

Employment Law London

Banking sector

Case watch

March 2011

Contractual claims for unpaid bonuses

Attrill & others v Dresdner Kleinwort Ltd and Commerzbank AG

Court of Appeal

The Facts

The employees: Attrill and others (the "Employees")

The employer: Dresdner Kleinwort Ltd and Commerzbank AG (the "Bank")

It was the established practice of the Bank to allocate a bonus pool and individual bonuses in November each year, communicate the allocation to its employees in December and pay the cash element of any such bonus in January the next year provided that the employee was then still employed by the Bank and not under notice to leave.

In August 2008 at a "Town Hall" meeting the Bank announced a guaranteed minimum bonus pool of €400m to be allocated on a discretionary basis according to individual performance. That decision was confirmed on a number of occasions and on the Bank's intranet.

In December 2008 employees received a letter stating the amount of their provisional bonus award, which could be reduced in the case of material adverse change in the Bank's revenue and earnings.

In January 2009 the business was sold and the new owner paid only 10% of the provisional bonus award and retained the major part of the bonus pool. The Employees brought proceedings claiming the unpaid 90% of the bonuses provisionally awarded. The Bank applied for summary judgment and the judge summarily dismissed any part of the claims which relied on the announcement made in August 2008 on the ground that it did not create any enforceable contractual rights on which the Employees could rely, but concluded that the claims based on the bonus letters raised issues of fact which should go to trial.

Held:

The Employees' contractual claims based on the Town Hall meeting and subsequent announcements had real prospect of success and should not be struck out.

The Employment Handbook which formed part of the contracts of employment expressly recognised that changes to employees' contracts of employment could be notified on the company intranet. The method of communication by means of the Town Hall meeting had been specifically approved by the board.

The promise of a guaranteed minimum bonus pool could be contractually binding even though individual employees could not at that time point to an entitlement to a specific bonus payable out of it. The court considered that there was no conceptual uncertainty as to those with whom the alleged contract was made or those entitled to share in the guaranteed minimum pool. Problems in identifying some members of either class was no reason summarily to dismiss the contractual claim of those who could be identified.

The alleged contract could be construed and applied consistently with the terms of the Handbook. The questions whether there had been acceptance by the Employees and whether any requirement for acceptance to be communicated had been dispensed with or waived were not suitable for summary determination. The continued work of the employee was arguably adequate consideration for the establishment of the guaranteed minimum bonus pool. It was clear from the evidence that the Bank intended to establish a guaranteed minimum bonus pool; that intention was communicated by the approved and conventional method of communication to all those eligible for allocation and payment of a bonus out of such pool if their employment continued until the bonus payment date; the Employees' employment did so continue.