<u>IN THE LABOUR COURT OF SOUTH AFRICA</u>

<u>BRAAMFONTEIN</u> NOT REPORTABLE

CASE NO: J1107/02

2003-05-30

In the matter between
BAREND KAYNIE Applicant

and

Credit Guarantee Insurance Respondent

J U D G M E N T

<u>PILLAY J</u>: The applicant's claim is for payment of a bonus for the period 1 July 2000 to 30 June 2001.

Both parties are *ad idem* that the dispute turns on the interpretation of the contract which provided for the bonus. However they each place different interpretations on the contract.

The material terms of the contract provides as follows:

"3.2. Participating employees who are under notice or have been dismissed at the time of the above mentioned Board meeting will not be entitled to any incentive payment that may be ratified by

> that board meeting. Participating employees that leave or have left the employment of Credit Guarantee for any reason other than dismissal or in order to join another employer will be entitled to their pro rata temporis share. Participating employees on extended (any leave other than normal annual or sick leave), sick, maternity or other leave will participate in the Incentive on a pro rata temporis basis."

It is common cause that the applicant gave a month's notice to terminate his employment with effect from 30 June 2001. He was therefore not "under notice", nor had he been dismissed by the time of the board meeting in August 2001. Accordingly, he was not disqualified from participating in the scheme in terms of the first sentence of clause 3.2.

The applicant relies on the plain and ordinary meaning of the second sentence of clause 3.2. He concedes that participating employees who left during the bonus cycle to join another employer would not be entitled to their bonuses. It could not have been the intention to exclude those employees who complete the cycle and meet all the performance criteria. His resignation only took effect after the bonus cycle. There is a dispute of fact as to whether he resigned to take up employment elsewhere.

The respondent alleges that the agreement is badly constructed. The crux of its argument is that the bonus was not payable to any employee who left the respondent to work for another employer at the time when the board decided on the payment of bonuses. It made no sense to pay a bonus to an employee who was no longer in the respondent's service, so it was contended. Furthermore the right to the bonus accrued only after the bonuses were calculated, audited and ratified by the board at its meeting in August following the particular bonus cycle. If the bonus is ratified, the board would pay the employees provided they are eligible. So it was submitted for the respondent.

In my view clause 3.2. determines the eligibility of employees for participating in the scheme. The plain meaning of the second sentence of clause 3.2. entitles participating employees who leave the respondent in the midst of a bonus year to a *pro rata* share of the bonus. It follows that if employees serve the full period of the bonus cycle then they should be entitled to 100% of the bonus. If this were not so, then those leave in the midst of the bonus cycle would be advantaged over those who wait until the end of the bonus cycle. There is no rational basis for such a differentiation.

The right to the bonus arises from the contract as evidenced at document 11 to 12 of the record. It is subject to contingencies, namely, the performance of the respondent over the period of the bonus cycle, the calculation, auditing and ratification of the bonus. Ratification cannot be withheld if employees are eligible in terms of clause 3.2.

The respondent's scheme operates to reward employees for past performance and to incentivise them for the future. By refusing to pay the applicant for his past performance, after having incentivised him to remain in its employ for the duration of the bonus cycle, the respondent is unlawfully depriving him of his just and agreed reward. If he indeed resigned to take up employment elsewhere, then he did so after he became eligible for the bonus on 30 June 2001.

I accordingly find that the applicant has a contractual right to be paid a bonus for the period 1 July 2000 to 30 June 2001.

However there is a dispute as to the *quantum* of the bonus. The court accordingly directs that this issue be referred for further evidence. The parties are given leave to supplement the evidence on the same papers to deal with the quantification of the claim which may be heard by any judge of this court.

The respondent is ordered to pay the costs.

COURT ADJOURNS

PILLAY D, J
10 September 2003