



REPUBLIC OF SOUTH AFRICA

Not Reportable

IN THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Case no: JR320/12

In the matter between:

SATAWU obo MDUDUZI BUTHELEZI

Applicant

and

NATIONAL BARGAINING COUNCIL FOR

THE ROAD FREIGHT INDUSTRY

First Respondent

MANISHA SINGH N.O

Second Respondent

XINERGISTIX MANAGEMENT SERVICES (PTY)

Third Respondent

Heard: 4 July 2013

Delivered: 6 May 2014

Summary: Review of arbitration award- employee arriving at work under the influence of alcohol- employer having zero alcohol tolerance policy- employee blood level above limit- commissioner finding dismissal fair- award reasonable- review application dismissed.

JUDGMENT

MANCHU AJ

Introduction

- [1] Mr Buthelezi (employee) represented by SATAWU (the applicant) was employed by the third respondent as a general worker at its PG Bison division.
- [2] On 22 November 2010, the employee was required to undergo a breathalyser test by the third respondent and was found to be under the influence of alcohol.
- [3] Disciplinary steps were taken against the employee that resulted in his dismissal.
- [4] The applicant wishes to review the findings against the employee. Essentially, the applicant does not dispute that the breathalyser results indicated that the employee's alcohol level was above that permitted at the workplace. Instead, the applicant asserts that the high alcohol level was the result of traditional medicine that the employee had consumed and not the result of the consumption of alcohol.

Work policy

- [5] It is common cause that the third respondent has a workplace Drug and Alcohol Policy. The policy seems particularly relevant for the third respondent's business and is intended to ensure and protect safety at the workplace.
- [6] As its preamble, the policy records that "Xinergistix Management Services (Pty) Ltd recognises the misuse and abuse of drugs and alcohol as one of the major causes of road traffic accidents and industrial incidents.
- [7] The policy provides that an employee reporting for duty should have an alcohol level of 0.00g/100ml. In other words, the policy does not allow for any amount of alcohol.
- [8] Of significance is that the policy had provisions for both prescription and non-prescription drugs. In both instances, an employee taking such drug must *inter alia*;
 - 8.1 obtain confirmation that the use of such drug will not impair his/her ability to carry out his/her duties; and

8.2 advise their supervisor (in confidence) of the nature of the drugs, and the period for which they are being used.

- [9] From my reading of the record, the applicant does not dispute being aware of the existence of the policy. In fact, the employee was previously charged with contravening the policy, so he ought to be aware of it.
- [10] The policy also seems important for the safety or proper functioning of the workplace.
- [11] In my view, the issue to be considered is whether the fact that the employee's alcohol blood level was the result of consuming medicine, instead of alcohol, means the employee has not breached the policy.
- [12] From my reading, the policy is concerned with alcohol blood levels and not how they are reached. The policy discourages the attendance at the workplace with any impairment, whether caused by consuming alcohol or prescription and non-prescription drugs.
- [13] In the case of medicines which cause impairment, the policy dictates that an employee has an obligation to confirm that the drug will not impair his/her ability to carry out his/her normal duties. Furthermore an employee is required to advise his/her employer in confidence, of the fact that he/she is taking medication.
- [14] The second respondent found *inter alia*, that:
- 14.1 It was common cause that the individual applicant was found to have been in excess of the alcohol level allowed by the third respondent;
- 14.2 The third respondent has a zero tolerance policy in respect of alcohol intoxication;
- 14.3 Alcohol intoxication is a very serious offence and all employees are subjected to a breathalyser test before gaining entry to the site;

- 14.4 The alleged traditional medicine was not tendered into evidence at the arbitration proceedings;
- 14.5 Due to the absence of the alleged traditional medicine, it was difficult to ascertain whether it contributed to the intoxication levels;
- 14.6 There was no satisfactory explanation as to why the alcohol was found in the individual applicant's blood;
- 14.7 The individual applicant had a final written warning for the same offence;
- 14.8 It was probable that the individual applicant had consumed alcohol, which accounted for the blood alcohol level; and
- 14.9 The dismissal of the individual applicant was substantively and procedurally fair.
- [15] In my view, this is reasonable decision in light of the evidence before the second respondent and does not warrant interference from this Court.
- [16] I further point out that even if it was shown that the alcohol level was the result of the traditional medicine, the employee would still have been in breach of the policy for arriving at work under the influence of alcohol.
- [17] The policy does not permit attending work under the influence of alcohol under any circumstances, even if caused by medicine. If any employee does take intoxicating medicine, he is required to take certain steps that the employee failed to do.
- [18] Therefore, in my view, it is not an answer to say the cause of the impairment was the result of medicine. The policy specifically prohibits all forms of impairment, even if caused by medicine.
- [19] The review is accordingly dismissed with no order as to costs.

Manchu AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES:

FOR THE APPLICANT: Mr Frans Mphepya instructed by Mabaso Attorneys

FOR THE RESPONDENTS: Ms Mohsina Chenia instructed by Glyn Marais Attorneys/
Cliffe Dekker Hofmeyr Inc.