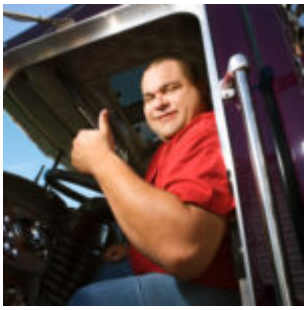
WINNERS & LOSERS: Is a Safety Bonus Part of a Worker's Wages?



As an incentive for workers to exercise safe workplace behaviour, some employers offer safety bonuses. Workers receive the bonuses if they meet certain criteria, such as being incident-free for a designated period of time. But do such bonuses count as 'wages' under employment standards laws' Here are two cases that confronted the issue of whether a safety bonus was part of a federally-regulated worker's wages'and came to different conclusions. The *Canada Labour Code* defines wages as 'every form of remuneration for work performed' but doesn't include tips or other gratuities. The Code requires employers to pay employees any wages to which they're entitled.

BONUS IS PART OF WAGES

FACTS

A driver was fired after having an accident. He sued his employer, claiming that he was entitled to an unpaid safety bonus. The employer agreed that the driver met the criteria for the bonus for the three-month period in question. But it argued that the bonuses were issued at its discretion and didn't qualify as wages to which the driver was legally entitled.

DECISION

A federal referee ruled that the safety bonus was part of the driver's wages.

EXPLANATION

Although there may be specific criteria that drivers must meet before they become entitled to receive the safety bonus and the employer has some discretion to determine whether those criteria have been met, the referee noted that this doesn't mean that the bonus isn't an earned benefit because the employer must exercise that discretion reasonably. The safety bonus program here was a term of the driver's contract. And the fact that the program said that the bonus wasn't a right or entitlement wasn't enough to turn it into an honorarium or gratuity. The referee concluded that because entitlement to the bonus depended entirely upon work performed, the bonus fell within the definition of 'wages' and thus the driver was entitled to it.

AYR Motor Express Inc. v. Grant, [2006] C.L.A.D. No. 92, Feb 28, 2006

BONUS IS NOT PART OF WAGES

FACTS

An employer implemented a program under which drivers were entitled to a safety bonus if they didn't have a 'preventable accident' during the relevant time period. (The criteria for the program weren't in writing.) A driver sued the employer for not paying him a safety bonus to which he claimed he was entitled, arguing that the bonus was part of his wages. The employer claimed that the bonus was a gratuity and didn't qualify as wages.

DECISION

A federal referee ruled that the safety bonus wasn't part of the driver's wages.

EXPLANATION

Because the Code referred to ‘tips and other gratuities,’ it distinguished between wages and other forms of remuneration arising from a worker’s employment. In other words, although wages form part of a worker’s remuneration, not all remuneration is in the form of wages, explained the referee. Here, there was no evidence that the employer or driver attached any special meaning to the word ‘bonus.’ And the ordinary or normal meaning of that word is ‘an unsought or unexpected extra benefit.’ So because the safety bonus was an extra, unexpected ‘gratuity’ beyond what was normally paid to drivers in the form of wages, the bonus didn’t meet the definition of ‘wages’ under the Code and so the driver wasn’t entitled to it, concluded the referee.

Keffer v. Courtesy Delivery (Cambridge) Ltd., [2010] C.L.A.D. No. 279, Sept. 9, 2010