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PUBLICATION

Employee's Bonus Entitlement During Reasonable Notice Period – Some Clarity

Date: October 29, 2020
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Original Newsletter(s) this article was published in: Employment Update: October 2020

On October 9, 2020, the Supreme Court of Canada (SCC) released an important decision for employers and employees in Canada regarding an employee’s entitlement to bonuses and incentive payments during a period of reasonable notice.

In *Matthews v. Ocean Nutrition Canada Ltd*., 2020 SCC 26, the SCC clarified that an employee is entitled to damages for the lost opportunity of a bonus or other incentive payment during the common law reasonable notice period unless this entitlement is removed by enforceable and unambiguous contractual language.

The Case

David Matthews was an executive level employee at Ocean Nutrition Canada Ltd. (“Ocean”). Part of Matthews’ compensation package included his enrolment in a Long Term Incentive Plan (“LTIP”). Under the terms of the LTIP, a payout was to be provided upon the happening of a “realization event”, one of which was the acquisition of Ocean by another company.

As a result of various changes to his employment, Matthews resigned and brought an action against Ocean for constructive dismissal. Matthews sought damages for common law reasonable notice, as well as damages for loss of the payout under the LTIP. After Matthews’ resignation, Ocean was acquired by another company.

At trial, Matthews was found to have been constructively dismissed and awarded damages for common law reasonable notice. The trial judge also found that there was a common law right to damages for loss of the payout under the LTIP because Matthews would have been entitled to the payout arising from Ocean’s acquisition during the applicable notice period.

Ocean appealed, and the Nova Scotia Court of Appeal ("NSCA") disagreed with the lower court with respect to his entitlement to the LTIP.

In a unanimous decision, the SCC found that the NSCA erred by not focusing on whether the damages owed to Matthews for reasonable notice included an amount for the LTIP.

Two-Part Test

The SCC followed the Ontario Court of Appeal decision in *Paquette v. TeraGo Networks Inc.*, 2016 ONCA 618, and applied a two-part test for determining whether an employee is entitled to a bonus as part of their damages for wrongful dismissal:

1. Whether, but for the termination, the employee would have been entitled to the bonus or benefit during the reasonable notice period; and

2. Whether the bonus plan or contract unambiguously alters, removes, limits, or takes away the employee's common law right to the bonus or benefit during the reasonable notice period.

With respect to the first part of the test, the SCC rejected the notion that the bonus must form an integral part of the employee's compensation in order for the employee to be entitled to its benefit. Rather, the SCC stated that *but for* Matthews' dismissal, he would have been entitled to the LTIP payout, as the "realization event" (the acquisition) would have occurred during that period.

In applying the second part of the test, Justice Kasirer, writing for a unanimous court, considered the contractual language and concluded that it did not contain any provisions that were sufficient to unambiguously remove or limit Matthews' common law right.

It was concluded by the SCC that the requirement in the LTIP to be a "full-time" or "active" employee was not sufficient to disentitle Matthews to the LTIP payout. Rather, any exclusion clause must cover the exact circumstances of the termination or dismissal. In this case, the LTIP did not include language that expressly excluded receipt of the bonus if Matthews was unlawfully terminated and the bonus fell within the reasonable notice period.

Key Takeaway:

The *Matthews* decision confirms that courts are to first inquire whether or not the former employee would have been entitled to the bonus but for their termination and, if so, determine if the written terms of the employment contract clearly and unambiguously limit that bonus entitlement during the applicable common law reasonable notice period.

In light of this decision, employers should review their current employment contracts and incentive plans to ensure that these contracts do not provide for ambiguous or unintended future benefits for terminated employees. In particular, language in a contract or plan referencing "active" or "full time" employment may not be sufficient to limit an emplyoee's damages.

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