

**CONTRACTUAL BENEFIT CLAIM  
WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION**

**CITATION** : 2020 WAIRC 00732

**CORAM** : SENIOR COMMISSIONER S J KENNER

**HEARD** : TUESDAY, 18 AUGUST 2020

**DELIVERED** : TUESDAY, 18 AUGUST 2020

**FILE NO.** : B 77 OF 2020

**BETWEEN** : DRAGAN KUZMANOVIC  
Applicant

AND

SCAFFOLD LOGISTICS PTY LTD  
Respondent

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**Catchwords** : Industrial law – Denied contractual benefits – Principles applied – Annual bonus – Performance indicators met

**Legislation** :

**Result** : Application upheld. Order issued

**Representation:**

**Applicant** : In person  
**Respondent** : Mr C Hallinan

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**Case(s) referred to in reasons:**

Hotcopper Australia Ltd v David Saab [2001] WAIRC 03827; (2001)  
81 WAIG 2704

*Reasons for Decision*  
*Ex Tempore*

- 1 This is a denied contractual benefits claim. The applicant was employed by the respondent as its Operations Manager on 8 April 2019. His employment ended on 27 May 2020 as a redundancy, which is not relevant for the purposes of the present claim.
- 2 The applicant was employed under a written contract of employment, a copy of which was tendered as exhibit A1. The contract of employment sets out the terms and conditions of the engagement between the applicant and the respondent as the Operations Manager. In addition to the substantive terms in the contract there are set out at schedule 1 in the contract, particulars of the applicant's engagement, his date of engagement, his position, his duties, the probation period and importantly for present purposes, his annual salary package of \$150,000 per annum paid on a weekly basis.
- 3 Additionally, in schedule 1 item 7 of the applicant's contract of employment was a further term providing for an annual bonus of \$15,000 on achievement of key performance indicators. Furthermore, item 7 sets out that there will be a review of the salary package conducted at the end of each 12-month period. Other relevant terms of the contract were cls 5.1 which refers to Item 7 of Schedule 1, 5.6 dealing with salary review and 5.7 dealing with performance review, most particularly.
- 4 The applicant testified that in accordance with his contract of employment, after commencement in about the first week, he was provided by his general manager, Mr Payne, a document. The document was described by Mr Kuzmanovic, the applicant, as his key performance indicators. The document which is part of exhibit A2 tendered by the applicant, is headed "Personal Objectives and Key Performance Indicators 2019/20". This "Key Performance Indicators and Personal Objectives" document, sets indicators and criteria, and those objectives include HSEQT, people, cash, partnership and growth. The document then sets out a description of the performance indicator, and has three measures of performance, "threshold, target and outstanding".
- 5 The applicant testified that in accordance with the respondent's practice, he undertook a performance appraisal with the general manager on 26 March 2020. This "Role Performance Appraisal" was over the prior 12-month period of the applicant's employment. The performance appraisal document, a part of exhibit A2, entails two parts. Firstly, was a self-assessment undertaken by the applicant, which is the final four pages of the document, by which the applicant assessed his own performance against his key performance indicators. Secondly,

was the completion of the role performance appraisal form by the general manager.

- 6 The applicant testified that in accordance with the contract of employment and the “Key Performance Indicator and Personal Objectives” document provided to him at the commencement of his employment, that he met at least the “threshold” on two key performance indicators and on the other three key performance indicators he attained at least two performances at “target” level and one at “outstanding” level. This is reflected on the front of the role performance appraisal form at the bottom of the first page of the document, where the "review of major skills required to fulfil this position's duties" was completed by the general manager.
- 7 I note that on the second page of the performance appraisal document, it is signed by both the applicant as the employee and the reviewer, being the general manager. I note also that there is a general comment on the top of the second page of the role performance appraisal document. That general comment is about the applicant’s performance and the note reads as follows:

Strong performer across all operational requirements. Great personal and leadership qualities. Drove strong operational culture. Regularly challenged himself with networking activities, and in and outside of hours identified maximum areas of improvement internally, and drove compliance to quality.
- 8 On the performance appraisal form which I have said was signed by both the applicant and his general manager, there are also some comments about future performance in the review period ahead.
- 9 The applicant testified that thereafter on 11 May 2020, he received a letter from his general manager informing him that as a result of restructuring of the respondent's business and changes in economic circumstances, his position as operations manager was to be made redundant. The letter of 11 May, which was tendered as exhibit A3, referred to various payments that the applicant would be entitled to receive on termination of his employment. I note towards the bottom of the page, where the letter refers to payments upon his departure, including “normal pay, redundancy payment, annual leave, and reimbursements”, there is also an entry for “annual bonus \$15,000”. That letter is signed by the general manager of the respondent and it was also dated and signed by the applicant on 11 May 2020.
- 10 Somewhat curiously, a little later, on 18 May 2020 the applicant received a further document by way of a letter from Mr Adshead, the CEO of the respondent. This letter referred to the termination of the applicant's employment to be effective on 27 May 2020. The letter referred to a meeting between the applicant and the general manager, Mr Payne, on 13 May 2020, and confirmed

that his position was being made redundant due to a restructuring of the business and other matters.

- 11 The letter from Mr Adshead also refers to what is described as a “discretionary bonus payment”. The letter under this heading is as follows:

A bonus payment will be reviewed in line with Scaffold Logistics Pty Ltd bonus payment policy and timeframes based on financial performance of the business and KPI assessment.

- 12 The applicant says that despite various requests after his employment came to an end, he has not been paid the bonus as was promised to him.

- 13 As this is a denied contractual benefits claim, the well settled principles in *Hotcopper Australia Ltd v David Saab* [2001] WAIRC 03827; (2001) WAIG 2704 apply. The matter turns on what entitlement the applicant had under his contract of employment. Clause 5, remuneration, of the contract, set out in exhibit A1, in my view is clear. Clause 5.1, which I have mentioned earlier, refers to the applicant's entitlement set out in item 7, schedule 1 to the contract. That refers to the applicant's salary package of \$150,000 per annum, and an annual bonus of \$15,000, on achievement of key performance indicators.

- 14 It also provides, as I have indicated, that a review would be conducted of the applicant's salary package at the end of each 12-month period. Whilst cl 5.6 and 5.7 of the contract of employment refer to a salary review and performance review respectively, in my view, these matters do not deal with the issue of a bonus, which in my opinion, based upon the plain terms of the contract, stands alone as a separate entitlement set out in the Schedule to the contract.

- 15 Furthermore, there is the terms of cl 5.5 providing for an incentive plan which, apparently, was to be implemented prior to the completion of the applicant's probation period. Whilst there was no evidence about this matter, in my view from a review of cl 5.5, that deals with a separate matter and is unrelated to the individual bonus claim or payment to the applicant.

- 16 Whilst the respondent contended that the bonus under item 7 in schedule 1 of the contract of employment was only payable on the combination of the achievement of personal key performance indicators and key performance indicators of the respondent's business as a whole, by way of a review of a manager one step removed, and on the authority of the CEO of the respondent, in my view that is not what item 7 of schedule 1 says at all. In my view, the bonus entitlement set out in item 7 is unqualified and is plain and clear on its terms as a matter of construction of the contract.

- 17 Whilst the respondent referred to a document which, whilst not tendered in evidence was put to the applicant in his evidence, entitled "A balanced score card" which appears to have been seemingly produced some time in April 2020, that document contained a coloured spreadsheet which on my review was

incomplete, had no information in it as to actual year to date financial performance figures whatsoever. The applicant's evidence was that he had not seen that spreadsheet previously. It would also appear to be the case that the document itself refers to the performance of the respondent's business looking forward, not retrospectively, from the commencement of the applicant's employment.

- 18 In my opinion, this contractual benefits claim is clear cut. I have no doubt on a proper construction of the applicant's contract of employment, having read schedule 1, item 7, in accordance with its plain terms, and the contract as a whole, that the applicant was entitled to a \$15,000 annual bonus on the satisfaction of key performance indicators given to him at the commencement of his employment by his general manager. The evidence is that the applicant did meet these key performance indicators, and in my view the terms of his contract of employment, as to his annual bonus entitlement were met. Given that item 7 of Schedule 1 contains an annual performance review, where performance against KPI's would be assessed, it is logical to infer any bonus be payable from the time of the annual review.
- 19 On the basis of the evidence and all of the material before the Commission, I am satisfied that the applicant has established on the evidence that he had a contractual entitlement to an annual bonus of \$15,000 on achievement of key performance indicators. Those key performance indicators were met by way of his annual performance review, conducted by the General Manager, and there is nothing in the contract document at all, which supports the respondent's assertion as to its qualification of the bonus payment.
- 20 Accordingly, the Commission will order that the respondent pay to the applicant by way of a denied contractual benefit an annual bonus the sum of \$15,000 gross, within 14 days of today.