

Chemical, Energy, Paper, Printing, Wood and Allied Workers' Union obo Ramaru / Kansai Plascon [2025] 9 BALR 925 (NBCCI)

Arbitration Law Reports

Division: National Bargaining Council For The Chemical Industry

Case No: CHEM174-24/25

Date: 02/06/2025

Before: S Oosthuizen, Commissioner

Keywords

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

Dismissal — Misconduct — Alcohol abuse — Employee testing positive for alcohol when reporting for duty while on final warning for same offence and attributing alcohol to herbal “concoction” — Dismissal fair.

Editor's Summary

The applicant employee was dismissed after testing positive for alcohol when he reported for work. He claimed that he had taken a herbal “concoction” for ‘flu which had been given to him by a friend. The respondent contended that it had a zero-tolerance policy for drug or alcohol abuse, that the sanction for a first offence was a final warning and for the second dismissal and that a month earlier the employee was had been given a final warning for reporting for work with alcohol in his blood.

The Commissioner held that given the earlier warning, the employee should have been more circumspect about using a herbal remedy before reporting for work. His claim that he was unaware that the “concoction” contained alcohol was unconvincing. Dismissal was appropriate for the second offence.

The referral was dismissed.

Award

1. Details of hearing and representation

The matter was scheduled for arbitration on 28 May 2025 at the offices of the National Bargaining Council for the Chemical Industry, 70 Fox Street, Marshalltown, Johannesburg. The applicant was represented by Mr D Maseku, a union official and the respondent was represented by Ms V Pitse, an employee of the respondent. The hearing was digitally recorded.

2. Background to the dispute

The applicant testified that he was employed in September 1998 and was dismissed on 17 December 2024. The applicant was employed as a manufacturing controller and his salary at the time of dismissal was R30 494 per month. The relief sought for the alleged unfair dismissal was retrospective reinstatement.

3. Issue to be decided

I have to decide whether the applicant was unfairly dismissed and if this was the case, I should determine the appropriate relief.

4. Respondent's submissions

The respondent submitted that the applicant is employed at a manufacturing plant where employees work with machinery and chemicals. As this is a potentially dangerous working environment, the respondent has a zero-tolerance policy to alcohol. There are specific policies in place to deal with alcohol and substance abuse and all employees receive induction training. On 7 October 2024 the applicant received a final written warning, valid for 12 months, for testing positive for alcohol at the staff entrance. On 4 November 2024 the applicant again tested positive and was called to a disciplinary hearing. The applicant was found guilty, and dismissal was deemed the appropriate sanction.

5. Respondent's evidence

5.1 Respondent's first witness: Ms Siwe Chimutashu

During evidence-in-chief and cross-examination, the witness testified that the drug and alcohol policy is strictly enforced to avoid accidents and harm to staff members. All staff are tested at the gate and if the first test is positive, there is a waiting period of 20 minutes while a senior supervisor or manager is called. The second test is then administered in the presence of the manager. If the result is still positive, a report is sent to HR, and the employee is sent home. In terms of company policy, the sanction for a first offence is a final written warning and a second offence is dismissal.

5.2 Respondent's second witness: Mr Doctor Mkhari

During evidence-in-chief and cross-examination the witness testified that he is employed as the security site manager. On 4 November 2024 the applicant tested positive at the gate. The breathalyser had been calibrated on 5 September 2024 and the certificate was valid for a year. Twenty minutes later the applicant was tested again with a different breathalyser that had also been calibrated on 5 September 2024. The second result was also positive.

6. Applicants' submissions

The applicant submitted that he had not been aware that the concoction given to him by his friend for flu had contained alcohol. The dismissal had therefore been unfair, and the relief sought was retrospective reinstatement.

7. Applicant's evidence

7.1 Applicant's first witness: Mr Charles Ramaru

During evidence-in-chief and cross-examination the applicant testified that he had not been feeling well, and his friend brought him a herbal remedy that he had bought at the pharmacy. On Monday morning, the applicant was still not feeling well and drank another bottle of the herbal remedy. He then felt better and although he was late, he still reported for duty. The applicant was very surprised when they told him at the gate that he tested positive for

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alcohol. Later during the week, the applicant went to the pharmacy and bought the same herbal remedy from the pharmacy and only then realised that it contained alcohol. The applicant testified that when he had tested positive in October 2024, this had been the result of him eating dumplings. The applicant stated that he was aware that certain energy drinks, cough syrup, mouth wash, magwinya and dumplings may give a positive result. The applicant confirmed that he had not asked for a referral to the EAP/ICAS as he did not have a problem with alcohol.

7.2 Applicant's second witness: Mr Kutlo Maseko

During evidence-in-chief and cross-examination, the witness testified that he is a shop steward and

represented the applicant at the disciplinary hearing. The witness confirmed that staff had reported that eating certain foods and drinks resulted in a positive breathalyser test. For this reason, management conducted an exercise where staff ate certain food and was then tested. It was found that often, after the 20-minute waiting period, the second test will be negative. The herbal remedy the applicant drank was not part of the exercise. The remedy had been bought at a pharmacy and not at a liquor store.

8. Analysis of evidence and argument

- 8.1 After consideration of the evidence and argument, it has been decided that the respondent has succeeded in removing the burden of proving the fairness of the dismissal. The reasons for the decision are as follows.

[Numbering as per Award – Ed.]

- 8.3 The respondent has submitted sufficient evidence to show that there is a policy in place regarding alcohol and substance abuse. It is furthermore clear that the applicant was aware of the policy, as he had received a final written warning in October 2024. The evidence shows that the applicant had again transgressed the policy in November 2024. It was the applicant's argument that he had not been aware that the herbal remedy, given to him by his friend, had contained alcohol. Given the fact that the applicant was aware that unexpected items such as dumplings could result in a positive test, it begs the question as to why the applicant had not been more careful when consuming a remedy given to him by his friend. The applicant argued that the remedy had not been bought at a liquor store, but the same holds true for energy drinks, dumplings and cough syrup. The applicant's argument therefore that he had not been aware of the contents of the remedy, is not persuasive, especially given the fact that the applicant had received a final written warning only one month before, after eating dumplings.
- 8.4 I find that the respondent has provided sufficient convincing evidence that the applicant had been guilty as charged and that dismissal had been the appropriate sanction.

9. Award

I find that the respondent has succeeded in removing the burden of proving that the dismissal had been both procedurally and substantively fair. The applicant's case is herewith dismissed.

No cases were referred to in the above award.