



**MASERUMULE**

Corporate Employment Law

## **DISMISSAL FOR THE USE OF A CELLPHONE AT WORK**

*by Maserumule Corporate Employment Law*

Dismissal for cell phone use at work often arises in contexts where such use compromises safety, productivity, or confidentiality.

In the matter of *Mostert v Overberg Agri-Bedrywe (Pty) Ltd*<sup>1</sup> the **Labour Court was tasked to review an arbitration award which upheld the substantive fairness of the dismissal** of Mr Mostert, hereinafter referred to as the Employee, for the use of his cell phone for private purposes whilst working with machines and who was in fact injured consequently. Agri-Bedrywe (Pty) Ltd, hereinafter referred to as the Company, employed the Employee as a qualified fitter and turner with some 17 years' experience for approximately 20 months until he was dismissed on the 12<sup>th</sup> of February 2021. The charges related to events on 27 and 28 November 2020 concerning the Employee's failure to comply with standards, rules and regulations related to safety.

The Employee disputed that he was guilty and, in the alternative, maintained that the sanction was too harsh in any event. At arbitration the Commissioner noted that the Employee was guilty of serious misconduct. Moreover, the Employee had deliberately refused to comply with the standards, rules and regulations related to safety on more than one occasion. The Commissioner was concerned that the Applicant was still arguing that talking on the phone or listening to music on it was not unsafe.

The Employee admitted that on 27 November he was talking on his phone while working, but there was no accident on

this occasion. When the Employee had the accident on 28 November he was working while talking on his phone, but his machine was not in motion. The response of the Company was that the critical principle is that when a call is taken at work, employees are expected to switch off the machine and move away from it. Mr Roodman, hereinafter referred to as "Roodman" the manager of the engineering division of the Company, provided commentary on the video of the incident on 28 November 2024 to the effect that the Employee was working on the stationary machine with his left hand instead of his right, though it appeared the accident occurred shortly after the Employee put the phone down.

Based on his experience of 17 years as a fitter and turner, the Employee defended his action of trying to adjust the machine while holding his phone in his hand because he was able to use his discretion to assess the risk of doing so.

The court held that it was not untenable to conclude that the Employee would have had more freedom of movement and would not have been using his left hand to free the jammed component if he had not commenced the task while he still had the phone in his right hand and had also set aside the phone, together with the earphones, before turning all his attention to a task that clearly required significant effort. Accordingly, it was a feasible inference that his phone had indirectly impeded his efforts to free the stuck component, thereby constituting a risk factor.

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<sup>1</sup> (C113/2022) [2025] ZALCCT 4

The court held that on 27 November, the Employee repeatedly was on the phone while his machine was running, so it was not as if he had flouted the rule only on one exceptional occasion that day. Regarding the 28 November accident, it was clear the Employee believed that because he was an experienced artisan with considerable experience, he was in a position to judge when it was acceptable to flout safety rules and that he was entitled to exercise his discretion in that regard.

The Employee did not acknowledge any wrongdoing or remissness on his part concerning his non-compliance with the normal safety procedures. Although the Employee had no written warning and the oral caution by his superior was not properly corroborated, the Labour Court held that remedial steps were unlikely to change the Employee's attitude about him being best placed to decide when a safety practice could be ignored, bearing in mind his lengthy experience which ought to have instilled a more cautious approach to safety matters. In conclusion the Labour Court held that **it cannot be argued that a reasonable Commissioner could not have concluded that the Employee's transgression, coupled with his recalcitrant attitude towards safety compliance, warranted dismissal. Accordingly, the Employee's review application was dismissed.**

From this case one may reasonably deduce that dismissal for cell phone use at work is justified when such use jeopardizes safety, breaches Company policies, and / or disrupts productivity. However, companies must ensure substantive and procedural fairness to defend the dismissal effectively. Employees, on the other hand, must adhere to workplace rules to avoid disciplinary action.

### **Practical Guidance for Employers**

- Draft Clear Policies: Include rules regarding cell phone use in the Company's code of conduct, with specific prohibitions for safety-critical roles.

- Educate Employees: Train employees on the risks and consequences of cell phone use in the workplace and more so in hazardous environments.
- Enforce Rules Consistently: Apply policies uniformly across the workforce to avoid claims of unfairness and inconsistent application of the rules.
- Document Incidents: Keep detailed records of infractions, warnings, and remedial actions taken.

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