

## An Arbitrator Rules On the Validity of an Alcohol Consumption and Drug Use Policy

By Pierre Beaudoin and Eve Beaudet

On April 12, 2005, grievance arbitrator Denis Tremblay issued a major ruling on the validity of a policy on alcohol consumption and drug use implemented by the Goodyear tire plant in Valleyfield during the summer of 2004.

The policy was widely attacked by the Communications, Energy and Paperworkers Union of Canada, local 143, representing all of the plant's production employees (close to 1,000 employees).

In addition to objecting to all of the provisions of the policy on the grounds that they breached the *Charter of Human Rights and Freedoms* and the current collective agreement, the Union was also challenging the very principle of an employer's right to unilaterally implement such a policy.

Since the parties so requested, the arbitrator, Mr. Tremblay, first ruled on the company's right to unilaterally implement an alcohol consumption and drug use policy. Secondly, he reformulated the policy to eliminate a few irritants he had detected. The new policy, as reformulated by the arbitrator, contains most of the provisions from the original policy.

### The Right For an Employer to Unilaterally Implement an Alcohol Consumption and Drug Use Policy is Subject to the Application of the Criteria of "Necessity"

According to the arbitrator, the employer had the right to unilaterally implement an alcohol consumption and drug use policy, since it was **necessary** given [Translation]: "the high risks incidental to a number of major operations and the employer's duty to apply safety measures."



The arbitrator summarized the evidence as follows:

- the plant is complex; it cannot be managed as if it were a unidimensional undertaking because of its 1,000 employees, numerous job classifications and variable working hours;
- alcohol consumption and drug use are serious problems in our society in general;
- under the "red flag" policy developed in the *Milazzo* case, employees who test positive should not be maintained in their positions, especially high-risk jobs;
- apart from screening tests, the employer has few means for preventing the effects of drug and alcohol problems or developing probative evidence with respect to alcohol and drug related problems at the plant.

### Policy Contents

The following restrictions are considered justified in light of the specific context of the plant concerned.

### Alcohol Consumption

- It is prohibited for any employee to consume alcohol at the plant or while in any vehicle belonging to the company or used for the purposes of the company;
- It is prohibited for any employee to report to work where his or her faculties are impaired by alcohol;
- It is prohibited for any employee to perform his or her duties where his or her faculties are impaired by alcohol.

### Drug Use

- It is prohibited for any employee to use drugs during working hours and at any time at the plant, or while in any vehicle belonging to the company or used for the purposes of the company;
- It is prohibited for any employee to report to work where his or her faculties are impaired by drugs;
- It is prohibited for any employee to perform his or her duties where his or her faculties are impaired by drugs.

### Screening Tests

The arbitrator is of the view that the employer is justified, in very specific circumstances, to require employees to undergo screening tests.

However, it should be noted that the arbitrator's ruling takes into account certain undertakings by the employer respecting the application of the policy. These undertakings may be summarized as follows:

- no systematic screening tests for drugs may be administered;
- no screening test may be administered without prior authorization by Human Resources management;
- the policy will be applied using judgment and objectivity.



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Mr. Tremblay, the arbitrator, is of the view that Goodyear is justified in imposing a screening test in the following circumstances:

- When the employer has reasonable and probable cause to believe that a person's **faculties are impaired** by alcohol or drugs, such person may be required to take a screening test.
- A screening test may be required for **any new employee who is to hold a "high-risk position"** in the company at the time that a job offer is made to him or her. Undergoing such test would then constitute a condition of employment.
- The employer may require, **without prior notice and at a time of its choosing, an employee holding a "high-risk position"** to undergo a screening test. Each situation will be evaluated on a case-by-case basis.
- A screening test may be required for an employee involved in **any major accident resulting in a work disruption** (other than that required to receive first aid), a major equipment breakdown or a serious injury, as soon as possible after the accident occurs, however giving priority to the care of the injured employee.
- The employer may require an employee to undergo a screening test upon **returning to work** following an absence related to the consumption of alcohol or use of drugs or an absence resulting from an accident involving alcohol or drugs.

#### Detoxification and Rehabilitation Programs

If it is determined that an employee suffers from a dependency on drugs (addiction) or alcohol (alcoholism), the employer may require, upon the breach of a policy requirement, that the employee submits to an evaluation by a health professional

designated by the employer. This professional will determine whether it is appropriate for the employee to enter a detoxification or rehabilitation program.

In addition, an employee, who enters a detoxification or rehabilitation program or takes the initiative to inform the employer of his or her alcohol consumption or drug use problem, must agree in advance to undergo unannounced screening tests for a maximum period of 24 months after resuming work. The frequency of testing after the return to work will mainly depend on the nature of the position held and the seriousness of the earlier policy breach, if any.

#### Disciplinary Action

The employer may impose, on a case-by-case basis, appropriate disciplinary action or administrative measures upon having reasonable cause to believe that an employee breached a policy requirement.

Disciplinary action or administrative measures mainly depend upon the nature of the position held and the status of the employee's file.

No disciplinary action or administrative measures may be imposed simply because an employee takes the initiative to inform the employer about his or her alcohol consumption or drug use problem.

Lastly, except in the event of a relapse, entering a detoxification and/or rehabilitation program results in an "amnesty" for the employee with respect to related discipline matters.

It is noteworthy that the Union applied for judicial review of arbitrator Tremblay's adjudication award. The outcome is much awaited.

**The employer was represented by Pierre Beaudoin and Eve Beaudet.**

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