

Bulletin 167

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BONUS SCHEMES: NO IMPLIED TERM THAT ELIGIBILITY DEPENDS ON BEING EMPLOYED AT PAYMENT DATE

Employer bonus schemes often contain a term that, in order to be eligible for a bonus, employees must be employed at the time the bonus is paid.

In the case of *Rutherford v Seymour Pierce Ltd*, the company operated a discretionary bonus scheme, but it did not contain such a term.

Mr Rutherford was dismissed prior to the bonus payment date, and the company refused to pay him a bonus.

The company argued that it was an implied term of the bonus scheme that, in order to be eligible for a bonus, Mr Rutherford had to be employed at the time it was paid.

The High Court rejected this argument and held that in circumstances where such a term was not expressly stated in the contract, it would not be implied.

Practical Tips

Whilst the High Court's decision is not surprising, it highlights the need for bonus schemes to be properly drafted.

Furthermore, in general terms, where employers are entitled to exercise their absolute discretion in relation to the payment of a bonus, they are entitled to do so as long as their decision is not irrational or perverse.

In this case, the company simply refused to pay a bonus, as opposed to exercising its discretion and deciding not to pay or paying a lesser amount. In view of the relatively low test for exercising discretion, it would have put itself in a better position had it done so.

Any advice in relation to bonus schemes is, however, wholly dependant on the terms of the scheme and specific advice should be sought in each case.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to helen.calvert@brabnerscs.com

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LIVERPOOL

Horton House, Exchange Flags, Liverpool L2 3YL
0151 600 3000

MANCHESTER

55 King Street, Manchester M2 4LQ
0161 836 8800

PRESTON

7-8 Chapel Street, Preston PR1 8AN
01772 823921