

# KEEPING IN TOUCH

THE NEWSLETTER OF RICHARD GROGAN & ASSOCIATES SOLICITORS

## **Bonus Payments**

The issue of bonus payments arose in ADJ19978.

The facts of the case are interesting. In this case the contract provided that;

“You will be eligible to receive an annual bonus of up to 10% of salary. This bonus will be performance related and therefore not guaranteed. Performance will be evaluated on both personal and financial performance”.

The AO in this case quoted the case of Board Gais Energy Limited and Niall Thomas PWD1729 where the Labour Court stated;

“The Court placed considerable weight on the fact that the complainant’s contract set out the eligibility requirements for the payment of the performance related allowance and that the complainant confirmed in evidence that he was aware that one of the criteria of the scheme required that he be in employment at the date of the payment”.

In this particular case the AO held that the employee retained her entitlement to a bonus. This is despite the fact that the employee left during the financial year. We have some comments to make in respect of this case. The first is that the best practice for an employer is to clearly specify, if there is a requirement that you be in employment at the date of the payment of the bonus, that the contract specifically provides for this. Relying on custom and practice is not the best practice.

The second issue in relation to this case is that the AO held that the employee was entitled to be considered for a bonus for the 2018/2019 financial year. We have some concerns about the elements of how the decision was arrived at.

Because claims must be made within 6 months of a right arising, it would be our view that the AO in this case must decide what payment should be made rather than simply providing that the employee is entitled to be considered to be included in the scheme. This is a claim

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made under Section 6 of the Payment of Wages Act and therefore the issue is making a determination which can be enforced.

The third issue is enforcement. The only enforcement is that the individual is considered, rather than a requirement for the employer to pay a certain amount to the employee.