Cingani / AECI Animal Health (Pty) Ltd
[2024] 9 BALR 909 (NBCCI)

Division:	National Bargaining Council for the Chemical Industry
Date:	17/06/2024
Case No:	**CHEM284-22/23**
Before:	T Chobokoane, Arbitrator

Referral in terms of section 191(5)(a)(i) of the LRA

Dismissal - Substantive fairness - Misconduct - Alcohol - Storeman testing positive for alcohol but not shown to have been incapable of performing duties - Dismissal unfair.

Editor's Summary

The applicant, a warehouse assistant, was dismissed for testing positive in two successive breathalyser tests. The applicant admitted that the tests had registered positive but that he should have received a final warning as he was not working in the manufacturing plant. The respondent claimed that it had reintroduced breathalyser tests after the Covid-19 pandemic and that all staff had been informed.

The Commissioner noted that according to the authorities it does not follow that an employee who reports for work with alcohol in his bloodstream must be dismissed; each case depends on its own merits. The applicant had two years' service with the respondent and had received no warnings. The applicant's claim that he had been denied permission to consult his doctor was baseless as he had not done so after being turned away from the premises. However, there was no evidence to show that the applicant was unable to perform his duties.

The applicant was reinstated without back pay.

Award

Details of hearing and representation

[1] The arbitration proceedings were held on 29 April 2024, 30 April 2024 and 28 May 2024 at Riverside Lodge and Limakatso Lodge in Aliwal North. Both parties agreed to submit written closing arguments by 4 June 2024.

[2] Mr Lungi Vincent Cingani ("the applicant") was represented by Sfiso Tom, NUMSA Official. AECI Animal Health (Pty) Ltd ("the respondent") was represented by Mr Thoba Nkabinde, the respondent's Employee Relations Specialist.

[3] The proceedings were digitally recorded, and Mr Sello Ntsoelinyane, the National Bargaining Council for the Chemical Industry ("NBCCI")

assigned Interpreter, assisted the parties with interpretation services from Xhosa to English.

Issue to be decided

[4] I am required to determine whether the applicant's dismissal was substantively fair, and if not, I must determine the appropriate remedy. Both parties concluded pre-arbitration minutes, and the procedure followed by the respondent was not in dispute.

Background to the issues

[5] The applicant was permanently employed as a Warehouse Assistant on 4 January 2021. He was earning R9 037 per month. The applicant was charged with testing positive for alcohol in his blood content, with results from 0.09 on the first breathalyser test and 0.07 on the second test. He received the notification of the allegation of misconduct on 20 February 2023. The hearing was held on 2 March 2023. He was dismissed on 10 March 2023. He worked five days per week, from Monday to Friday.

[6] The applicant had one charge to answer as stated on page 8, Bundle "A" ("A"), "In that on 13 February 2024 you tested positive for alcohol at work".

[7] The following were further common cause issues.

[8] The applicant was tested for alcohol using Breathalyser tests. The applicant tested positive on the first test, and the alcohol reading displayed 0.09, at 7:38am, and he was tested for the second time, and he tested positive for alcohol, and the reading was 0.07, at 7:55am.

[9] The respondent submitted Bundle A ("A").

[10] The applicant prayed for retrospective reinstatement and later, during his evidence, submitted that he was looking for compensation. The signed pre-arbitration minutes state that he was praying for retrospective reinstatement, and pre-arbitration minutes are binding on both parties.

Survey of evidence and argument

The respondent's case

The respondent's first (1st) witness, Mr Marshall van der Merwe (Mr Van der Merwe) testified under oath to the following

[11] He was in charge of the logistics in the company. To ensure all customer's things are delivered on time. He also manages the dispensing team, and the applicant reports directly to him.

[12] The applicant was a Warehouse Assistant, and his work was to wrap and strip the pallets and load goods on the vehicle. The applicant tested positive on the alcohol breathalyser. Their policy was zero tolerance for alcohol.

[13] On pages 20 to 26, "A" was their Alcohol and Drug Abuse Policy; if the employee is tested at work, must have tested 0.00 alcohol; anything above

is in contravention of the policy. The use of the breathalyser was suspended later in the year 2020 due to Covid-19. They started using the breathalyser again on 13 February 2023. On page 19, "A", the attendance register states that the meeting was held in 2022, and it was a mistake. It should have been 2023; it was a mistake made by him as an Operations Manager. On 10 February 2023, it was on Friday, and on 9 February 2023 was on Thursday. In 2022, 10 February 2022 was on Thursday, and 9 February 2022 was on Wednesday. Everyone who attended the meeting filled in the attendance register, and the applicant, Mr Lunga Cingani, signed the attendance register on page 19, "A". They normally have 30-minute meetings before the start of the shift, and that is where they informed the employees of the re-introduction of the breathalyser. They had a meeting on 9 February 2023 for night shift employees at 5pm and the following morning on 10 February 2023 at 07h00 to inform the employees about the re-introduction of the breathalyser. The meeting in which they informed the employees that the breathalyser would be re-introduced was on Monday, 13 February 2024 in terms on page 17, "A" second bullet under "REQUEST TO & FROM MANAGEMENT / NEW ISSUES / NEW INFORMATION".

[14] On 13 February 2023, the security informed them that there was an employee who had tested positive for alcohol on the breathalyser. The applicant blew red. They normally wait for 15 to 20 minutes and administer the breathalyser again. The second breathalyser test was done 17 minutes after the first test. On the first test, the applicant tested 0.09 for alcohol, and on the second test, he tested 0.07 for alcohol. Mr Janko and Ms Mbenyana were the Security Guards on duty when the applicant tested positive for alcohol consumption. The applicant was not allowed to enter the workplace. He was told to go home. They could not allow him to enter the workplace because he was driving a forklift and had code 10, and would, from time to time, be requested to drive trucks.

[15] Both Security Guards had competency training on how to use the breathalyser. On 9 February 2023, Ms Mbenyana and Mr Janko were part of the training as per the attendance register on page 41, A. On pages 46 and 47, "A" it was the certificates of attendance of "Course on the Alco Blow Breathlyser Test Machine" for Mr Janko and Ms Mbenyana.

[16] On page 48, "A" it was the letter to NUMSA from the Operations Manager informing them of the re-introduction of the breathalyser in the workplace. The applicant only came back to the workplace on 14 February 2023. They then issued him with the suspension letter. On page 49, "A" it was a workplace WhatsApp group, and it was posted by Siseko Work on 13 February 2023 that "I'm pleading with every one of U to take the Breathalyser issue very seriously, it could cost us our jobs, and we do not want that". The applicant then replied and said, "It is true; I am an example of it". The applicant was the first person to confirm the seriousness of testing positive for the breathalyser. The outcome of the breathalyser was never challenged. He was referred to page 36, "A" offences under clause 8, "Alcohol and drug-related offences". The first column point (a) states that employees that are based personnel, if they tested positive for

alcohol, must be issued with the final written warning on the first offence, and on the second offence, must be dismissed. The second column, point (b), states that the employee in the manufacturing area if tested positive for alcohol on the first offence, must be dismissed. The applicant falls under the second column (b) because he works in the manufacturing area. The applicant is not an office-based employee; he worked in the plant, and the plant is a manufacturing area.

[17] The normal process is that the employee must be tested first, and a decision to allow or not to allow will be made based on the outcome of the results. The decision will be made while the employee is at the security gate.

[18] He was referred to the "Alcohol and Drug Abuse Policy" of the respondent on pages 20 to 26, "A". On page 25, "A", clause 6.1.9 states that "if an employee is suspected of being under the influence of drugs, a breath analysis is not appropriate to confirm this. The assess [*sic*] the employee for suspicion of being under the influence of alcohol or substance, the following checklist must be completed by the SHE Officer and/or Senior Manager in the presence of witnesses:". On page 26, "A", the checklist is then listed as "Smell of alcohol/drugs, Slurred speech, Steadiness on feet, Eyes, Response to questions, Attitude, Picking up a small item from the floor, Close eyes, raise arms (shoulder height), lift leg, bend at knee". The applicant tested positive for alcohol on 13 February 2023, and he was not refused permission to go see the Doctor.

The respondent's second (2nd) witness, Mr Jakobus Coenraad Erasmus van Vuuren (Mr Van Vuuren), testified under oath to the following

[19] He was a Safety, Health, and Environment Officer for about 15 years. He worked all the plants in Burgersdorp. The respondent has a zero-tolerance policy for alcohol. They test everyone in the morning, even when going to lunch. On page 13, "A", it was a certificate of calibration of machine TBJCB0109 designed to test multiple people. The calibration was done on 22 February 2022, and they take their breathalyser machines for calibration annually. On page 21, A, paragraph 5.3 states that "AECI has a zero-tolerance policy towards alcohol and substance abuse in the workplace. AECI recognises that substance abuse by employees will impair their ability to perform their work properly and will have serious adverse effects on the safety, efficiency and productivity of other employees and the Company as a whole". On page 36, "A", the applicant works in the warehouse, in the middle of the premises, there are plants to the left and right, and their manufacturing plants. The applicant worked at the manufacturing plants, and the applicable code will be 8(b), and on the first offence, dismissal would be the appropriate sanction. Paragraph 8(a) would only apply to the Head Office staff, which is regarded as based personnel. The dismissal of being under the influence of alcohol is serious because there are moving machines in the manufacturing area. The employee who works in the office at the manufacturing plant will be dismissed if found to be under the influence of alcohol. The applicant goes to

the plant to fetch the finished product using a forklift. He works on wrapping the product and in dispatch. There may be situations where the applicant is exposed to the chemicals. Zero tolerance means no alcohol in the employee's blood. They have dismissed a receptionist who worked in the manufacturing area. He drafted the memo to the union (NUMSA). On pages 16-19, it was minutes of the Indaba they had for the whole factory. He was in the meeting that was held and appeared on the attendance register on page 19, A. The meeting was held on 9 and 10 February 2023. If people had not been made aware of the breathalyser, they may not be dismissed. The applicant was aware of the use of the breathalyser and the date on which it would be used.

The respondent's third (3rd) witness, Ms Nosiphiwo Mbenyana (Ms Mbenyana) testified under oath to the following

[20] She was a Security Guard. She was placed at the respondent premises for about 4-5 years under the previous security company and is now under Thorburn Security Solutions. In the year 2023, they were taken through training on how to use the breathalyser, and they were told that the employees of the respondent would also be taken through the training. On page 41, "A", it was an attendance register for the training she attended. They were trained by Mr OIivier, and the time for training was 60 minutes. Her name appears on the attendance register. On page 47, "A", it was her certificate showing that she passed the training on breathalyser.

[21] On page 11, "A", it was the document they used to test the applicant. She tested the applicant, and he tested positive for alcohol at the rate of 0.09. She then waited for about 15 to 20 minutes and tested him again. He tested positive for alcohol, and the rating was 0.07. The applicant was under the influence of alcohol. The employer has zero tolerance for alcohol. It is stated on the document that the test was administered by Mr Janko, while she was the one who administered the test. They made a mistake while filling out the document. While she was administering the breathalyser testing on the applicant, her colleague, Mr Janko, was present. The only confusion was when they signed the document. The document was correct because it reflects the rate of alcohol on the applicant and the time they tested; the only thing which is a mistake was that it showed Mr Janko as the person who administered the test, while it was she who administered the test, everything that is on the document was correct. After the applicant tested positive for alcohol, they sent him home; they did not allow him to enter the premises.

[22] The applicant was amongst the employees who told them that from Monday, the employer will be breathalysing.

The respondent's fourth (4th) witness, Mr Siphiwo Janko (Mr Janko), testified under oath to the following

[23] He was the Security Guard and has been employed on the respondent site for two years. Page 41, "A" was an attendance register for the training on breathalysers, which he had attended. His name appears on the attendance

register on row six. On page 46, "A" it was his certificate showing that he had concluded the breathalyser training. On page 11, "A" was the document showing the day his colleague tested the applicant. Ms Mbenyana administered the breathalyser test to the applicant. He does not see anything wrong with the document because everything they did, they did it as colleagues jointly.

The applicant's case

The applicant, Mr Lunga Vincent Cingani (Mr Cingani), testified under oath to the following

[24] He was employed as a Warehouse Assistant. He started working for the respondent on 4 January 2021. On 13 February 2023, he went to work, and he intended to work; he was then tested for alcohol, and the result of the breathalyser showed that he tested positive for alcohol. He was tested by Ms Mbenyana, not Mr Janko, as stated on page 11, "A" (breathalyser results). Ms Mbenyana appears as the person who witnessed breathalyser testing and stated that Mr Janko was the person who administered the breathalyser, which is

not the correct reflection of what happened. He blew for the first time, and the results showed 0.09. He then waited and blew for the second time, and the breathalyser result showed a reading of 0.07 positive for alcohol. The test was administered by Ms Mbenyana. When he blew, he was at the gate, and after blowing positive for alcohol, he was not allowed access to the workplace. He never heard anything about the employer intending to reintroduce the breathalyser, it was for the first time he was tested with the breathalyser in the workplace. When entering the workplace from the gate, it was about 200 meters to the factory. When going to his workstation from the Security Gate where he had tested, he passes the office and goes to the plant. He was working at the dispatch, and his work was to wrap the product and count the stock on the truck, so the forklift Driver knew which stuff to load. He does not belong to the manufacturing department; he should have been issued with the final written warning. He consumed alcohol a day before, on 12 February 2023, and went earlier to go and sleep. Both Ms Mbenyana and Mr Janko were present when he tested positive for alcohol. He accepted that both Mr Janko and Ms Mbenyana were trained on how to conduct the breathalyser test. Had they changed the areas they had signed, nothing would have changed on the alcohol readings and times.

[25] The meeting minutes on pages 14 to 19 had nothing to do with reintroducing breathalyser testing in the workplace. It was the meeting wherein they complained about working conditions after the respondent stopped providing transport to employees. On page 18, "A", it was the list of complaints they reported to the employer, and the meeting was in 2022, not in 2023. He was not sure about the date of the meeting, but he knew that there was nothing said about the breathalyser, as stated on page 17, "A". On page 19, "A" it was an attendance register for another meeting, and it was used as if he was in the meeting wherein the issue of breathalyser testing was discussed. There was never a meeting between January 2023 to

February 2023. He does not have any knowledge about the zero-tolerance policy and the disciplinary code regarding testing positive for alcohol.

[26] On page 48, "A" was the letter written to NUMSA, and he was a member of NUMSA. He cannot contest the contents of the letter. There was no proof of service confirming that the letter was delivered to NUMSA. He worked with the forklift once a week. He also drives the truck once in a while. The dismissal was too harsh; it was his first offence, and he should have been issued with a final written warning. There are two employees specifically employed as Forklift Drivers. The dates stated on page 19, "A" were correct dates.

[27] He would like to be compensated; he does not want to be reinstated anymore.

Analysis of evidence and arguments

[28] Section 188 of the Labour Relations Act 66 of 1995, as amended ("the Act") clearly states that a dismissal that is not automatically unfair is unfair if the employer fails to prove that the reason for dismissal was fair and that the dismissal was effected in accordance with a fair procedure.

[29] It was the respondent's case that the applicant was aware that as of 13 February 2023, the employees would be tested for alcohol. The respondent called two witnesses who confirmed that there was a meeting on two dates, Thursday, 9 February 2022, and Friday, 10 February 2022. Both the witnesses, Mr Van Vuuren and Mr Van Der Merwe, confirmed that the meeting was held in 2023 on the same days and same dates, and it was a typing error. It should have been 2023. I then checked the days and the dates in 2022 and also in 2023. I found that in 2022, 9 February was on Wednesday, and 10 February was on Thursday, which could not collate with the days on page 19, "A". I then checked 2023 and found that 9 February was on Thursday, as it appears to be on page 19, "A", and further checked 10 February, it was on Friday, as it appears on page 19, "A". I therefore conclude that it was clearly a mistake on the side of the respondent to type 2022 instead of 2023. The two witnesses of the respondent, Mr Van Vuuren and Mr Van Der Merwe's testimony was that the applicant was part of the meeting where employees were informed of the use of breathalyser testing from 13 February 2023, and applicant failed to bring any witness to corroborate his evidence about not being in the meeting from January to February 2023. The most probable version is that of the respondent because it is supported by two witnesses. I therefore conclude that the applicant was informed about the use of a breathalyser from 13 February 2023. The applicant knew the rule and when it would be implemented.

[30] In the case of *National Union of Metal Workers of South Africa v Trentyre (Pty) Ltd and another*, case number JA49-05 [reported as *National Union of Metal Workers of South Africa obo Cloete v Trentyre (Pty) Ltd and others* [2016] JOL 35706 (LAC) - Ed], Labour Appeal Court judgment ("*Trentyre* case") Judge Zondo JP in agreeing with the

conclusion of Patel JA when dealing with the principle of the law regarding intoxication or being under the influence of alcohol stated as follows:

> " . . . it needs to be pointed out that it is not our law that the mere fact that an employee is found to be under the influence of liquor in the workplace on a particular day means that the only appropriate sanction in every case is dismissal. Each case must be decided on its own merits but, generally speaking, progressive discipline must be applied. This does not mean that it will never be fair for an employer to dismiss an employee for a single instance of being under the influence of alcohol. Whether or not dismissal is a fair sanction in a particular case is an issue that must be decided with due regard to the nature of the *employee's job, his length of service, his disciplinary record, the extent to which he was under the influence of alcohol* and other relevant factors."

[31] I have considered the length of service, the applicant had two year's service with the respondent, no warnings regarding the same allegation for testing positive for alcohol. Within (7:38am - 7:55am), the alcohol

level decreased by 0.02, which could confirm the evidence of the applicant that he consumed alcohol on the previous day.

[32] The respondent, after the testimony of Mr Janko, requested an inspection *in loco* to deal with the issue raised by the applicant that the document bearing the SA Premix logo on page 11, "A" was used when the applicant was breathalysed; it was not a correct document of the respondent because the applicant never worked for SA Premix, and his contract was between the respondent and the applicant and there was no mention of SA Premix. The respondent's submission was that the SA Premix is mentioned in the bags they used in the plant and is visible throughout the plant as there were markings stating SA Premix. They submitted that SA Premix is the same company as AECI Animal Health (Pty) Ltd. The issue raised regarding page 11, "A" was later when I referred the applicant to it; at the bottom of the page, the logo of the respondent appears, and I asked them why they were still pursuing the issue that SA Premix and the respondent were not the same company. It was the document from the respondent because it had a logo of the respondent on the bottom of the page and the applicant then abandoned the issue, and the issue regarding SA Premix was added to the issues, which could be regarded as common cause. The only dispute concerning the document was whether the breathalyser was administered by Mr Siphiwo Janko, as stated in the document. The applicant's evidence was that the test was administered by Ms Nosiphiwo Mbenyana who appeared on the page to be the witness. Both Mr Janko and Ms Mbenyana were called to testify by the respondent, and both confirmed that Ms Mbenyana was the person who administered the breathalyser testing when the applicant was tested, and Mr Janko witnessed. The readings of alcohol contents and the time intervals were not in dispute, and evidence of both Mr Janko and Ms Mbenyana was later corroborated by the applicant's evidence; I accept that page 11, "A" reflects the true results and the time intervals between the first and the second testing of the applicant and as such confirmed what happened on 13 February 2023. I accept, based on the evidence before me, that Ms Mbenyana administered the breathalyser, and Mr Janko witnessed the breathalyser testing for alcohol of the applicant. I also accept that it was a human error

that Mr Janko signed as the person who had administered the test, and Ms Mbenyana as the person that witnessed the testing.

[33] The applicant's case was that he was denied an opportunity to consult the Doctor, this submission was baseless because after he had tested positive for alcohol, he was not allowed to enter the premises of the respondent and he was told to leave the premises of the respondent. If he wanted to consult the Doctor, he had an opportunity to do so when he was turned away from the workplace. In the case of *Samancor Chrome Ltd v Rickus Ernst Willemse and others* (JR312/2020) (LAC) [reported as *Samancor Chrome Ltd (Western Chrome Mines) v Willemse and others* [2023] JOL 59370 (LC) - Ed], the Court decided that the breathalyser testing was not reliable because the employee, after testing positive, approached his Medical Doctor and had his blood drawn and it was sent to the laboratory (lab), and the lab results show that the applicant was not under the influence of alcohol. The Doctor was called to give evidence in the arbitration. In the current case, the applicant did not call any expert to challenge the validity of the breathalyser results, and as such, the only evidence before me is the breathalyser test, which shows that the applicant was under the influence of alcohol and is not contrary evidence as it was in the case of *Samancor*. I, therefore, accept that the applicant was under the influence of alcohol.

[34] The applicant does not dispute that at 7:38am, the breathalyser reading was 0.09, and he was tested again at 7:55am, and the test showed 0.07. They confirmed that he consumed alcohol on the previous day, which could have had a bearing on the reading found on him. If it was the applicant's case that he never consumed alcohol on the previous day, the result could have been questionable, but this is not the case. It was the responsibility of the applicant to make sure that when reporting for duty he was not under the influence of alcohol, the readings confirm that he was under the influence of alcohol. He was therefore correctly found guilty of being under the influence of alcohol.

Whether the dismissal was appropriate or whether it was too harsh

[35] In the case of *Tanker Services (Pty) Ltd v Magudulela* [1997] 12 BLLR 1552 (LAC) ("*Tanker* case"), the court found that:

> "Employee guilty of being 'under the influence of alcohol' when not able to perform tasks entrusted to him with the skill expected of a sober person - Whether an employee [is] unable to perform such task depents on its own nature". [*Sic*.]

[36] The central issue in terms of the *Tanker* case was whether the task the applicant was expected to fulfil, he could have been able to fulfil. There was no evidence that the applicant would have not been in the position to perform his duties. It must be noted that the evidence before me was that the applicant was a Warehouse Assistant, and there was no job description stating what was expected from him as a Warehouse Assistant, but both parties confirmed that from time to time, he would be expected to drive a forklift, both parties confirmed that he was not employed as a Forklift Driver. In the absence of the job description (job contents), I will not be

able to conclude that this was an inherent duty of the Warehouse Assistant. The applicant testified that there were Forklift Drivers employed by the respondent, and once a week, he would be required to drive the forklift. This evidence was not challenged during cross-examination; it is, therefore, my conclusion that the applicant's duties were that of the Warehouse Assistant, not a Forklift Driver, and because there are designated Forklift Drivers, driving a forklift was not the job he was employed for. I, therefore, conclude that the applicant was

correctly found guilty of testing positive for alcohol, which readings were common cause, and a reasonable inference can be drawn from his evidence that he consumed alcohol the previous day, that the readings were correct. In the absence of any contrary evidence, I accept the applicant was under the influence of alcohol, and also conclude that the dismissal was too harsh, the employer should have been issued with the final written warning.

[37] In the case of *Scrader Automotive (Pty) Ltd v Metal Industries Bargaining Council and others* (LC) case number P488/05 [reported at [2008] JOL 22584 (LC) - Ed] ("*Scrader case*") the Court in paragraph 18 stated the following.

> "In the present instance, the evidence which was before the arbitrator was that the alcohol content in the employee's blood was high and that he smelt of alcohol. The evidence before the commissioner was that the supervisor of the employee called Mr Niemand and told him that the employee smelt of alcohol. As a result, the employee was subjected to an alcohol test. It is also clear from the reading of the award that the commissioner accepted that the employee was not innocent, and that is why, in the exercise of his power of determining a fair sanction, he delayed, as a form of punishment, the reinstatement of the employee. The employee was dismissed on the 2nd March 2005, and effecting the punishment for his wrongdoing the commissioner reinstated him effective from the 28 November 2005."

The binding nature of the signed pre-arbitration minutes

[38] In the case of *Sibanye Rustenburg Platinum Mine v AMCU obo Sono and others* (LAC), case number JA32/2022 [reported at [2024] JOL 64454 (LAC) - Ed] ("*Sibanye* case") the court in paragraph 11 stated the following:

> "Parties are bound by an agreement reached in pre-trial minutes and it is not open to the courts to adjudicate on the issues that fall outside the scope of issues agreed upon by parties. In *MEC of Economic Affairs, Environment and Tourism, Eastern Cape v Kruizenga and another* (2010) ZASCA 58; 2010 (4) SA 122 (SCA), *the Supreme Court of Appeal made it clear in relations to pre-arbitration agreements that in the absence of any special circumstances a party is not entitled to resile from such an agreement*".

[39] In the pre-arbitration minutes in paragraph 6 (relief claimed), the parties recorded that "The applicant seeks retrospective reinstatement with backpay he was earning an amount of R9 375 per month".

[40] The applicant, during his testimony, stated that he wants compensation; it is my conclusion that the remedy stated in the pre-arbitration minutes is binding in terms of the *Sibanye* case. I will, therefore, limit myself to the remedy recorded in the pre-arbitration minutes.

[41] The dismissal sanction was too harsh; the applicant should have been issued with a final written warning. The applicant's hands were not clean, and as such, I have decided that the reinstatement without backpay is an appropriate remedy.

[42] In the circumstances, I make the following award.

Award

[43] The applicant, Lunga Vincent Cingani, was dismissed by the respondent, AECI Animal Health, and the dismissal was substantively unfair.

[44] The respondent is ordered to reinstate the applicant to his position, and the applicant is ordered to report for duty on 11 July 2024.

The following cases were referred to in the above award: