



REPUBLIC OF SOUTH AFRICA

THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG

JUDGMENT

Reportable

Case no: JS 598/15

In the matter between:

BAREND HENDRIK JACOBUS GROENEWALD

APPLICANT

and

DR. NE MOKGETHI N.O

FIRST RESPONDENT

KGOTSO KHUMALO N.O

SECOND RESPONDENT

TLOKWE MUNICIPALITY

THIRD RESPONDENT

Date heard: 20 October 2015

Date delivered: 13 November 2015

Summary: Section 77(3) claim for outstanding performance bonus. No performance evaluation conducted – entitlement and amount not established. Application dismissed.

JUDGMENT

EVERETT AJ;

Introduction

[1] This is an application in terms of section 77(3) for payment of an outstanding performance bonus for the financial year 1 July 2010 – 30 June 2011. The amount claimed is R116032.55 plus interest.

The facts

[2] The applicant commenced employment with the respondent in 1987 and over the years he was employed in various capacities. In terms of the employment contracts that applied at the time, he and the employer would enter into a performance agreement, and the employer was required to review his performance. The performance evaluation would form the basis for rewarding outstanding performance or correcting unacceptable performance 'and a performance bonus between 5% and 14% of the all-inclusive annual remuneration package may be paid to the employee in recognition of outstanding performance'. The applicant's total remuneration package at the end of June 2011 was R828,803.94.

[3] The applicant entered into the performance management agreement for the period 1 July 2010 to 30 June 2011.

[4] For the financial year 1 July 2010 to 30 June 2011, no performance evaluation was conducted despite a council resolution on 26 August 2011 to the effect that all outstanding bonuses be finalized and paid to him. This was not done and after the

applicant had resigned from the position he held until 6 July 2014, he received a request to submit a portfolio of evidence for assessment to enable the municipality to pay performance bonuses. He claimed it was impossible to comply with the request as the required documents were not in his possession.

- [5] For the year 2009 to 2010, the applicant was paid a performance bonus of R64264.73 after tax, after a council resolution on 17 April 2013 that outstanding performance bonuses should be paid.

Evaluation

- [6] It is clear that the employer has failed to conduct the performance evaluation as required by the contract of employment and that this has resulted in a failure to pay the applicant a performance bonus for the year in question in the event that his performance was evaluated as having been outstanding.
- [7] The performance agreement specifies a range between 5% and 14% for outstanding performance. In particular, a score of 130% earns a performance bonus ranging from 5% to 9% and a score of 15% and above results in a bonus ranging from 10% to 14%.
- [8] The applicant has claimed the amount which equates to 14% of his salary at the time. He does not set out any basis for claiming 14% as opposed to 5%. The difficulty is that conducting a performance review or evaluation is a condition precedent to determining the percentage and therefore the amount of the performance bonus. In the absence of a performance evaluation it is impossible to assess whether he was entitled to the bonus and the amount thereof. For a similar finding on the need to establish entitlement in terms of the contract, and quantify a claim for the purposes of a section 77(3) application, see *Volschenk v Pragma Africa (Pty) Ltd* [2014] 11 BLLR 1146 (LC), albeit that this was in the context of an exception. Entitlement and payment of an outstanding performance in the previous year does not establish entitlement in the year in question.

[9] When the applicant was asked to provide a portfolio of evidence so that the outstanding performance evaluation could be conducted and the amount of the performance bonus, if any, could be quantified, he had an opportunity to engage with the employer. It appears that he failed to take up this opportunity and instead sought to claim the maximum performance bonus in terms of section 77(3) of the BCEA.

[10] In a claim of this nature, section 77 would be the appropriate route if there is clear entitlement in terms of the contract of employment. But in this case, entitlement to a performance bonus only arises once the evaluation has been conducted and a score is decided upon. For these reasons the application must fail. As this matter was not opposed, there is no order as to costs.

Order

1. The application for payment of a performance bonus is dismissed.
2. There is no costs order.

Everett AJ

Acting Judge of the Labour Court of South Africa

APPEARANCES

For the Applicant: J Keet

Instructed by: Keet Attorneys

For the Respondent: No Appearance.

LABOUR COURT