

Case Study – Drugs & Alcohol



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Introduction: Case studies can be a helpful way of understanding real world actions and consequences, and to learn from other's mistakes. Whilst we have drawn the below case from the Employment Relations Authority files, identifying details have been removed for brevity.

The Situation: A business in the agriculture sector recently suspected an employee was under the influence of drugs. The employee's behaviour had recently become unpredictable, argumentative and he was frequently absent from work with unacceptable excuses. The employer decided they should send the employee for a drug test with an accredited drug and alcohol testing provider. They requested the employee take a drug test.

The Unexpected Surprise: The employee refused to take a drug test stating his Individual Employment Agreement (IEA) referred to a Drug and Alcohol Policy he had not seen nor been given access to. The company owner panicked and tried to introduce the Drug and Alcohol Policy in the moment, thinking this would give them the ability to test. The company gave the employee a copy of the Drug and Alcohol policy to read and an (unreasonable) deadline of 24 hours in which to do so. The following day the employee was requested to sign his acceptance of the new Drug and Alcohol Policy, which he had not been given a reasonable opportunity to seek advice on.

The Missteps Continue: On the day following the request and refusal of the drug test, the company arranged for a drug testing provider to visit their workplace to drug test the employee in question. They were highly concerned that further delay of a test would allow time for drugs to be eliminated from the employee's system. The employee again refused to take the drug test, citing legal advice as the reason for the refusal. The employee then went to his own doctor and obtained a drug test showing he was clear of drugs, and provided this result to the employer, however this was not acceptable to the employer. Eventually the employee was terminated.

The Outcome: The dismissed employee took a grievance seeking remedies (compensation) for unjustifiable dismissal by the company. The Authority agreed that the employee had been subjected to a "procedurally unfair process" and awarded compensation over NZD \$10,000.

The Learnings: Employers should first confirm they have a robust Drug & Alcohol Policy in place and adequate clauses in the IEA before wading into the legally complex and contentious area of workplace drug and alcohol testing. In addition, the Authority questioned why the employer hadn't dealt with the employee's disruptive behaviour, which they had evidence of, as a disciplinary issue rather than become fixated on proving potential drug use by the employee. *"There's more than one way to bake a cake"* as they say...