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Bradshaw v James Pascoe Ltd AA 226/07 (Auckland) [2007] NZERA 635 (3 August 2007)

Last Updated: 18 November 2021

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

5073656
AA 226/07

BETWEEN	BRONWYN BRADSHAW Applicant
AND	JAMES PASCOE LIMITED Respondent

Member of Authority: Vicki Campbell Representatives: Bronwyn Bradshaw in person

Jo Douglas for Respondent

Investigation Meeting: 11 June 2007 at Hamilton Determination: 3 August 2007

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Bronwyn Bradshaw was employed by James Pascoe Ltd (“Pascoe’s”) for 16 years. For four of those years she was engaged as a manager and was entitled and did receive a manager’s bonus based on her performance for the period 1 June to 31 May each year.

[2] Ms Bradshaw claims she was entitled to receive a proportion of her manager’s bonus at the end of her employment for the period of the financial year she had worked, to recognise her contribution to the store during that period. In support of her claim, Ms Bradshaw provided evidence from another employee who left his employment in March 2003 and received a proportionate payment of his manager’s bonus in the subsequent October.

[3] Further, in support of her claim, Ms Bradshaw says, that when she was temporarily employed as a manager at the Chartwell, Hamilton store for nine months she received a proportion of her bonus for the period of that temporary assignment.

[4] The respondent denies Ms Bradshaw is entitled to a bonus and says that the payment or otherwise of a bonus to its managers was at all times discretionary.

Terms and conditions of employment

[5] Ms Bradshaw's employment was subject to an individual employment agreement. The employment agreement is silent on the issue of the payment of bonuses. During the term of Ms Bradshaw's employ, Pascoe's implemented various policies and procedures relating to Ms Bradshaw's employment.

[6] Following requests by managers, Pascoe's confirmed the details of the bonus scheme on 16 May 1996. The only discretionary aspect of the scheme in as set out in the 1996 document is in relation to the calculation of the bonus payment and the application of the "...Administration, Stock Control / Security and General" factors. The 1996 document states that pro-rata payments will be made where an employee moves from one store to another during the year. This is consistent with Ms Bradshaw's experience when she was employed as the manager at Charwell on a temporary basis.

[7] In October 2004 the Managers bonus was reviewed. In a memo to all Store Managers, Mr Kevin Turner, Managing Director, states:

Please note as always that the Managing Director reserves the right to amend the bonus scheme from time to time, and all Store Manager's bonuses are paid out at his/her discretion.

[8] Following her written resignation, Ms Bradshaw ended her employment on 31 March 2006. Expecting a proportionate payment of her manager's bonus to recognise her contribution to the store for the ten months from 1 June 2005 to 31 March 2006, Ms Bradshaw wrote to Mr Turner in November 2006, requesting payment of her bonus.

[9] Mr Bradshaw was advised on 6 November 2006 that:

It is group policy that the entitlement to the payment of bonuses is restricted to those employees that are still in the group's employment at the time of the payment.

...

The 2006 bonus was paid to eligible employees on 31 October 2006, as you had terminated your employment prior to this date under the group policy you were not eligible to receive a bonus.

[10] Mr Andrew Mainey, a store manager with Pascoe's, Bayfair, left his employment in March 2003. In October 2003, Mr Mainey was paid a bonus proportionate to his employment from 1 June 2002 to March 2003. Ms Bradshaw was appointed in May 2003 to the vacancy created by Mr Mainey's departure. Ms Bradshaw says that the payment to Mr Mainey supports her claim that she was entitled to be paid a proportionate bonus following the termination of her employment.

[11] Mr Kevin Turner, group manager finance, told me Mr Mainey was paid his bonus at a time when the company was much smaller. He told me that from 2003 the company had grown dramatically and it was decided in 2006 that all the companies across the group of companies, which now included Farmers, had to be consistent. That meant that the managing director would exercise his discretion not pay a proportion of the bonus when employees left the company before the end of the financial year.

[12] Pascoe's say the bonus scheme was a policy and did not form part of Ms Bradshaws terms and conditions of employment. Ms Bradshaw says that in 2003, when she was appointed to her position as Bayfair branch manager she was told that she would receive a salary plus a bonus. She says, therefore that the payment of the bonus became part of the offer of employment. Ms Bradshaw has provided a copy of the letter of offer dated 2003. However, that letter only makes reference to a salary and the payment of Ms Bradshaw's telephone rental. There is no mention of the payment of a bonus.

[13] In 2004, when Pascoe's set out its policy relating to the payment of bonuses, including the statement that the payment of the bonus was now at the discretion of the managing director, Ms Bradshaw did not challenge the change to the policy. This can only be because Ms Bradshaw was aware and accepted at that time, that the payment of a bonus was a policy, and did not form part of her terms and conditions of employment.

[14] As a general proposition, unless a policy document is incorporated by reference in the applicable employment agreement, it will not be expressly binding.

(see *Rotorua District Council v Kameta* unreported, Travis J, 6 December 1994, AEC 73/94; *Carter Holt Harvey Ltd v Pawson* [1998] NZEmpC 38; [1998] 2 ERNZ 1; *ANZ National Bank Ltd v Doidge* [2005] NZEmpC 77; [2005] 1 ERNZ 518)

[15] The bonus payment was expressed as a policy, and the policy made it clear that the payment of the bonus was at the discretion of the managing director. I am unable to find that the bonus payment was a contractual obligation, rather it was a discretionary scheme and Pascoe's was entitled to exercise its discretion not to pay the bonus in Ms Bradshaw's case.

Costs

[16] Costs are reserved. In the event that costs are sought, the parties are encouraged to resolve that question between them. If the parties fail to reach agreement on the matter of costs, the parties may file and serve a memorandum

as to costs within 28 days of the date of this determination. I will not consider any application outside that timeframe.

Vicki Campbell

Member of Employment Relations Authority

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