

# When Are Terminated Employees Entitled to a Performance Bonus?



Employees earn bonuses for a job well done. But what happens when employees don't get enough time to finish the job? **The scenario:** Employees who are on their way to earning a promised bonus get terminated just before the bonus comes due. Do you still have to pay the bonus after the employee leaves? The answer depends on 3 things:

- What, if anything, the employment agreement said;
- The basis on which the bonus was to be measured; and
- When the employee was terminated.

Here are a couple of cases where courts that applied these factors to the post-termination claims of employees reached different results.

## **TERMINATED EMPLOYEE IS ENTITLED TO BONUS**

### **Situation**

A senior staff engineer for a petroleum exploration company is tired of having his computer break down at work. So, he writes management a terse and angry note. Management is none too pleased and decides to fire the engineer with no notice or severance pay a few days before Christmas. Before writing the ill-fated note, the engineer was promised by his boss that he'd get a double bonus of almost \$35,000 on December 31 if the company met certain corporate goals. The company meets those goals. But because the engineer is no longer on the payroll, he doesn't get a penny in bonus money. So, he sues the company for the promised bonus and notice.

### **Ruling**

The Alberta Court of Queen's Bench awards the engineer a full bonus for this year and next year, and 15 months' termination notice to boot.

### **Reasoning**

The court bases its decision on three factors:

**Terms of Employment Contract:** Although the engineer didn't have a written employment contract, he was still entitled to a bonus because of the oral promise made by his boss.

**Eligibility Requirements:** The petroleum company was obviously unhappy with the engineer when it fired him. So, he might not have been entitled to a bonus had it been based on his own individual performance. But instead the bonus was based on the **company's** performance. Since everyone at the company was entitled to a bonus regardless of their work performance and attitude, the court granted the engineer the bonus, too.

**Date of Termination:** The engineer was fired before his bonus became due. But the court determined that the termination was without cause and ordered his employer to pay 15-months' salary as payment in lieu of notice. When the court added this notice period to the termination date, it found that the engineer would have been working on December 31 of the year he was fired and the year afterward. Since all other employees were entitled to bonuses in both of those years, the court said the engineer should get them too.

[\*Mothersele v. Gulf Canada Resources Ltd.\*](#), 2003 ABQB 2 (CanLII)

## TERMINATED EMPLOYEE IS NOT ENTITLED TO BONUS

### Situation

The president of a large pharmaceutical retailer is fired without cause as a result of corporate restructuring. The company gives him 15 weeks' termination notice, as required by his employment contract. But it doesn't give him his bonus, which would amount to over \$100,000. According to his contract, all the president had to do to earn the bonus was work a continuous 12-month period during the contract's term. Even though he renegotiated his agreement each year, he had actually worked for the company for 3 years. So, he sues for the full amount of the bonus.

### Ruling

The Manitoba Court of Queen's Bench rules that the president isn't entitled to a bonus and throws out the lawsuit.

### Reasoning

The court's decision is based on the same 3 factors as in the *Mothersele* case. But this time those factors lead to a different conclusion:

**Terms of Employment Contract:** The employment contract gave the employer the right to terminate the president without cause, as long as it paid 15 weeks' salary as notice. And it expressly said that this pay was "without bonus of any kind." The president took an active role in negotiating the contract and should have recognized that the contract expressly stated that he wouldn't get a bonus after termination, the court reasoned.

**Eligibility Requirements and Date of Termination:** The president wasn't eligible for the bonus because he hadn't put in the time necessary to earn the bonus stipulated in the contract.

**Date of Termination:** The contract required the president to work for 12 continuous months "during the term of this Agreement" to earn the bonus. Since he entered into a new agreement each time he renegotiated the terms of his employment, the court said he was bound to the date his most recent agreement was signed, which was—unfortunately for him—only a few months before his termination. His prior years of service didn't count because they were provided under technically different agreements.

[Musaphir v. Canadadrugs.Com Partnership et al.](#), 2007 MBQB 52 (CanLII)