



Dear Members

As we embrace the heart of winter, we hope this season brings meaningful opportunities for everyone! In this month's newsletter, our focus will be on the latest developments in Labour Law, along with key updates and news about HASEA. Join us as we explore these critical topics, offering insights and information to keep you informed and engaged!

LABOUR NEWS

The following article was received by Labour Guide, regarding the dismissal of a machine operator who refused to take a breathalyser test and was found to be procedurally and substantively fair. Should you have any further questions or advise please do not hesitate to contact us.

Breathalyser Refusal: The dismissal of a machine operator who refused to take a breathalyser test (in accordance with the company's policy on substance abuse and the refusal of an employee to be tested) was found to be procedurally and substantively fair

Case summary

The applicant was employed as a machine operator at a steelworks, but his employment was terminated in August 2022 after an internal disciplinary hearing, during which he was accused of refusing to take a breathalyser test when his colleague and supervisor found that he had the smell of alcohol on his breath while operating heavy machinery at work. The applicant then referred a dispute to the Metal and Engineering Industries Bargaining Council (MEIBC), claiming that he had been unfairly dismissed.

An arbitration hearing was held in November 2022 under the auspices of the MEIBC.

According to the three witnesses called by the respondent, the applicant had a strong odour of alcohol on his breath when he reported for night shift. This was only noticed about two hours into his shift, when he came into close contact with a colleague. The colleague reported it to a supervisor, who arranged for both the applicant and his colleague to take a breathalyser test. The colleague took the test and passed, but the applicant refused the breathalyser test. The supervisor instructed the applicant to remain in the kitchen for the rest of the night shift because it was not safe to leave the premises at that late time of night.

Over the course of the disciplinary hearing and the arbitration, the applicant gave three different reasons for having refused the test. First he claimed that breathalysers were discontinued due to Covid safety measures, then he claimed that the supervisor had a bad attitude when requesting him to take the test, and then he claimed that the supervisor had told him, in essence, that his days at the company were numbered, predicting his dismissal within three months. The respondent company did not accept these inconsistent excuses for refusing a breathalyser test as company policy is very clear about substance use



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is always to assist employees experiencing substance-related problems.

The applicant requested, before the commencement of the arbitration hearing, that the arbitrator recuse himself, as the applicant did not believe that he would be allowed to express himself freely to the arbitrator, for unknown reasons. The proceedings had not even started when the applicant made this assertion, so there was no logical reason to come to this conclusion. The representative for the respondent objected to the request and it was subsequently denied.

The applicant remained unwilling to admit to any wrongdoing and the arbitrator felt, based on the weight of the evidence, that he was a possible danger to his company, his colleagues and himself.

The dismissal of this applicant was found to be substantively and procedurally fair, and the case was dismissed.

<https://labourguide.co.za/misconduct/other-misconduct/breathalyser-refusal>

ORGANISATIONAL NEWS

As HASEA is a National Organisation with branches in various provinces, we are very proud to announce that our membership increased to 283 members, with the following member that have been added to the HASEA family:

JUNE: Die Fish & Chips Plek - Gauteng

At HASEA, we prioritise growth and have also selected organisers in various provinces to ensure our service level remains exceptional!

It is with great sadness that we advise you of the passing away of one of our organisers, Liza Smalberger. Our condolences and prayers go out to her family!

For more information regarding our services, you can visit our website www.hasea.co.za or email us: admin@hasea.co.za / accounts@hasea.co.za