

Employment E-Brief No 89

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CAUTION TO BE EXERCISED OVER DISCRETIONARY BONUSES

A recent case involving Cantor Fitzgerald resulted in the Court of Appeal giving a detailed analysis of the interpretation of 'discretionary' bonus schemes.

The scheme in question was a 'discretionary' scheme, the amount of which was performance related and was to be mutually agreed between the employer and employee (albeit that the final decision rested with the employer).

The Court of Appeal found that the objective of the scheme was to reward the employee for past efforts and to motivate him. The scheme was also subject to a precondition that the employee be employed by Cantor at the time; to ensure future loyalty. For these reasons, and in view of the fact that the bonus formed a significant part of the remuneration package, the Court of Appeal found that the bonus was actually a contractual benefit and the employer would have breached it if it exercised its discretion in an irrational or arbitrary manner.

This decision adds weight to earlier High Court cases that bonus clauses, even if expressed to be completely 'discretionary', have to be operated in a justifiable manner. The obligation on employers is to consider bonuses in a rational and bona fide manner.

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