready to be played, as I
 24 understand it.
 25 [INTERVIEW PLAYED]

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1 MR BRUINDERS SC: Chair, could we at this
 2 point allow the interpreter to interpret?
 3 CHAIRPERSON: Well, I'm glad you raised
 4 that. I wanted to raise the following point with you,
 5 whether it wouldn't be appropriate perhaps for the
 6 interpretation to be done during the tea adjournment. In
 7 other words, we listen up to the tea adjournment and then
 8 the interpreter can be brought a cup of tea if necessary,
 9 and then he interprets. There are two of them, aren't
 10 there, so they can take turns and interpret it during the
 11 tea adjournment so we don't waste time that way. That's
 12 just – I'm putting that to you for your response.
 13 MR BRUINDERS SC: I think that the – I
 14 suppose some of the family members here are family members
 15 of members of AMCU and they probably do want to hear, they
 16 want to hear the –
 17 CHAIRPERSON: I'm not suggesting it
 18 shouldn't be interpreted. I just made a suggestion as to
 19 when it should be interpreted, in a way which wouldn't use
 20 up too much of our time. This programme normally runs from
 21 about 10 past eight till 9 o'clock. Admittedly there are –
 22 there's a news bulletin and the adverts and traffic reports
 23 and so on, but even so, it will take quite some time for
 24 the whole debate to be played to us, but I'm in your hands
 25 to some extent.

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1 MR BRUINDERS SC: Thankfully all the
 2 adverts and callers and so on have been taken out. Clearly
 3 the only – I think that our, I think AMCU does feel that
 4 the families who might be families of some of its members,
 5 that they hear it as we hear it in the inquiry rather than
 6 sequestered later on.
 7 CHAIRPERSON: Alright, if that's the way
 8 you prefer it done, we'll do it that way.
 9 MR BRUINDERS SC: Thank you, Chair.
 10 Interpreter, I think you're up.
 11 MR MAHLANGU: Yes, Chairperson, I have to
 12 read it. I thought it would be best, because I wasn't
 13 given this document until we are very deep into it now, I
 14 was also going to suggest that if the Commission would take
 15 the tea adjournment then the two of us, the interpreters,
 16 would then explain to the people exactly what is here. It
 17 will be faster that way.
 18 CHAIRPERSON: Mr Bruinders, you've heard
 19 what the interpreter says. It's obviously important that
 20 the people present - there may be members of AMCU here,
 21 there may well be members of NUM here and other people who
 22 are not members of either union, all of whom I'm sure will
 23 be interested in what was said over the radio in this
 24 debate and it's important that it be interpreted into
 25 isiXhosa so that they can understand. The only question is

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1 when.

2 MR MADLANGA SC: May I offer some

3 suggestion, Mr Chairman? I would assume that the families

4 also would like to take tea when we take tea but that being

5 aside, if it is an hour long programme there will come a

6 time when there is going to be no tea, when it has to be

7 interpreted. Perhaps a via media would be to the extent

8 that the interpreter can deal with what has already been

9 done, he can do that but when we resume I can't see any

10 other way in which it can be done other than to take it

11 piecemeal – in other words, I would suggest that –

12 CHAIRPERSON: Forgive me if I'm being

13 discourteous, I don't mean to be discourteous. It's now

14 already five to 11. Let's take the tea adjournment now,

15 the interpreter's problem is he would like to read it, as I

16 understand. Let him read it during the tea adjournment,

17 we'll take tea, let everybody take tea – as you say, even

18 the people in the auditorium are entitled to have tea and

19 we'll resume after tea and then we'll carry on in the way

20 that's been suggested.

21 MR MADLANGA SC: Thank you, Mr Chairman.

22 CHAIRPERSON: The Commission will adjourn

23 for tea.

24 [COMMISSION ADJOURNS COMMISSION RESUMES]

25 [11:21] CHAIRPERSON: The Commission resumes.

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1 MR BRUINDERS SC: Yes Chair, the point we

2 were at is that the interpreter needed some time to

3 acclimatise himself with the document and I suppose that he

4 will now read the first part that has already played and

5 we'll continue from there.

6 CHAIRPERSON: It seems the way forward.

7 MR MAHLANGU: Thank you, Mr Chairperson.

8 MR BRUINDERS SC: Can we continue with

9 the recording, Mr Interpreter?

10 MR MAHLANGU: Yes.

11 [INTERVIEW PLAYED]

12 MR MAHLANGU: I'm just asking the

13 operator –

14 CHAIRPERSON: Mr Bruinders, I don't know

15 if you're in charge of the volume but I think it might help

16 if it was a little bit louder when we hear The Forum@Eight

17 itself.

18 [INTERVIEW PLAYED]

19 [11:41] [INTERVIEW PLAYED]

20 MR MAHLANGU: Just before you – Mr

21 Chairperson, may I exchange the interpreter –

22 [MR HANABE INTERPRETS FURTHER]

23 [INTERVIEW PLAYED]

24 [12:01] [INTERVIEW PLAYED]

25 [12:21] [INTERVIEW PLAYED]

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1 [12:41] [INTERVIEW PLAYED]

2 MR BRUINDERS SC: I think, Chair, we're

3 skipping the calls to get to the end of the interview.

4 [INTERVIEW PLAYED]

5 CHAIRPERSON: Page 43.

6 MR BRUINDERS SC: Correct.

7 [INTERVIEW PLAYED]

8 [13:01] [INTERVIEW PLAYED]

9 CHAIRPERSON: As Mr Gwala says, I think

10 we can wrap it up at that point.

11 MR BRUINDERS SC: Yes, sir.

12 CHAIRPERSON: We'll take the lunch

13 adjournment now. We'll restart at seven minutes past two.

14 [COMMISSION ADJOURNS COMMISSION RESUMES]

15 [14:09] CHAIRPERSON: The Commission resumes. Mr

16 Bruinders?

17 MR BRUINDERS SC: I hope he's not gone to

18 the mountain.

19 CHAIRPERSON: I see. We haven't got

20 another quick witness we can interpose – oh, Ms Pillay,

21 while we're waiting for Mr Mathunjwa to come back from the

22 mountain or wherever he's gone, have you got that letter

23 for us? I think it's Exhibit R, the letter about the

24 rubber.

25 MS PILLAY: Chairperson, I do have the

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1 letter. It's just, if I can be excused, I'll get it.

2 CHAIRPERSON: Alright. In a good cause

3 we'll excuse you. Thank you. Mr Mathunjwa, I must remind

4 you that you're still under oath.

5 MR MATHUNJWA: Thank you, sir.

6 EXAMINATION BY MR BRUINDERS SC (CONTD):

7 Thank you. Mr Mathunjwa, that was The Forum@Eight that

8 we've just listened to, not so?

9 MR MATHUNJWA: That's correct.

10 MR BRUINDERS SC: And you, you've

11 listened to it.

12 MR MATHUNJWA: Yes, I did.

13 MR BRUINDERS SC: And do you confirm that

14 that was the programme that you participated in, run by Mr

15 Gwala of the SAFm?

16 MR MATHUNJWA: That's correct.

17 MR BRUINDERS SC: When you left the SAFm,

18 where did you go?

19 MR MATHUNJWA: I proceeded to Lonmin.

20 MR BRUINDERS SC: And when you got to

21 Lonmin, where did you go first?

22 MR MATHUNJWA: I went to offices of

23 Lonmin called as LPD offices.

24 MR BRUINDERS SC: Why did you go there?

25 MR MATHUNJWA: It's because of the

<p style="text-align: right;">Page 2279</p> <p>1 meeting that we were to engage on with the management of 2 Lonmin as per the interview by Xolani Gwala. 3 MR BRUINDERS SC: So was an arrangement 4 made that you meet at Lonmin? 5 MR MATHUNJWA: That's correct. 6 MR BRUINDERS SC: And who was at – I beg 7 your pardon, did a meeting then take place? 8 MR MATHUNJWA: Indeed it took place. 9 MR BRUINDERS SC: And who was at that 10 meeting? 11 MR MATHUNJWA: It was myself and the 12 general secretary and the branch committees of AMCU at the 13 mine. And then there was the SAPS general who was present, 14 who was introduced as General Mpembe and also two officers, 15 ladies, whom I can't recall what was their names and also 16 the President of National Union of Mineworkers and the 17 other comrades from NUM who were present. 18 MR BRUINDERS SC: And was there anybody 19 from Lonmin present? 20 MR MATHUNJWA: Yes and also there was the 21 management representative, Mr Barnard Mokwena, a 22 representative – that means one of the senior managers, 23 Barnard Mokwena – and Mr Kwadi and Mr Patrick and others 24 whom I couldn't, I can't recall their names. 25 MR BRUINDERS SC: Is there a recording of</p>	<p style="text-align: right;">Page 2281</p> <p>1 the interpreter have a copy of the transcript, do you? 2 MR MATHUNJWA: I've given mine to the 3 interpreter. Apparently there's one that is being 4 arranged. 5 MR BRUINDERS SC: Good. Can we have the 6 recording played? 7 CHAIRPERSON: Here you are, I see we've 8 just been handed copies of Exhibit T, the letter sent by 9 the Provincial Commissioner operational response on the 20th 10 of December 2011, which has been outstanding for some time. 11 Thank you very much. 12 [RECORDING PLAYED] 13 CHAIRPERSON: - volume, I think it should 14 be turned – 15 [RECORDING PLAYED] 16 CHAIRPERSON: Can the volume not be 17 turned up? The sound's about as clear as the water cannon 18 video camera that's covered in mud. 19 MR BRUINDERS SC: We'll ask for the 20 volume to be turned up. 21 [RECORDING PLAYED] 22 [14:29] [RECORDING PLAYED] 23 [14:49] [RECORDING PLAYED] 24 [15:09] [RECORDING PLAYED] 25 CHAIRPERSON: Stop the recording. There</p>
<p style="text-align: right;">Page 2280</p> <p>1 that meeting? 2 MR MATHUNJWA: Yes, I've seen the script 3 of the meeting that was recorded. 4 MR BRUINDERS SC: Chair, we now ask 5 permission to play the recording, we think it's important 6 that we listen to it. It's also – it's not a video 7 recording, it's obviously some kind of digital voice 8 recording. There is a transcript of the recording as well. 9 CHAIRPERSON: We'll be given the 10 transcript before we listen to the recording? 11 MR BRUINDERS SC: I beg your pardon, sir? 12 CHAIRPERSON: Will we be given the 13 transcript before we listen to the recording? 14 MR BRUINDERS SC: Yes, we'll hand it up 15 now. 16 CHAIRPERSON: Right, thank you. Will 17 this be OO3? 18 MR BRUINDERS SC: Yes. 19 MS PILLAY: Mr Chairperson, if I may just 20 interrupt? According to my notes, OO3 is the audio clip of 21 the SAfm interview, so this should be – 22 CHAIRPERSON: OO4? 23 MS PILLAY: Yes, that's right. 24 CHAIRPERSON: Thank you. 25 MR BRUINDERS SC: Mr Mathunjwa, you and</p>	<p style="text-align: right;">Page 2282</p> <p>1 seems to be something wrong with our microphones here and 2 loudspeakers, they're making funny noises and lights are 3 flashing. I was going to take the tea adjournment in five 4 minutes. It may help those who are having, finding it 5 difficult to keep awake, if I take it now and the 6 microphones can be attended to in the meanwhile. 7 MR MADLANGA SC: - direction we are 8 losing here, Mr Chairman. 9 [COMMISSION ADJOURNS COMMISSION RESUMES] 10 [15:28] CHAIRPERSON: The Commission resumes. 11 I've been asked to ask all concerned to be careful when 12 they walk around that they don't tread on the microphone 13 cords. That apparently was the cause of the trouble. The 14 microphones have now been fixed and if everybody will keep 15 their feet off the cords then hopefully we won't have a 16 problem again. I think we can now return – I don't have 17 to, I suppose I must remind you, you're under oath although 18 you're probably not going to have to say anything. We 19 carry on with the recording. 20 MR BRUINDERS SC: He says a lot, just not 21 here. 22 CHAIRPERSON: - we've been hearing hasn't 23 been in open court. 24 [RECORDING PLAYED] 25 [15:48] [RECORDING PLAYED]</p>

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1 MR BRUINDERS SC: Thank you. Mr
 2 Mathunjwa, we've just listened to a recording, have we not?
 3 MR MATHUNJWA: Yes, we did.
 4 MR BRUINDERS SC: And was that a
 5 recording of the meeting of the 13th?
 6 MR MATHUNJWA: The 15th.
 7 MR BRUINDERS SC: I beg your pardon, of
 8 the 14th August 2012.
 9 MR MATHUNJWA: Yes, indeed it is.
 10 MR BRUINDERS SC: And do you confirm
 11 under oath that that recording is an accurate recording of
 12 what took place in the meeting?
 13 MR MATHUNJWA: Yes, it is.
 14 MR BRUINDERS SC: At about what time did
 15 this meeting finish?
 16 MR MATHUNJWA: It was quite late, even
 17 though I couldn't remember quite clearly.
 18 MR BRUINDERS SC: And we know from the
 19 recording that the NUM had requested time to caucus, not
 20 so?
 21 MR MATHUNJWA: That's correct.
 22 [16:08] MR BRUINDERS SC: Did people leave the
 23 meeting?
 24 MR MATHUNJWA: Yes, the NUM delegation
 25 left the boardroom and the SAPS left the boardroom. We

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1 were the only union left behind.
 2 MR BRUINDERS SC: And for how long did
 3 you wait in the boardroom?
 4 MR MATHUNJWA: We waited more than 30
 5 minutes, if I could remember, it's quite long but we waited
 6 quite some time.
 7 MR BRUINDERS SC: Did anybody return to
 8 the boardroom where you were waiting?
 9 MR MATHUNJWA: No-one returned to the
 10 boardroom where we were.
 11 MR BRUINDERS SC: What did you then do?
 12 MR MATHUNJWA: Then I phoned Mr Jomo
 13 Kwadi, asking about their whereabouts.
 14 MR BRUINDERS SC: What did he say?
 15 MR MATHUNJWA: He responded by saying I
 16 must come to the place which I called the police camp,
 17 which it happened to be known as a JOC in this Commission.
 18 MR BRUINDERS SC: Is that where you went?
 19 CHAIRPERSON: Mr Bruinders, when you
 20 reach an appropriate point, indicate it and we can take the
 21 adjournment. You can decide when we must adjourn.
 22 MR BRUINDERS SC: Will do. Is that where
 23 you went?
 24 MR MATHUNJWA: Yes, after I've been
 25 advised, it's where we went because I asked him, we were

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1 waiting while the NUM was still going for a caucus.
 2 MR BRUINDERS SC: When you got to the JOC
 3 did you meet up with the SAPS and NUM?
 4 MR MATHUNJWA: Yes, when we got there,
 5 there was NUM, SAPS and management.
 6 MR BRUINDERS SC: There's video footage
 7 that has been shown in this Commission of your interaction
 8 there, that's AMCU's interaction with the SAPS. Have you
 9 seen that?
 10 MR MATHUNJWA: I think I haven't seen it.
 11 MR BRUINDERS SC: Well, let me then set
 12 your mind at rest. There was some video footage shown here
 13 last week which showed you interacting with the SAPS and I
 14 think a Colonel Macintosh, about how you were going to go
 15 to the koppie. You don't know this?
 16 MR MATHUNJWA: I'm not suggesting that
 17 there was no interaction or whatsoever, but maybe when it
 18 was played here in the Commission I was not present on that
 19 day.
 20 MR BRUINDERS SC: You say you don't
 21 dispute there was interaction. Did you talk to the SAPS at
 22 the JOC about how to get to the koppie?
 23 MR MATHUNJWA: Correct, we did.
 24 MR BRUINDERS SC: Did you later on go to
 25 the koppie?

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1 MR MATHUNJWA: Yes, after that process
 2 was explained then we left to the koppie.
 3 MR BRUINDERS SC: And who did you go
 4 with?
 5 MR MATHUNJWA: In my delegation it was
 6 myself, Joseph Vusi Mathunjwa, and national organiser
 7 Dumisane Nkalitshani and our Karee chairperson, Mr Jombo.
 8 MR BRUINDERS SC: Did members of the SAPS
 9 go with you?
 10 MR MATHUNJWA: Yes, we were taken firstly
 11 by one of the Vito, small buses, Mercedes Benz minibus.
 12 MR BRUINDERS SC: And after you were
 13 taken in this minibus, were you taken in another vehicle?
 14 MR MATHUNJWA: Yes, we were taken to
 15 another vehicle which they called – what, Nyala or – which
 16 is commonly known as Hippos during the days of the
 17 struggle.
 18 MR BRUINDERS SC: And did you then at the
 19 koppie address the strikers who were gathered there?
 20 MR MATHUNJWA: Yes, indeed.
 21 MR BRUINDERS SC: And when we saw the
 22 video last week when you were not here, we saw that you
 23 addressed them from inside the Nyala.
 24 MR MATHUNJWA: It is correct. We were
 25 not allowed to be outside the Nyala, by the police.

1 MR BRUINDERS SC: Is this an appropriate
2 time?
3 CHAIRPERSON: The Commission will adjourn
4 until 9:30 tomorrow morning.
5 [COMMISSION ADJOURNED]
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