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EMPLOYMENT

The use of alcohol in the workplace

9 January 2018 *3 min read*

An employer who is faced with an employee who is under the influence of alcohol in the workplace may, in the absence of satisfactory evidence by an employee as to his alcohol dependency, proceed by way of a disciplinary hearing for misconduct. The mere fact that the employee subsequently claims to have an alcohol dependency problem during the hearing is no absolute bar to the dismissal of such an employee for misconduct. If, however, the employee can provide suitable evidence, or alternatively has previously approached the employer with his dependency problem, then the employee must rather proceed by way of an incapacity enquiry.

COURT'S DECISION

In the recent case of *Superstone Mining (Pty) Ltd v Kuebu and others* [10 September 2013] [Unreported], the court addressed the issue of misconduct and incapacity which arose in the context of alcohol abuse.

The employer, a diamond processing business, dismissed the employee for misconduct as a result of his being intoxicated while on duty. The employer had a strict alcohol and drug dependency policy in place which provided for a zero-tolerance approach to alcohol abuse. The employee was aware of this policy. However, upon being called before the disciplinary enquiry the employee alleged, for the first time, that he had an alcohol dependency problem.

The chairperson took into account the employer's zero-tolerance policy, the fact that the employee was a senior employee and the fact that the employee only alleged alcohol dependency after being caught. The chairperson dismissed the employee for misconduct.

The employee then approached the Commission for Conciliation, Mediation and Arbitration. The commissioner found that the key question was whether the employer should have continued with the disciplinary enquiry in the face of the employee's claim that he had an alcohol dependency problem. The commissioner found that the hearing should have been postponed so that the possibility of rehabilitation could be investigated and consequently ruled that the employee's dismissal was unfair.

The matter was taken on review to the Labour Court. The Court disagreed with the commissioner's finding that the dismissal was unfair, stating that it was trite law that where a policy is in place, it falls upon the employee who has an alcohol dependency problem to make use of the employer's assistance scheme. In addition, the Court found that an employer does not have a duty to treat an instance of alcohol related misconduct as incapacity where there is no evidence of such incapacity. Lastly, the court emphasised the importance of maintaining safety within the workplace.

IMPORTANCE OF THE CASE

If an employee fails to approach the employer for assistance with his or her alcohol dependence or fails to provide evidence of same, the employer is entitled to proceed by way of a disciplinary enquiry for misconduct if the employee is found to be under the influence of alcohol in the workplace. This case also confirms the importance of having in place an alcohol and drug dependency policy which is made known to all employees.



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