

Bonus Entitlements Upon Termination – Ontario Court of Appeal Upholds Provision!

Employers are often perplexed as to why clear provisions in employment agreements are set aside by our courts, and very often decided in favour of the employee. A very recent Ontario Court of Appeal decision is a refreshing change for employers who provide bonuses to employees.

Johnathan Kielb was hired by National Money Mart Company (“Company”) in 2008. Prior to starting work, he entered into an employment agreement with the Company that contained a bonus provision. The provision stated that the bonus did not accrue and was only considered to be earned and payable on the date of the payout. The provision also took into account any statutory notice period owed upon termination and stated that Mr. Kielb agreed to waive any claim to the bonus that would be paid after the expiration of that notice period. While Mr. Kielb negotiated some terms of the employment agreement, he did not do so with the bonus provision. He signed the employment agreement (including the limiting bonus provision) and started work.

Mr. Kielb was terminated without cause two (2) years later on April 21, 2010. The 2009/2010 bonus payout date was, however, set for September 17, 2010. The Company refused to pay the bonus since, in accordance with the contract, Mr. Kielb was not entitled to any portion of the bonus upon his termination date. Specifically, the bonus was set to be paid after both his date of termination and the expiry of any notice period owed to him. Mr. Kielb refused to sign a release and the Company simply complied the *Employment Standards Act, 2000*.

Mr. Kielb (of course) disagreed and sued the Company for damages, one being his entitlement to his accrued 2009/2010 bonus to the date of termination, which he alleged to be in the amount of \$86,239.56. The trial judge rejected the argument that the bonus provision was unenforceable due to its ambiguity. In fact, the judge stated that the provision clearly stated that if the bonus payout date fell within the notice period the Company would honour its requirements to pay. On appeal the Court agreed with the trial judge and saw no reason to interfere with the lower court’s interpretation of the provision.



While the latest decisions in Ontario continue to be mixed in terms of how bonus provisions are interpreted by our courts, this decision is a certainly a “win” for employers. Unlike other decisions which set aside similarly drafted provisions, the court in this case noted that the parties were open to agree how and when any bonus was earned, accrued and would be payable.

If you have any questions related bonus plans and their interpretation, please do not hesitate to contact e2r® to speak to an Advisor.

