



(1) Reportable: NO
(2) Of interest to other Judges: No

Signature

Date

THE LABOUR COURT OF SOUTH AFRICA, DURBAN

Case no: D681/23

In the matter between:

MHE ELECTRONICS (PTY) LTD

Applicant

and

**RAYHAAN TOFFIE AND REASEL
LETTMAN**

First Respondents

**COMMISSIONER NTOMBIZONKE
MBILI**

Second Respondent

**METALS AND ENGINEERING
BARGAINING COUNCIL ("MEIBC")**

Third Respondent

Heard: 18 February 2026

Delivered: 26 February 2026

JUDGMENT

MAESO AJ

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1. This is an application to review and set aside the award issued by the second respondent in terms of Section 145 of the Labour Relations Act.
 2. The applicant was ordered to reinstate Mr. Toffie and Mr. Lettman, described as the first respondents, including the payment of backpay. However, a variation order was later issued amending the relief to compensation only.

BACKGROUND

3. Mr. Toffie and Mr. Lettman were dismissed on 4 November 2022 after they failed a random drug test conducted at the workplace.
4. The results indicated that Mr. Toffie tested positive for the use of THC, cocaine and amphetamine. THC is a crystalline compound that is the main active ingredient of cannabis. Mr. Lettman tested positive for the use of heroin/morphine as well amphetamines.
5. A third employee, tested on the same day by the applicant, also tested positive for the use of heroin/morphine and THC and was dismissed. The employee did not challenge his dismissal. This is not disputed.
6. Mr. Lettman's duties at work included the use of a laser machine used to cut perspex and can engraving machine used to engrave metal. Both machines required close concentration. The laser emits a flame when in use. Mr Toffie on the other hand uses heavy machinery at work and is the primary forklift driver when he is expected to operate the forklift lifting loads of up of 200 to 500 kilograms at a time. It stands to reason that the employees' faculties when performing these tasks

cannot be impaired to ensure their own safety and the safety of their fellow employees.

7. The applicant has a zero-tolerance policy in place in respect of the use of narcotics in the workplace.
8. Prior to the internal enquiry, Mr. Toffie pleaded guilty to being under the influence of an intoxicating substance on the 27 October 2022.
9. Mr. Lettman pleaded not guilty to the charge. When presented with his test results, he went to his doctor. Mr Lettman indicated that the doctor's test results indicated that his test did not indicate the use of intoxicating narcotics. The doctor was not called to give evidence at the arbitration.

THE AWARD

10. It was common cause that Mr Toffie and Mr Lettman were tested for the use of narcotics on the day in question by the applicant. It is further common cause that the test results demonstrated the use of narcotics.
11. The record indicates that Mr Toffie and Mr. Lettman challenged the test procedure in that :-
 - 11.1 the applicant failed to show Mr. Toffie and Mr. Lettman the testing apparatus recording that they had tested positive for the use of narcotics and;
 - 11.2 the testing equipment was not labelled in their presence identifying them to the samples being tested;

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12. The second respondent records Mr Toffi and Mr Lettman's challenge to the testing process as follows:-

"They argued that the results were not conclusive, as there could have been a possibility of the results being mixed up or tampered with".

EVIDENCE IN RELATION TO THE DRUG TEST

13. Mr. White on behalf of the applicant, described the test process. He said employees were called to the toilet two at a time. Management stood outside the cubicle with the door ajar while the employee urinated into a cup. The employee's name was written on the box of the test kit as well as the dipstick. The test was conducted by placing the dipstick into the urine sample which was held by the employee. Once the dipstick produced a test result, it was removed from the urine sample, and the employee flushed the sample. The dipstick was placed on the box of the test kit, and a photograph was taken of the dipstick and the test box. Mr White was certain that there was no way that the results could have been mixed up. The employee's version that the urine samples were placed on the floor was denied.
14. Sue Bechan confirmed that employees entered the toilet two at a time and that a urine sample was brought to her to test with a dipstick. The name of the employee was recorded on the dipstick before it was placed in the urine sample. Once the dipstick indicated a result, it was removed from the sample, and the employee was asked to flush the sample.
15. Ms Bechan confirmed she did not touch the urine sample and that it was held by the employee concerned whilst the test was performed.

16. Ms Bechan confirmed that Mr Toffie did not dispute the result.

17. In the award, the second respondent concluded that:

“The applicants (Toffie and Lettman) version on how the tests were conducted remains undisputed and must be accepted. The evidence of the employer on how the tests were conducted appears to me to have missed cardinal rules of fairness.

The applicant’s urine samples were not marked before them, room for error was in this regard very probable. Furthermore, it remained undisputed that the test results were not shown immediately to the applicants shortly after the test were conducted. This raises serious concerns on why the employer decided to keep the tests from the applicants at this point, in fact the employer testified that they did not know what the indicators meant until this was verified after a meeting was held to deliberate on the results.”

18. For these reasons, the second respondent concluded that the probabilities favor the conclusion, as advanced by Toffie and Lettman, that the test results were not accurate.

19. The second respondent suggests that this conclusion is fortified by the fact that Mr Lettman produced results that contradicted the applicant’s test results.

20. The second respondent concludes that Sue Bechan, who performed the tests for the applicant, did not have the “requisite capacity” to conduct the test. This being made clear to the second respondent by the fact that she had to verify the results with a director of the applicant.

21. For these reasons, the second respondent concludes that the test results performed by the applicant were not accurate.

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22. Added to this and described as a “further twist to the circumstances of this case” the second respondent criticized the employer for applying its zero-tolerance rules selectively as it was not disputed that other employees who tested positive for THC were not dismissed. This is described as clearly unfair.

THE REVIEW

23. It is not disputed that the applicant conducted a drug test on site. It is not disputed that both Toffie and Lettman were tested.
24. The applicant’s evidence is that both Mr. Toffie and Mr. Lettman failed the drug test.
25. Toffie pleaded guilty to the offense at the disciplinary enquiry.
26. The record indicates that applicants’ version of the test procedure was corroborated by Winter and Bechan. The urine samples were tested in the presence of the employees. The dipstick used to test the urine sample was placed on the box of the drug test kit which in turn was labeled with the employee’s name. Photographs of the dipstick and the box bearing the name of the employee appear in the record.
27. The record provides evidence of a fair testing process. On the other hand, Mr. Toffie and Mr. Lettman’s version was that there was a “possibly of the results being mixed up or tampered with”.
28. The evidence does not support the second respondent’s conclusion that the testing process was unfair. No evidence was introduced by Mr. Toffie or Mr. Lettman that the results were mixed up or tampered with. If there was any doubt in respect of the veracity of the results, it is unlikely that Mr. Toffie would have pleaded guilty to the

charge. This, together with the numerous contradictions by Mr. Toffie and Mr. Lettman when describing their version of the test procedure, renders the conclusion that this version should be preferred over that of the applicant, is not consistent with the evidence.

29. On this basis, the employees failed to satisfy the evidentiary burden that shifted to them once it was proven that the tests were performed in the manner described by the applicant.
30. I agree with Mr Hayward, representing the applicant, that at best for the employees, their version of events amounted to speculation and should not have been considered by the second respondent. Furthermore, the second respondent concluded that Sue Bechan did not have the requisite capacity to conduct the test performed on the day. This finding is not supported by the evidence. Ms. Bechan indicated that it is the norm to discuss the results from drug tests with her superiors. There was no evidence that Ms. Bechan was seeking clarity on how to perform the test or that she was not trained in the drug test process. The applicant's version of events must stand, and the conclusion drawn by the second respondent was inconsistent with the facts presented at the arbitration.
31. The second respondent concludes that the test results relied upon by the applicant were not accurate. This conclusion is influenced by the fact that Mr Lettman produced a result indicating that he had not consumed narcotics on the day in question. Mr. Toffie did not do this, and he also pleaded guilty to the charges, yet it appears that second respondent without explanation gives him the same benefit of doubt afforded to Mr. Lettman and this constitutes a gross irregularity.

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32. Lettman indicated that he had undergone another test with his doctor. This evidence was introduced at the arbitration by producing a short affidavit purportedly deposed to by the doctor. The doctor was not called to give evidence or to confirm the affidavit. The affidavit did not include a medical conclusion and only recorded that the drug kit used in the test also measured heroin opioids and morphine. The affidavit does not record the actual results of the test performed by the doctor. The doctor purportedly also produced a handwritten note indicating that Mr. Lettman had performed a urine test to test for use of drugs and the result was negative.
33. Given the affidavit and the handwritten note produced by the doctor was challenged by the applicant on the basis that it believed that a different test had been used that was not designed to detect the same drugs detected in the applicant's test, the second respondent was unable to accept the affidavit and handwritten note as undisputed evidence. The doctor was not called to give evidence and the reliance on the affidavit and note was irregular. Minimal evidentiary weight should have been attached to this evidence.
34. The second respondent committed a further irregularity in the application of the applicant's zero-tolerance policy. Having referred to the case of ***National Union of Metalworkers of South Africa obo Nhlabathi and Another v PFG Building Glass (Pty) Ltd and Others [2023] 2 BLLR 142 LC***, the second respondent concludes that the applicant did not act fairly in its application of its zero-tolerance policy and that it was guilty of a selective application of that policy.
35. The judgment confirms that a zero-tolerance policy should be consistently applied if justified in the workplace.

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36. In this case, the applicants elected not to dismiss those employees who tested positive for THC (cannabis) only. This decision was based on the fact that the private use of cannabis, had been decriminalized after the zero-tolerance policy was implemented. Given that THC can remain in a person's system for some time, it elected that dismissal for a first offense for testing positive for marijuana in these circumstances would be too harsh. For this reason, all individuals testing for THC only, were disciplined but were not dismissed. The evidence indicates that they were treated considerately.
37. Furthermore, there was no evidence led to show that a zero-tolerance policy for use of narcotics was unreasonable. The undisputed evidence of duties performed by Mr Toffie and Mr Lettman, support such a policy.
38. The second respondent's interpretation of the zero zero-tolerance policy in these circumstances was one that no reasonable decision maker could make and ignores the proportionality and appropriateness analysis that employers should undertake before considering an appropriate sanction.
39. The Labour Appeal Court has confirmed that whilst the element of consistency on the part of an employer in its treatment of employees is important in the determination of the fairness of a dismissal, it is only a fact that is taken into account in that process. The Labour Appeal Court emphasized that it is not decisive of the outcome on the determination of reasonableness and the fairness of a decision to dismiss.¹

¹ ABSA Bank Limited v Naidu and Others [2015 1 BLLR 1 (LAC)

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40. Having found that “the misconduct is sufficiently serious” but going on to conclude that the applicant did not apply policy correctly, suggests that the second respondent considered the allegation of the inconsistent application of the zero-tolerance policy to be sufficient to mitigate against the dismissal of Mr Toffie and Mr Lettman. As indicated above, the weight attached to the applicant’s zero tolerance policy misconceives the evidence placed before her.
41. Furthermore, the second respondent did not give any weight to Mr Toffee’s plea of guilty at the disciplinary enquiry. It is noted that in Mr Xulu’s address to this court, when representing both employees, he accepted that this admission should weigh heavily on Mr Toffie.
42. It is noted that the second respondent omitted to make any reference to the applicant’s obligations contained in legislation to ensure a safe workplace and to ensure that its employees do not enter the workplace under the influence of alcohol and/or narcotics. Safety in the workplace is a paramount obligation for any employer. Any breach of established safety protocols should be dealt with.
43. The Labour Court, when dealing with a breach of safety rules has concluded:-
- “Safety of employees at the workplace is paramount, it cannot be compromised. An employer cannot expect to wait until an employee is maimed or has lost his or her life before taking decisive action against an employee who has exposed fellow employees to danger. Procedures which are intended to prevent injury and fatality, particularly in the mining industry, need to be complied with properly because the lapse has disastrous consequences.*
- In exercising his power to determine the fairness of the (employee’s) dismissal, the commissioner had to decide the appropriateness of the sanction of dismissal. His decision*

that dismissal was inappropriate disregards the value of the lives and safety of the employees, the third respondent had the responsibility of protecting. It is not supported by evidence before him. It constitutes a decision a reasonable decision maker could not reach on the facts before him and stands to be reviewed and set aside”²

44. Taking all the above into account, I am satisfied that the award is not one that a reasonable decision maker would make and that the award stands to be reviewed and set aside and the award should be substituted with an order that the dismissals of Mr Toffee and Mr Lettman were procedurally and substantively fair. I am guided by the following:-

“In summary, the position regarding a review of a CCMA is this; a review of the CCMA award is permissible if the defect in the proceedings fall within one of the grounds in Section 145(2)(a) of the LRA. For a defect in the conduct of the proceedings to amount to a gross irregularity is contemplated by Section 145 (2) (a) (ii), the arbitrator must have misconceived the nature of the enquiry or arrive at an unreasonable result. A result will only be unreasonable if it is one that a reasonable arbitrator could not reach on the material that was before the arbitrator. Material errors of fact, as well as the relevance and weight needs to be attached to particular facts, are not and in of themselves sufficient for an order to be set aside but are only of any consequence if the effect is to render the outcome unreasonable.”³

45. From the evidence placed before me, the second respondent misconceived the evidence placed before her and the result was one that a reasonable arbitrator could not reach on the material that was placed before her. The material errors of fact are sufficient to render the second respondent’s ruling unreasonable.

² Sasol Mining (Pty) Ltd v CCMA and Others [2015] 36 ILJ 2359 (LC)

³ Heroldt v Nedbank Limited [2013] 11 BLLR 1079 (SCA) at para 25

46. The question of costs was not vigorously pursued by either party.

ORDER:

- (i) Application to review and set aside the award is granted.
- (ii) The award is substituted with a finding that the dismissals of both Mr Toffee and Mr Lettman were substantively and procedurally fair.
- (iii) No order as to costs.

MG MAESO

Acting Judge of the Labour Court of South
Africa

Represented by:

Applicant: Mr K Hayward instructed by NEASA

First Respondents : Adv N. Xulu instructed by BB & Associates