

don't know about the incident. So, we thank you very much.

MR HARE: Commissioner, may I thank you for paying me the compliment and may I also say that as I have said earlier, I truly believe that every single individual within the South African Airways would very dearly love to be able to get to the bottom of what caused the Helderberg incident but I also believe that every individual will offer you every assistance that they possibly can and will answer whatever question is possible in an attempt to get to find a solution as to the cause of the Helderberg incident.

If I may provide further information at any stage please do not hesitate. I would welcome coming back and answering any further questions if cause arises.

CHAIRPERSON: Thank you very much. You are excused Mr Hare.

MR HARE: Thank you.

WITNESS EXCUSED

CHAIRPERSON: Ms Terreblanche?

MS TERREBLANCHE: I think we should now call Mr Willemse, Mr Tienie Willemse. I believe the two of them need to....

CHAIRPERSON: Welcome Mr Willemse. I have explained very quickly to most witnesses that this is a Section 29 enquiry. What it means is it is an investigative enquiry. It is not a trial, it's not a tribunal, it's not disciplinary enquiry, no findings will be made. It's an information gathering exercise.

It is held privately so you can safely regard everybody here to have been sworn to confidentiality and so also will the evidence that will be taken here to not be made public and that decision will be the decision of the Commission as and when certain requirements have been complied with.

We have translators who are also part of the Commission who are contracted to the Commission and who will be able to translate for us on any person who would prefer to take the evidence in English should you choose to give your evidence in Afrikaans. So you are entirely free to testify in the language you best would like to testify in.

We will not be disadvantaged thereby because as you will see there are listening devices which will assist us to listen simultaneously as you speak in to the English version of your evidence. So if you want to speak in Afrikaans, please feel free to do so.

Welcome to these proceedings and before you testify I will therefore ask Commissioner Glenda Wildschut who is to my left to swear you in. But let me introduce the members of the panel. She is Commissioner in the Reparations and Rehabilitation's Committee. I am Ntsebeza.

I am a Commissioner in the Human Rights Violations Committee and are in the investigative unit.

To my right is Mr Magadhla, Wilson, he is head of special investigations. He is also as you see a member of this panel. To the right is Ms Terreblanche, Chrystelle, who has investigated and has collected all information relevant to this hearing and with her is Dr David Klatzow who has been contracted to the Commission and who will give, will assist us in those technical aspects and in any of the aspects about this matter which is fairly familiar, having dealt with it on a substantial number of years thereafter. Ms Wildschut will therefore swear you in.

MS WILDSCHUT: Mr Willemse good morning. Do you have any objection to taking the oath? No objection. Could you state your full name for the record please?

MR WILLEMSE: Martinus Gerhardus Willemse.

MARTINUS GERHARDUS WILLEMSE: (sworn states)

CHAIRPERSON: Ms Terreblanche?

MS TERREBLANCHE: Good morning Mr Willemse. Thanks for coming. I see we misspelt your name on the invitation. Sorry about that.

MR WILLEMSE: The Williams, I'm used to that, that's no problem.

MS TERREBLANCHE: I think it's these computer spell checks that insist on these things some times. We've asked you to come and provide details of your role in SAA at the time of the

Helderberg disaster, to explain SAA's role in terms of the investigation into the Helderberg disaster. To answer questions pertaining to the relationship between SAA and Armscor during the 1980's and answer questions pertaining to SAA's relationship with airlines and cargo agents in Israel and Taiwan.

May I just start off by asking you to explain to us your career in SAA. When you started and?

MR WILLEMSE: May I have the opportunity, as the Chairman said that Afrikaans is my mother tongue, that if it will be okay with you that I conduct the session in Afrikaans?

MS TERREBLANCHE: Please go ahead. Can you use the earphones because then you will hear the English, so that we can have, but it's quite fine. Can you hear us?

MR WILLEMSE: Yes I can.

MS TERREBLANCHE: Please continue Mr Willemsen. You may speak in Afrikaans.

MR WILLEMSE: I hope it won't cause any inconvenience.

MS TERREBLANCHE: No. Not at all. Thank you.

MR WILLEMSE: The question is that I should briefly explain what my career was with SAA. I was asked to transfer to SAA during 1979. At that stage I was a member of the legal advisors team and was known then as the South African Railways and Harbours and I fulfilled a very specific role there. I had to appear on behalf of the

old Railways and Harbours before the National Transport Commission to look after the so-called competition between road and rail.

The reason why I asked to transfer to the airlines was because there was a commission of enquiry appointed at that time under the chairmanship of Justice Margo which had to look at the whole issue of a new airline policy for South Africa and the then deputy asked me to transfer to the airlines so that I could become a member of the Margo Commission itself, to advise them on the new aviation policy for South Africa.

What was at stake was mainly the open skies policy which had taken hold in America at that stage and I followed it and some particulars and I attended some of the hearings in Washington at that stage to find out what the impact of the so-called open skies policy would be in South Africa. That was chiefly my role. To advise the South African Airways and to help with the activities of the Margo Commission which extended over a couple of years and that was very briefly the reason for my transfer to the South African Airways. It was a very specific instruction which I had.

MS TERREBLANCHE: At the time of the Helderberg disaster, could you please explain what your position was at SAA?

MR WILLEMSE: After the Margo Commission had been completed I acquired other responsibilities and I then moved in to the

commercial side of the airlines and away from the pure legal side of matters. We used different titles initially. My title was trade director.

There were two of us and then we subdivided it into the director of marketing and director of planning. Subsequently we changed it to chief director international. At that stage I was mainly responsible for the international or the commercial side of international services of SAA. There was no clear dividing line between domestic activities and the international activities because we were in the process of developing those as two separate products and we said that the internal scenario was aimed at a very specific public market and internationally speaking the target market was very different and I was chiefly engaged in the development of the root structure of the international section of South African Airlines.

MS TERREBLANCHE: Did that include passengers as well as cargo?

MR WILLEMSE: Yes. It was the total enterprise. But I must tell you that in the 1980's there was very little emphasis on cargo in the sense that we didn't have a specific cargo section and the reason for that was as a result of all the detours that we had to use due to sanctions existing at the time and we had very little cargo capacity which we could utilise on our planes.

South African Airways at that stage was mainly a passenger enterprise. So the emphasis was on the development of routes for passenger purposes and where cargo could be added that was regarded as a bonus. From South Africa there was very little cargo but it was mainly perishables which depended very much on the season and the main route was towards Europe.

MS TERREBLANCHE: You're talking about sanctions now, were you aware of the fact that SAA sometimes carried cargo intended to evade sanctions or circumvent sanctions?

MR WILLEMSE: No. The cargo which we carried was any commercial cargo which we could obtain in the market at competitive prices to bring it in, well in both directions. In other words, in to South Africa and from South Africa. The sanctions to which I am referring is this, the fact that SAA could not fly along the normal commercial routes which our competitors used.

You will remember that since 1963, that was before my time, we could not use the shortest routes across Africa. So all our routes to Europe were via the West Coast of Africa or the stop at Sol Island. At some point most of our flights stopped.

MS TERREBLANCHE: Yes, now we understand that, I just want to make sure about this question, were you ever aware of the fact that cargo was carried or placed on SAA flights which were actually

not destined for South Africa or which South Africa could actually not export due to sanctions?

MR WILLEMSE: No I was not aware of anything like that.

MS TERREBLANCHE: I think that Dr Klatzow wants to ask you a couple of questions.

DR KLATZOW: Thank you Mr Willemse. Do you have any objection if I ask my questions in English? And if you have any difficulty, you may just ask me. Mr Willemse, your duty with SAA was a legal advisory and a general commercial advisory capacity, was that not correct?

MR WILLEMSE: Initially a legal advisor in the sense only when I acted in the role of representing SAA at the Margo Commission of Enquiry into civil aviation.

DR KLATZOW: Correct, but at the time of the Helderberg. In 1988, your function was to oversee the commercial aspects of the international trade that SAA was doing?

MR WILLEMSE: That's correct.

DR KLATZOW: And as such you would have been intimately involved with the accident and the following investigations and the matters that transpired as a result of the accident?

MR WILLEMSE: No, I was not intimately involved. Let me explain it to you. I was not at all involved in the investigation into the Helderberg disaster. It was an aspect which was dealt with



purely on the technical side at the airport. The only role which I fulfilled during and after the accident was that I and my team of marketing and sales people, I'm talking about passenger sales, passenger marketing, we set up an office at Johannesburg, at the head office and our sole function was to transmit information to the families and friends of the passengers who had died in the disaster.

That was our main purpose. To actually effect contact with the next of kin. To keep them informed regarding the progress and I'm specifically referring to the first couple of days after the accident took place, to contact as many of these as possible because we had the passenger lists and the arrangement which we made was that we sent our sales people to the next of kin as far as we could trace them in South Africa to have contact with them on behalf of SAA, to tell them what the position was and also to convey our condolences and to find out whether there was anything that we could assist them with at that stage.

What we also did was that we attended as many of the memorial services as we could as a sign of our condolences.

DR KLATZOW: Yes, but the night of the accident were you at Jan Smuts Airport?

MR WILLEMSE: No. At no stage was I personally at Jan Smuts Airport during or after the accident.

DR KLATZOW: You were never in the operational room?

MR WILLEMSE: No.

DR KLATZOW: Along with Mickey Mitchell and others?

MR WILLEMSE: No. As I said, I set up an office in headquarters or I had an office in headquarters in Johannesburg and that is where I did my work from.

DR KLATZOW: Did you ever know a man, Tinus Jacobs who was working for SAA?

MR WILLEMSE: Tinus Jacobs was at some point and I think especially during the Helderberg disaster, he was our manager in Taiwan.

DR KLATZOW: That's quite correct. Can you inform us about Tinus Jacobs' career after the Helderberg disaster?

MR WILLEMSE: As far as I can recall Tinus Jacobs, he resigned some time afterwards. I don't know exactly how long he resigned from SAA and started up his own business as a tour operator.

DR KLATZOW: In the name of Crown Travel?

MR WILLEMSE: As far as I know, yes. Yes it is so.

DR KLATZOW: Who is his foremost client in that business, his best client?

MR WILLEMSE: I wouldn't be able to tell you.

DR KLATZOW: Isn't it true that the SAA is his best client and that he gets a lot of work from SAA?

MR WILLEMSE: It's possible but that is not within my field of knowledge. But it is possible if he is a tour operator and as far as I know he is established in South Africa, then you would assume that he would do business with SAA.

DR KLATZOW: Are you also aware of a man called Vernon Nadel, he's waiting outside.

MR WILLEMSE: Yes I know Vernon.

DR KLATZOW: What is his function at SAA at that stage?

MR WILLEMSE: At what stage are you referring to?

DR KLATZOW: The stage of the Helderberg disaster.

MR WILLEMSE: I don't know. I didn't know him at that stage.

DR KLATZOW: Right. Very well thank you.

MS TERREBLANCHE: Mr Willemsse I have a couple of questions. I would like you to think back, I'm sure you know Mr Flippie Look. He is still a pilot at SAA.

MR WILLEMSE: Yes. It's difficult to say, if that is the person that I am thinking of now then, I'm speculating now, I have to add, I did meet Flippie Look once during a meeting which we had with SAPA, now that was quite a number of years ago. This was at some place outside Johannesburg. SAPA is the South African Pilots Association.

We met with them, we meaning South African Airways management and the management of the Pilots Association but then I have to add that I suspected he was there.

MS TERREBLANCHE: In 1985 Mr Flippie Look told us that he met you in Mauritius at the airport. You were there with your family. Can you recall that?

MR WILLEMSE: No. I think he was the pilot of the plane but.

MS TERREBLANCHE: Were you in Mauritius in 1985?

MR WILLEMSE: I don't know, it's possible. I would have to go and check. If I was there with my family I was probably there on leave, on holiday.

MS TERREBLANCHE: Yes, but if I told you what he told me as to what he told you, maybe that will help you. He said that in June 1985 he landed at Tel Aviv Airport and whilst they were still in the plane looking or watching a movie, the cargo was off-loaded and he peeped out and there was a crate which had been broken and he said that he saw a missile inside this crate and this was confirmed to him by the freight or cargo controller at Ben Gurion Airport, the SAA man there.

A week afterwards another South African pilot and I think you know Mr Deon Storm?

MR WILLEMSE: Yes, I do.

MS TERREBLANCHE: Exactly the same happened to him. Mr Look said that he expressed his concern about the situation to you and said that what happened then was that he had hoped that you would be able to explain this, clarify matters. But he was later called in and told that Mr Van Veer and Mr Mitchell had gone to Armscor and obtained assurances that that would not happen again. Can you recall this conversation?

MR WILLEMSE: No I can't recall it.

MS TERREBLANCHE: Can you not recall that you ever heard from anybody that they were worried about the cargo which they had to convey on SAA planes?

MR WILLEMSE: Once again as far as I can remember you're talking about '85 so it's a long time ago, I can't remember, I would have to go and check up whether I was in Mauritius in '85 but as far as I can remember there was no such a conversation with me. I'm not saying that it isn't so, I just can't remember it. And I also can't remember that anybody had a conversation with me or expressed concern about cargo which we were conveying on SAA planes. Cargo had a very low profile in the '80's, on our flights.

MS TERREBLANCHE: You don't have to give a definite figure or even a definite percentage, but can you recall how much of your cargo in the mid '80's came from Taiwan and Israel? What percentage of your cargo went along those routes?

MR WILLEMSE: I have no idea.

MS TERREBLANCHE: So you didn't target certain countries as being more lucrative than others?

MR WILLEMSE: Any cargo which became available on any route where the tariff was worthwhile we would have accepted that. As far as I can remember our biggest concentration of cargo was from Germany into South Africa because I know we had a very active team and as far as I can remember Germany was the only South African Airways depot under the control of the Germans and which is very active in obtaining cargo.

The system in Europe was that they moved cargoes by means of trucks and they concentrated on certain stations so if you ask me what were the places where there was the highest concentration of cargo then as far as I know and can remember it was from Frankfurt and also from Italy. We had a considerable amount of freight from Italy as a result of the fact that they used trucks extensively.

MS TERREBLANCHE: Were you ever aware of the fact that SAA conveyed goods for Armscor?

MR WILLEMSE: Not specifically. If you're telling me that we conveyed goods for Armscor and it was good cargo then I would say to you yes, we probably would have done it.

MS TERREBLANCHE: What is good cargo?

MR WILLEMSE: That means cargo which generates a high tariff. I would compare that instance with the following. From South Africa we often sat with cargoes of perishable goods such as flowers etc., and at that stage it was a very low tariff cargo. It was subsidised to quite a high degree by the Department of Agriculture so the income which SAA got from that was very low.

And it was important for an airline to carry cargo which had a small volume but high weight because that's where you made your money. So if Armscor was a client offering cargo falling into that category then you would rather have conveyed that and perhaps rejected flowers and perishables. But that would have applied to any other supplier.

MS TERREBLANCHE: Thank you. Dr Klatzow?

CHAIRPERSON: Commissioner Wildschut?

MS WILDSCHUT: Mr Willemse I just need to clarify for myself, you have a legal background?

MR WILLEMSE: That's right yes.

MS WILDSCHUT: And your interest and part of the reason why you came on board, pardon the pun, to SAA was because of your interest in policy?

MR WILLEMSE: My interest in?

MS WILDSCHUT: Policy, policy development.

MR WILLEMSE: Was my interest in policy, that's right.

MS WILDSCHUT: Policy, yes, particularly airline policy and you were looking at open skies policy and so on from the US. And is it true to say that somebody whose involved in policy would be involved where the airline is experiencing difficulties such as accidents and so on that one would then want to re-look at what has happened, particularly with accidents to inform policy?

MR WILLEMSE: The policy which I was looking at was totally different to for instance safety policy because airline policy and aviation policy is something quite independent and very specialised. It was very important for us in South Africa to understand what was happening globally.

The two things which were very closely interconnected were the following. What was the policy in other countries in respect of aviation policy and that is reflected in your bilateral air agreements and was important for us to understand what the policy would be of our department of transport and especially civil aviation, how would they structure our air agreements in future.

So for an airline in a country it is extremely important to understand that so that the government and the department don't decide overnight, for instance that it is now in the interests of the country to move towards an open skies policy whilst the infrastructure is not prepared for that step.



As against the situation with a disaster or an accident like the Helderberg, that is a completely different field and I would like to answer you as follows. The reason why I did not become involved at all in the Helderberg disaster was that after the accident took place I played a very limited role because I was looking at the marketing side of things and I was managing the affairs of the next of kin.

All the other legal aspects, for instance in dealing with the finalisation of claims, claims instituted by the next of kin, negotiations with our insurers. There were several sets of negotiations involved. The settlement of claims in South Africa and also in other countries where passengers came from, such as Japan, Taiwan, Korea, I think there were passengers as far afield as England and the United States.

This was all dealt with by the office of the chief legal advisor in Transnet itself. So from the airlines' side we didn't interfere at all. The chief legal advisor played that part and I was no longer part of his team and he dealt with the attorneys of the insurers because you immediately have to involve them when there is an accident and they, I'm referring you to the insurers in turn then appointed their own attorneys in the respective countries and instructed them to start up with the negotiations with the next of kin with a view to settlement of claims.

My impression was that the most important aspect here was to see whether in relation to the claims flowing from the Helderberg disaster whether this could be finalised as soon as possible in context of the international convention governing claims. And that's how the matter was dealt with so I was not at all involved in that aspect because I was no longer functioning as a legal advisor. I hope that answers your question.

MS WILDSCHUT: A question I was going to ask and that was about claims, insurance claims and so on. Are you saying that the insurance claims were not handled by SAA but by some other department and so which department, if you can just repeat that for me?

MR WILLEMSE: Yes. It was the office of the chief legal advisor of, at that stage we were not called Transnet, I think we were called the South African Transport Services. So in other words we had the legal advisor, with his team and he took over that function on behalf of Transnet of the company as such, well we weren't even a company at that time but of SATS, and he co-ordinated all the liaison with the insurers and with their attorneys and their various legal representatives.

MS WILDSCHUT: Right.

MR WILLEMSE: So he served as, let's call it, as a central point to then act into South African Airways and then from there into the

legal advisors of the various countries. So I know that there was interaction between his office for instance and our offices in Taiwan and in Tokyo and all over the show.

MS WILDSCHUT: And as marketing chief at that time, would you have co-ordinated all of those functions, would you have insured,

MR WILLEMSE: No.

MS WILDSCHUT: That people were reasonably happy with claims and insurance payouts and so on?

MR WILLEMSE: No. That was the function of the insurers as such. We didn't interfere. Their liaison was strictly with the office of the chief legal advisor and he would inform us of the progress that they were making. It's quite a structured environment in which you operate in an airline and with airline claims because you are dealing with a Warsaw Treaty which places a limitation on that which can be claimed and that applies to all international cargo or flight and then you have certain protocols which pushes up the amount that can be claimed.

So, in the case of the Helderberg, if I remember correctly, the maximum amount which could be paid to any passenger or next of kin was defined in the conditions adhering to your ticket which said that the liability of the airline is subject to the following international treaties as amended by the Hague Protocol and whatever conventions which were applicable.

So, it was quite neatly circumscribed and all that had to be determined by the insurers was actually the ultimate quantum, the amount which had to be paid out and we found that in the case of the Helderberg, the insurers were prepared to go for the maximum amount that could be paid out because I think that the dilemma which they faced was that once they started settling in a country such as Taiwan for instance, the Japanese and the Koreans would expect exactly the same settlement to make sure that there was no discrimination.

Because one country's attitude was that his citizens were no less valuable than the citizens of another country but these amounts were all determined by those international conventions and I can't remember whether the amounts were calculated in dollars or whether it was SDR or what but it was easily converted.

MS WILDSCHUT: So are you saying that there were differential payments made out to the different passengers on the flight?

MR WILLEMSE: No.

MS WILDSCHUT: Based on the tickets they have and the class they were flying or whatever.

MR WILLEMSE: No.

MS WILDSCHUT: Or relationship between the insurer and the countries that these people came from?

MR WILLEMSE: No. There was no difference. That is the point I am trying to make. The settlements which were concluded made very certain that there was no distinction made between passengers so there was parity in the offers made in terms of settlement to next of kin.

So unfortunately I can't talk about the detail because I wasn't involved but what I do know as a result of conversations that took place was that from our side, from the airlines side, we said that we should try to not cause any delays so that the negotiations as far as settlements were concerned could commence as soon as possible so that the next of kin not gain the impression that the airline was unwilling to pay out.

MS WILDSCHUT: And is there a difference between what, well, in terms of employees of SAA, look you've got passengers, people who are not employees on the flight.

MR WILLEMSE: Yes.

MS WILDSCHUT: And then you had employees of the company who are also victims of this disaster, particularly the crew and so on. Now in terms of SAA and insurance paid out to employees. Can you explain to us what happened there?

MR WILLEMSE: Yes. I'm not aware of the details but I know that as far as our crew was concerned, the former managing director, he personally visited all the next of kin of our crew. I was not involved

in that. I was only involved in the next of kin of the passengers. But I know that he made a point of visiting the crew's next of kin. He visited the pilots' wives and also the cabin crew's wives and next of kin and as far as I can recall there was a different set of rules applicable to payments to be made to next of kin of people who were actually working and were on duty whilst a disaster took place, it's different from a passenger with an ordinary ticket.

MS WILDSCHUT: You are aware of the fact that Mrs Uys is very unhappy? Do you know about the fact that she feels that she was dropped by SAA?

MR WILLEMSE: No, I am not aware of that.

MS WILDSCHUT: Thank you.

MR MAGADHLA: Mr Willemse, were you ever aware of allegations that this plane carried dangerous material, dangerous cargo?

MR WILLEMSE: Do you mean allegations?

MR MAGADHLA: From next of kin of some of the passengers and from a lot of other people. Newspapers included.

MR WILLEMSE: I am aware that long after the accident there was speculation at one stage in the newspapers. I cannot recall exactly when it was but there was speculation in the newspapers that there had been dangerous goods on board. That would surely have been

about four to five years, it might have been more recent than that. I am aware of that yes. I read that.

It must have been in one or other English newspaper that there was speculation about this possibility. So I do have knowledge of that type of speculation.

MR MAGADHLA: Are you saying your knowledge of such would have been confined to it having been expressed by newspapers and others whereas in this case there was actually the wife of the pilot who also complained, would you have regarded that as part of the rumour or the conspiracy by those people, the papers and others?

MR WILLEMSE: I'm personally not aware of as you say the wife of a pilot who complained about dangerous cargo. All that I can tell you is that I am aware of the fact that there was speculation about this in the newspapers, about the fact that dangerous goods were on board. I don't even know if they used the expression dangerous goods on board, specifically the Helderberg.

I am also not aware of the fact that there was a specific person, such as, for example the wife of a pilot who spoke to me or anyone else or where I was present and said that there were dangerous goods on board that aeroplane, no.

MR MAGADHLA: Thank you.

CHAIRPERSON: Thank you Mr Magadhla. Anything?

MS TERREBLANCHE: I think we have no further questions Mr Chairman.

CHAIRPERSON: Thank you Ms Terreblanche. Mr Willemse, thank you very much for having come and for having taken the trouble to come even with the shortest of notices and we value the information that you have been able to share with us. You are excused.

MR WILLEMSE: Thank you very much.

CHAIRPERSON: I think this will be a convenient time to take the tea adjournment. We're adjourned until twenty five past.

HEARING ADJOURNS

