Use of Deferred Bonuses May Be "Dickensian" says the High Court

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On 26 January 2007 Mr Justice Smyth delivered his judgement in a high profile employment law case involving Davy Stockbrokers and a former employee Eamon Finnegan concerning an accrued but unpaid bonus. Mr Finnegan commenced employment with Davy's in October/November 1990.

In 1997 Mr Finnegan had a successful year on the equity desk and he estimated that his bonus would be in the region of IR£90,000 to IR£100,000. Mr Finnegan was told his bonus would be IR£50,000 for that year. Mr Finnegan deemed this to be unreasonable and requested an increase. His bonus was doubled to IR£100,000 the following day. Mr Finnegan was told that IR£60,000 of this bonus figure would be paid as normal in the new year and IR£40,000 would be deferred for one year. He was told if he left the employment before the deferred payment became due he may not receive the IR£40,000. Mr Finnegan queried this and was advised that if he joined a competitor of Davy's' he would definitely not receive the remainder of the bonus.

In September 2000 Mr Finnegan left Davy's to work for NCB Stockbrokers and when he requested the "deferred" monies retained by Davy's from what he claimed to be "already earned bonuses" he was refused payment from Davy's. Mr. Finnegan issued proceedings against Davy's for the outstanding bonus's.

Mr Justice Smyth accepted the submissions from Mr Finnegan's lawyers that the attitude of the employer was Dickensian and "like Oliver Twist". Critically for all employers, Mr Justice Smyth concluded that the unilateral changes to Mr Finnegan's terms of employment were made without notice and crucially, without notice in

writing. Further, he deemed the effect of the changes to Mr Finnegan's bonus scheme to be a restraint of trade which prevented Mr Finnegan from working for another firm.

This case signals a number of warnings to employers:

- It highlights the importance of taking and retaining clear and contemporaneous interview notes.
- The terms of the contract of employment and any bonus scheme should be explicit and preferably in writing.
- In order to enforce a term or condition of employment it must be fairly and reasonably brought to the employee's attention on commencement of employment. This is particularly so in circumstances where the term or condition deviates somewhat from the accepted norms in the relevant industry or profession.
- It is unlawful for an employer to unilaterally alter an employee's terms and conditions of employment. In circumstances where an employer wishes to introduce changes to an employee's contract, these must be agreed with the employee.

Conclusion

Ultimately, the key message is if a bonus is accrued and declared, an employer cannot unilaterally defer the bonus payment. However, the case goes slightly further and would seem to suggest a deferred bonus may, in certain circumstances, be tantamount to a restraint of trade and unenforceable in law.

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