



Case-Study. Drug Testing in the Australian Mining Industry.

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Abstract

Alcohol and illicit substance abuse in the workplace is increasingly becoming a major human resource and employee relations issue. Whilst more sophisticated measures have been developed to test and monitor drug use in the workplace, and despite tacit union support on the grounds of occupational health and safety, the implementation of drug testing procedures remains a contentious issue. This paper examines the issue through a case study in the Australian mining industry where the introduction of the drug-testing resulted in a major industrial disputation.

Introduction

Alcohol and illicit substance abuse in the workplace is increasingly becoming a major human resource and employee relations issue. Whilst more sophisticated measures have been developed to test and monitor drug use in the workplace, and despite tacit union support on the grounds of occupational health and safety (OH&S), the implementation of drug testing procedures remains a contentious issue (Webb & Festa, 1994; Hartwell., Steele., French. & Rodman, 1996; Bohle, & Quinlan, 2000; Nolan, 2000). This paper examines the issue through a case study in the Australian mining industry where the introduction of the drug-testing resulted in a major industrial disputation.

Case Study - The South Blackwater Mine

Background

South Blackwater Coal Ltd (SBCL) employs 400 workers and is located approximately 900km north-west of Brisbane at the heart of the Bowen Basin coal mining region of Queensland. As part of policy development to ensure a safer working environment, management and trade unions were in the process of negotiating policies and procedures for drug-testing at the mine (in line with that of other mines in the region). Previously, testing only took place if staff were involved in an accident. During this process, management found a used syringe on-site and took this as prima facie evidence of illicit drug use in the workplace. Management immediately moved to install drug-testing procedures at the mine. Trade unions advised their members to refuse this blanket testing

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for drugs, at which point they were stood-down by the company. After one week and three visits to the Australian Industrial Relations Commission (AIRC) the case was (theoretically) resolved. The following analysis illustrates the problems and issues associated with the implementation of these procedures.

Issues Preceding the Dispute

SBCL management had been in negotiation with the Construction, Forestry, Mining and Energy Union (CFMEU) and the Communication, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Service Union (CUPE) for approximately 10 months, in an attempt to implement a company “Drugs and Alcohol” policy at the South Blackwater Coal Mine. From management’s perspective, the rationale for the introduction of such a drug policy was to:

- Identify any drug problems that might exist in the workforce and incorporate the results into the education part of the process;
- Ensure that the drug testing scheme operates effectively, and consider any changes that may be required in future anti-drug efforts; and
- Ensure that the company provides a ‘safe workplace’ (for both employees and visitors) and that ‘safe systems of work’ are not jeopardised by individuals under the deleterious influence of illicit substances (AIRC, 2000:1).

In August, 2000 a needle stick injury was reported which was caused by a used syringe located in a toilet on-site. The general manager Jim Randall noted that: ‘After we had our experts look at it, it was obvious it had been used for some kind of drug injection on-site’.

Management took this as prima facie evidence of drug abuse in the workplace. Due to its responsibility to maintain a safe work environment, and its frustration with regard to the negotiation process to date, SBCL management informed the unions in July 2000 that it was going ahead with the implementation of its Drugs and Alcohol policy in August of that year. The first stage was the introduction of ‘blind’ drug tests for all employees (as a precursor to random drug testing). The ‘blind’ tests required each employee, contractor and even visitors to the site to provide a urine sample for testing, but no specific records (identifying individuals) were to be kept. Management justified this decision to the unions by citing a requirement under law to provide both a safe workplace and safe systems of work, as allowed for in the certified agreement, which stated:

This clause does not remove the right of SBCL to unilaterally develop and implement safety policies or procedures, subject to any dispute being dealt with in accordance with clause 2:15 (SBCL, 1998).

The mine’s management stated that the introduction of such a testing program was consistent with industry standards, and SBCL’s competitors had undertaken similar substance tests for some time (Randall, 2000). Management argued that the ‘blind’ testing was merely a way to provide the company with useful statistical data, upon which management could act should the need arise (Randall, 2000).

Senior SBCL management indicated that the company believed it had the right, if not the obligation, to test for illicit drugs and alcohol abuse, citing the concern for employee safety and the vicarious liability of the company for employee actions. Management attempted to alleviate employee/union concern by stressing that the policy was the result of a safety issue, and not one specifically designed to reduce workforce numbers. As Jim Randall stated:

...we are very concerned about drugs in the workplace and safety issues.... Management wanted to alleviate any employee fears about drug testing and stressed the policy was a safety issue (cited in Vale, 2000).

Dispute over the introduction of Drug and Alcohol Policy

Negotiations continued through the period leading up to the implementation of the blind test, however, no agreement was reached as the union refused to condone the company policy as it was presented. SBCL management enforced the implementation of the 'blind' testing regime, employing evidence of the used syringe found on-site as prima facie evidence of illicit drug use. As Jim Randall reiterated on the day of the implementation of the drug testing policy:

We've asked all the workers, not only all the workers but all the visitors, all the contractors, anybody on this site, we've asked them to participate in what we're referring to as a blind test, and a blind drug test is where we're simply testing anybody on site here as a precursor to random testing. But the blind test will not take anyone's name, its simply for information so that we can gather information about the incidence of drug-taking on our site (ABC Radio Interview).

The CFMEU and CUPE advised their members to refuse to undertake the tests. Although the action of refusing to undertake a 'blind' test for illicit substance abuse was not considered to constitute 'industrial action' by the Australian Industrial Relations Commission (AIRC), SBCL management stood down all of the employees that refused to provide the required urine sample (250 in total) without pay, resulting in the initiation of industrial conflict.

CFMEU and CUPE representatives cited two important issues behind their decision not to 'allow' their members to provide the samples required by management. Firstly, the union rejected managerial arguments concerning the need for a 'safer workplace'. The unions argued that the employer's concern was not so much safety, but rather an attempt to increase the ability to rid themselves of 'trouble employees'(Vickers, 2000 cited in Vale, 2000). Union representatives were concerned that management seemed interested only in the issue of whether employees were using illicit substances, not why they were using them. Indeed, as the state secretary of the CFMEU, Andrew Vickers, stated:

.. the miners were not against drug-testing but did not want a half-baked scheme put up as part of a feel good exercise by management. Peeing in a

cup and submitting that for drug testing will not tell you if you're stressed or fatigued. We want proper procedures and protocols used and genuine safety measures, not just more arrows in the company's quiver of punitive measures. (cited in Olsson & Vale, 2000: 6).

The second issue identified was that of the inability of substance testing to accurately gauge the level of employee impairment whilst on-duty. It was the contention of the unions that substance testing may be inherently flawed in efforts to ensure a safer workplace for all individuals. In addition, union representatives also noted that if the issue is OH&S, then measures of impairment and chemical ingestion related to the work itself should also be included in these safety procedures. As Steve Pierce of the CFMEU stated:

.... The union wanted pupil dilation tests and psych-motor test (which measure average reaction times), and protocols including anonymity, protection from legal action and proven validity attached to urine testing. It also wanted increasing use of 12-hour shifts examined in tandem with fatigue and stress tests. Finding out down the line that you've dangerous practices is too late. ... I believe tests for impairment are probably more accurate than just a test for presence of substance... We're not condoning the use of illegal substances, but a person could be measured to have it in his system when in fact there is no impairment.

Representatives of the CFMEU maintained this argument that whilst agreeing that a drugs testing procedures were consistent with the company's "fitness for duty" policy, it needed to form part of a 'proper set of comprehensive procedures' aimed at the detection of fatigue and stress levels as well as illicit substance abuse and subsequent employee rehabilitation. The CFMEU counter position regarding the implementation of the testing policy focused on four points:

- The union will refuse to allow members to submit for drugs testing if the employees are collectively unhappy with the intrusion into their personal lives;
- The testing of urine samples does not reveal the extent of impairment, with some drugs staying in the human body long after any significant effects have 'worn off';
- The drugs testing policy discounts any analysis of why the employee is taking illicit substances, focusing only on the question as to whether they are taking drugs. Such a lack of analysis fails to indicate whether working conditions may be partly responsible for employee dependence upon illicit substances (eg. 12-hour shifts, work stress levels, poor job satisfaction; unrealistic deadlines etc);
- The drugs testing policy fails to test for chemicals that may enter the bloodstream of an employee via their work duties that may be harmful and adversely affect their performance (eg. carbon dioxide levels; excessive dust particles etc.); (Olsson & Valle, 2000; Vale, 2000; AIRC, 2000).

Resolution of the Dispute

The AIRC ruled that SBCL had breached the certified agreement by not complying with its internal problem solving procedures outlined in the agreement (Nolan, 2000). SBCL was thus forced to retract its drug testing procedures, allow stood down employees to return to work and re-establish discussion with the trade unions over the issue of drug testing in the workplace. The inference was that the unions and SBCL management would jointly develop and implement a Drug and Alcohol Policy. However, the employees stood down for not complying with drugs testing remained stood down as the unions sued for lost income. A “caretaker” workforce of approximately 80 personnel maintained the mine in a 'ticking over capacity' for the next 10 month until the dispute was finally resolved. As Professor Bowden of Griffith University, Queensland noted this on-going conflict was endemic of bigger problems (of control) at South Blackwater mine between management and trade unions. As he states: 'mine management had chosen the drug issue to flex its muscles over the union because it was saleable to the public' (cited in Vale, 2000).

This is particularly important, as many policy issues associated with employer directed substance testing can result in employee-union conflict and are related to the "great struggle for workplace control" (Keenoy & Kelly, 1998). In the struggle for control the CFMEU and CEPU (in their efforts to protect members interests and restore and acceptable balance of power and control in the workplace) called upon their members not to provide any samples for analysis - in effect introducing their own 'substance testing' policy and then sued for lost income.

Conclusion

High profile disputes over drug-testing illustrates the contentious nature of the issue at the workplace. It also highlights the importance of developing a participatory framework to deliver a workable solution. Any activity in this area must be part of a broad based OH&S program which is jointly developed by employers and employees and/or unions. A unilateral drug-testing policy that places an employee in a position which could jeopardise their employment is coercive and therefore unacceptable (Nolan, 2000). For sensitive issues like this to be handled successfully, employee acceptance is critical. Whilst alcohol and illicit substance abuse in the workplace may need to be viewed in the context of an employer providing a safe and healthy workplace, the issues are not clear cut, and should be examined in the broad context of OH&S in the workplace. Research indicates that high-quality employee education programs and assistance programs are important factors in preventing and reducing drug abuse (Desjardine & Duska, 1997; Oliver, 1994). Indeed, a drug testing policy not linked to a well established rehabilitation program is likely to result in the removal of the employee from the workplace, but not the illicit drug usage that may well enter the workplace with the replacement employee.

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