

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

McALARNEY

-v-

AIB

MORGAN LCJ

[1] This is an appeal from a decision of an Industrial Tribunal given on 14 May 2012 when the Tribunal found in favour of the claimant in relation to his entitlement to the payment of his contractual bonus. We are grateful to both counsel for the careful and helpful submissions that they have made and for the extensive and helpful written arguments which have been provided.

[2] The sole ground of appeal now pursued on behalf of the appellant is whether the Tribunal has erred in law in reaching a finding that no express contractual provision of the respondent's contract of employment existed which entitled the appellant to withhold bonus payments. The appellant in the course of the hearing before the Tribunal relied on three grounds to sustain the proposition that there was an express contractual provision which entitled it to withhold bonus payments. The first of these is what is being referred to as the general clause which is found in clause 19 of the terms and conditions which were served upon Mr McAlarney when he commenced employment and which indicate that the Bank were to give notice of any change in these terms (ie by mutual consent or negotiation) within one month from the date of change and then discusses how that notice might be given. Mr O'Donoghue for the appellant no longer relies upon that ground.

[3] The third of the bases was the communication via Info Bank in 2010, again a communication upon which no weight is now placed. But the second of the grounds which is the ground upon which the appellant now relies is contained in the document entitled "Variation to Terms and Conditions of Employment" and which says "in addition to but separate from basic salary you will be eligible to participant in the company's bonus scheme which is based on business and individual performance. Details of the bonus scheme (which may vary from time to time) will be advised to you by the Company.". We accept Mr O'Donoghue's submission that

this is a point which was not expressly dealt with by the Tribunal in the course of its findings and the issue for us is whether we should accept Mr O'Donoghue's invitation to remit this matter so that it can be determined by the Tribunal or whether it is a point which it is appropriate for us to deal with ourselves. In order to decide whether or not to remit it, the starting point is to look first at the term itself which is a term which is related to bonus rather than to salary and which indicates that the bonus scheme may vary from time to time and imposes an obligation to advise the worker of any such variation. The Terms and Conditions themselves in the general clause at Clause 19 refer to notices of changes in the Terms that is by mutual consent or negotiation being provided to employees which appears to be an indicator that the basis upon which variations are sustained are by that method.

[4] Insofar as the Bonus Scheme is concerned it is important to look at the origin of the bonus. This bonus was generated as a result of extensive discussions occurring between the Bank and the Union in or about 2005 and 2006. It was designed to deal with the question of incentivisation of bank staff and the decision that was reached was that basic pay in relation to those entering the bank should no longer be at the rate which previously applied but at a lower rate and in compensation for that a greater emphasis was then placed on bonus payments by way of ensuring that those entering were entitled to a team bonus in relation to the contact centre but also incentivised by way of personal bonuses dependent upon their performance. It is clear from the manner in which the documents were created that this was the subject of detailed agreement and that agreement having been reached between the parties, the Union then indicated to management that it would ballot its members with a view to ensuring that there was agreement that these conditions were satisfactory. So these terms were circulated widely by the Union in relation to all of the employees so that they were aware precisely of the terms on which the new employment was to operate and those who were employed by the Bank were to have the opportunity to participate. None of that documentation suggested that there was any unilateral right on the part of the Bank to interfere with the entitlement to bonus and although we have been taken to considerable documentation within these papers and which is referred to by the Tribunal, none of the other documents suggest that any such entitlement was either contemplated or expressed so far as the Bank is concerned.

[5] The terms of the variation themselves do not indicate expressly that there is a right unilaterally to vary without agreement and in our view standing back and looking at the matter as a whole it seems to us that any such variation in relation to the Bonus Scheme could only have been achieved by way of mutual consent or alternatively by negotiation. We reject therefore any interpretation of this clause which might suggest that there was a unilateral right on the part of the Bank to vary. Also we recognise that if any such right was available, it is a right which would have been of a general application. It does not seem to us that it could have been interpreted in any way so as to limit it. To give such a wide power to the Bank in circumstances where bonus was intended to be such an important element of the remuneration available to employees within the Bank seems to us to be contrary to

every aspect of the documents which were before us. So we feel able in those circumstances to come to the view that this is a term with which we should deal rather than send it back. We consider that it does not assist the Bank and in those circumstances it follows that the appeal must be dismissed.