

[5] The bonus payable quarterly was based on the company accounts, the net profit figures prepared by the company accountant and the final annual accounts prepared by the company's firm of Chartered Accountants.

[6] Mr Woodman said that his income was primarily affected by the gross margin and expenses incurred by the company. Higher expenses equalled a lower salary.

[7] Mr Woodman resigned in October 2006 giving three months' notice. His last day of employment was to be 16 January 2007.

[8] A replacement was found who started working on 6 December 2006. Certain expenses relating to Mr Christophers were incurred and expenses were also incurred for an interior refit.

[9] Mr Woodman was concerned about the financial ramifications for his income of the Christophers' expenses and the refit expenses, which totalled \$20,696.39.

Meeting of 22 December 2006

[10] Mr Woodman met with Mr Redding, the Director of the company to discuss what the final bonus payment would be. December 22 was the last working day of 2006.

[11] Mr Woodman produced a spreadsheet of his calculations of his estimated bonus which had been prepared by the company accountant, Ms Woo. Mr Woodman wanted to ensure that the Christophers' expenses and the refit expenses were not deducted from the net profit figure and the bonus payable.

[12] Mr Redding agreed to this. It resulted in Mr Woodman receiving an additional \$6,208.91, that being 30% of the \$20,696.39 expenses. On 22 December Mr Woodman understood he was to be paid \$17,059.73.

[13] Subsequently, Mr Redding ascertained that the year to date net profit figures presented on 22 December did not include the Christophers' expenses for December. Mr Woodman does not dispute this.

[14] Mr Redding said that at 22 December the actual accounts for that month had not been finalised so the bonus was an estimate. On Ms Woo's return to work, and after the suppliers' invoices and related documents and expenses for December had been put through the books, a finalised account for December was run. The final accounts were completed on 11 January 2007.

[15] Mr Woodman said that on 22 December he and Mr Redding agreed that they were settling as at the end of November whereas Mr Redding said it was as at the end of December.

[16] In addition to not including the expenses, the document produced and discussed at the 22 December meeting did not include Mr Woodman's salary for December and the net profit figure was only calculated to 30 November 2006.

[17] Mr Woodman said that the figures discussed were based on a YTD profit of \$428,631.60 and there was an assumption that December trading would not yield a profit but breakeven once agreed expenses had been added back in. Mr Woodman said that as long December was breakeven the \$17,000 estimate would cease to be an estimate and would be the bonus to be paid.

[18] On a document signed by Redding on 22 December the bonus owing has been rounded to \$17,000. The word "estimated" clearly appears with reference to the bonus.

[19] I do not accept Mr Woodman's argument that there was agreement that November would be used as date for calculating the bonus. The document discussed on 22 December includes December expenses. The contract provides for quarterly bonus payments. I do not agree that a full and final settlement was concluded on 22 December 2006.

[20] Mr Redding says that Mr Woodman's outstanding annual leave of 36.18 days was not taken into account in the YTD salary received figure and should be deducted from the net profit. I do not accept this argument. Annual leave is not an extra payment and will have been included in the salary received.

[21] Mr Woodman was owed the sum of \$8,220.27 which the respondent has paid.

[22] Costs were reserved. The parties should file memoranda within 28 days of the date of this determination.

Dzintra King

Member of the Employment Relations Authority