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Maynard v Fletcher Building Ltd AA 322/03 (Auckland) [2003] NZERA 560 (28 October 2003)

Last Updated: 13 December 2021

Determination Number: AA 322/03 File Number: AEA 122/03

Under the [Employment Relations Act 2000](#)

BEFORE THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND OFFICE

BETWEEN Ian Graham Maynard (Applicant)

AND Fletcher Building Limited (Respondent)

REPRESENTATIVES Ian Graham Maynard In person

Jonathan Cain for Respondent **MEMBER OF AUTHORITY** Marija Urlich **INVESTIGATION MEETING** 4 September 2003

SUBMISSIONS RECEIVED 8 September, 12 September 2003

DATE OF DETERMINATION 28 October 2003

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

Ian Maynard seeks an order from the Authority requiring his former employer Fletcher Building Limited (“FBL”) comply with the terms of his employment agreement and pay him the sum of

\$14,400, the difference between what he received by way of bonus payment and what he says he is entitled to. Mr Maynard also seeks interest on this sum.

FBL says it has treated Mr Maynard fairly and reasonably in the calculation of his bonus and says further that the payment of the bonus is entirely within its discretion.

Background

In July 2000 Mr Maynard was appointed to the position of General Manager, Procurement. He had worked for the respondent since 1993.

Mr Maynard’s terms and conditions of employment were set out in a letter of appointment dated 16 June 2000 and included:

“2. COMPENSATION

This section deals with compensation issues, including base and incentive compensation.

2.1 Total Cost Base

Your Total Cost Base, effective from 1 July 2000 is \$180,000.00 per annum.

Whether there should be an upwards adjustment will be reviewed by the Company at its discretion annually. The Company may, in the event that it is implementing Total Cost Base reductions across a peer group of executives, also, at its discretion, reduce your Total Cost Base by the average percentage of those reductions.

Total Cost Base is a gross amount and is your Taxable Salary (plus Position Related Costs). Your Total Cost Base will be used to calculate any payments for or in lieu of annual and long service leave and any redundancy and notice entitlements. It covers all hours of work required to perform your role. It is expected and understood that these include any requirements which may fall outside of normal business hours.

Total Cost Base does not include any entitlements under any incentive remuneration plan which you may participate in.

2.2 Incentive Remuneration Plans

You participate in and will continue to participate in an incentive plan.

The Company maintains a number of incentive plans, the terms and conditions being set by the Directors from time to time. The Directors have the authority to amend the terms of any incentive plan. Participation in any incentive plan is by invitation on an annual basis.

The benefits under any incentive remuneration plan are additional to your Total Cost Base.”

Mr Maynard had participated in the bonus scheme for a number of years. He had no concerns about the manner in which bonus payments for the years preceding the disputed one had been calculated.

Mr Willem Roest gave evidence on behalf of FBL. He is employed as its Chief Financial Officer. During Mr Maynard's employment as GM, Procurement he reported directly to Mr Roest who then held the position of Director, Performance Improvement and Planning. It was Mr Roest's role to assess Mr Maynard under the incentive scheme.

In September 2001 Mr Roest met with Mr Maynard to discuss the basis of the 2001/2002 incentive scheme.

In October 2001 Mr Roest sent Mr Maynard the following memorandum confirming their September discussion regarding the 2001/2002 incentive scheme:

“I attach a copy of your agreed Goals and Challenges for the above Incentive Scheme. Please note:

- 1. Your bonus percentage is 40% of your TCB.*
- 2. That is allocated 20% to company performance and 20% to personal objectives.*
- 3. The attached EVA numbers are the final budget numbers.*
- 4. Should your role change during the year, the bonus scheme, including your objectives, will be reviewed at that time.*

- 5. It is incumbent on you to update me each month on progress towards your goals and to let me know promptly of any issues.”*

Attached to the memorandum was Mr Maynard's performance plan. The performance plan listed the agreed personal goals and challenges referred to in the memorandum as follows:

“Key Objectives

- Effective procurement organisation through
 - Supply Category Managers appointed for all categories under management*
 - Procurement network re-built and completed (including Concrete Procurement Manager)**
- The following categories (as a minimum) will be openly contested in the market:*
 - Insurance*
 - Vehicle leasing/scouring*
 - Office consumables*
 - Telecommunications*
 - Electricity*

- Domestic travel

- *Systems and processes deployed*

- Procurement planning process

- Monthly reporting of Procurement savings for Fletcher Building

- Demonstrate annualised savings of \$6m pa from procurement initiatives.
- Insurance processes and procedures standardised across Fletcher Building”

Beside the fourth key objective Mr Roest had hand written “*Ian. This is the key objective for your personal component.*” The memo invited Mr Maynard to sign the Performance Plan and return it to Mr Roest for countersignature.

Mr Maynard signed the Performance Plan on 11 February 2002 with the addition of the following notation “(i) *Guiding Principals used to value procurement initiatives are attached*” and a document entitled “*Profit Improvement Initiatives - Guiding Principals June 2001*” and returned it to Mr Roest for countersignature. Mr Roest did not countersign Mr Maynard’s performance plan. He told me at the investigation meeting that he did not countersign it because he did not agree to the *Guiding Principals* document being used to assess Mr Maynard’s performance. There was no dispute that inclusion of the *Guiding Principals* had not been agreed to. I find the *Guiding Principals* did not form part of the performance plan.

In January 2002 Mr Maynard reported on the performance of the procurement business unit to the overseeing Steering Committee. This was not a report on Mr Maynard’s personal performance. However, at this meeting Mr Maynard and Mr Roest discussed the inclusion of insurance and electricity savings in the performance plan and Mr Roest indicated they would not be included in the \$6 million savings target.

On 28 March 2002 Mr Maynard resigned from his position effective 30 June 2002.

On 8 April Mr Maynard emailed Mr Roest seeking clarification of a number of issues relating to his

performance objectives. These issues included whether insurance and electricity savings would be included in the performance plan. Mr Roest replied by email, but in terms which did not satisfy Mr Maynard who wrote again on 26 April seeking clarification. This email was not replied to. Mr Roest said he did not reply because the issue had been well canvassed between himself and Mr Maynard and he felt he had made his position clear.

In May Mr Maynard provided Mr Roest with a detailed review of his own performance for Mr Roest to consider in his assessment of his performance.

Mr Maynard’s final day of employment with the respondent was 30 June 2002.

On about 5 August Mr Roest assessed Mr Maynard’s performance for the purposes of calculating his bonus payment. As the company financial targets had been met Mr Maynard was credited with the full company component. Mr Roest assessed whether Mr Maynard had met the personal performance objectives by grading them individually. Mr Roest explained to me that he did this by assessing whether the performance objectives had been met or not based on the information provided by Mr Maynard and Mr Roest’s knowledge of his performance during the year. He said the performance objectives were either met or not met. If they had been met they were graded “1”, if they had not been met they received no credit.

Using this assessment process Mr Roest credited Mr Maynard with a “1” for key objectives 1, 2 and

4. On the performance assessment sheet key objective 4 is assessed as “*about 50% done*”. Notwithstanding this Mr Roest has given Mr Maynard a full credit for this key objective. I find this extra weighting fairly reflects the emphasis key objective 4 was originally given.

Mr Roest’s assessment of Mr Maynard’s found that he had not achieved key objectives 3 and 5 of the performance plan and accordingly he received no credit. Mr Maynard does not challenge the assessment of 3 and 5.

The marginalia of the assessment sheet records Mr Roest’s calculation of Mr Maynard’s bonus payment. Having assessed his performance of the key objectives, he notes “*3/5*” and “*60%*”. I understand these notes to mean Mr Maynard had achieved credits for 3 out of the 5 key objectives which is equivalent to a 60% achievement of the personal component.

On 3 September 2002 Mr Maynard was advised in writing that his bonus payment was assessed at

\$57,600 before tax. This figure is made up of 100% of the company component and 60% of the personal component of the bonus payment.

On 11 September Mr Maynard emailed Mr Roest querying why he had only received 60% of the personal component of the bonus and they met on 19 September to discuss this.

Mr Maynard wrote to Mr Roest on 19 November setting out the reasons why he believed he was entitled to 100% of the bonus

component and seeking a review of the assessment. Mr Roest replied by email dated 21 November declining Mr Maynard's request to review the assessment. Mr Maynard emailed a reply again Mr Roest replied on 18 November stating "*In the end my assessment is just that, and I am happy that it fairly reflects what I believe was achieved.*"

Determination

The parties agree Mr Maynard's participation in the bonus scheme was a contractual entitlement. The parties also agree that the calculation of the bonus payment involved the exercise of the respondent's discretion. The question for the Authority is was this discretion exercised fairly and

reasonably?

Mr Maynard says the key objective 4 savings target of \$6million was demonstrably meet when electricity and insurance saving initiatives are included. He says because Mr Roest identified key objective 4 as the main focus of his performance plan he should be given full credit for meeting this savings target and receive 100% of the personal component of the performance bonus.

Mr Roest made it clear to Mr Maynard by at least January 2002 that he would not consider electricity and insurance savings in the \$6 million target. The performance plan does not define what "*annualised savings*" or "*procurement initiatives*". There was no agreement between the parties that electricity and insurance procurement savings would be included in the assessment. How the savings target was to be assessed falls squarely within the discretion of the respondent and there is no evidence that this discretion has been exercised unfairly or that any irrelevant or irrational factors were taken into account by Mr Roest in his assessment of Mr Maynard's bonus. Further, the \$6 million target was given greater weighting than the other key objectives in the assessment process, reflecting the focus it was given by Mr Roest.

For these reasons Mr Maynard's claim cannot succeed.

Costs

I invite the parties to attempt to resolve the issue of costs between them. If they are unable to do so Mr Cain should file and serve costs memorandum within 14 days of the date of this determination. Mr Maynard has a further 7 days from receipt to file and serve a memorandum in reply.

Marija Urlich

Member of Employment Relations Authority

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