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Labour Law Remark

# Bonus in the last doctrine of the High Court of Justice of Madrid

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With regard to bonuses, a review of the latest pronouncements of the judicial doctrine of the Employment Chamber of the Madrid Supreme Court of Justice clears up four unknowns on certain and classic questions in this matter.

1. - In the first case, the right of a worker (Industrial Teacher) to receive remuneration by objectives corresponding to the year 2014 was discussed, on the assumption that the company established that for this purpose it was necessary to comply with *"individual and/or collective objectives defined by the Business/Service Management for each job position. The objectives may be quantitative or qualitative in nature. During the first quarter of each financial year, the objectives linked to variable remuneration shall be defined or revised."*

The Court of First Instance rejected the claim because the plaintiff only received €2000 as an "annual bonus" in March 2011 and did not do so in subsequent years, nor did the targets for the years 2011 to 2013 appear, nor did he make any claim for it, on the understanding that the worker therefore abandoned his right to claim variable remuneration for three years and that he could not claim the targets for 2014.

However, the High Court judgement of 27 October 2017 (Comsa case; RS 258/2017) estimates the claim and orders the company to pay the sum of €3,546.20. In the first place, it stresses that the circumstances that may exist regarding the aforementioned remuneration corresponding to other annuities are indifferent and that it would not have claimed its non-payment in the face of a hypothetical right to receive it. Secondly, it refers to the fact that, being in the presence of an agreement which was not subsequently developed because the company did not wish to do so, it can only be interpreted in the most appropriate way so that it can have effect and against whomever included those clauses in the contract, which was obviously the company.

2. - A second file analyses the case of a worker (manager) who, without any agreement on this matter, in the years 2011, 2012, 2013 and 2014 received, between March and June, amounts under the concept bonuses referred to the previous year, which amounted respectively to amounts of 3.150, 3.019,50 ,2.396,78 and 5.000. -€, not having been paid in 2015.

The High Court judgement of 13 October 2017 (Case Concentra; RS 220/2017) confirming the judgement rejecting the Court of First Instance affirms that (a) the bonus was a remuneration variable according to the work carried out, paid freely and voluntarily, without any contractual or contractual obligation to do so and therefore nonconsolidable; and (b) furthermore, the rejection of the bonus stemmed from the fact that the company had proved that the circumstances had changed, since no profits had been obtained on the basis of which the plaintiff was paid.

3. - In the third so-called analysis object, a Medical Director had been performing functions consisting of clinical trials with a contractual clause as follows: "A final variable remuneration (bonus) is established, subject to obtaining the authorization of the medicine in the EMA equal to 55,000. -€" European authorization that was not finally achieved because there were objections in the evaluation of the medicine and the company withdrew from the authorization.

In response to a complaint filed by the employee requesting that the amount claimed of 55,000 be paid to her. The STSJ of 28 September 2017 (Case GES; RS 86/2017) dismissed the appeal, confirming the judgment of the Court of First Instance, since not only had not been proven the fulfilment of the condition agreed to accrue the bonus, but it was established that such condition had not been fulfilled, without the condition could not be understood as impossible to comply, since it was not the registration of a medicine in the EMA or that it was capricious or meaningless because it does not have the same commercial repercussion.

4. - The last case analysed resolves the question of which salary should be taken into account after an unjustified refusal to readmit a voluntary surplus: should it be the one that would have corresponded to the time of re-entry or the superior that would have been received at the time of the leave, including the recently received bonus?

The High Court judgement of 23 October 2017 (IBM case; RS 454/2017) is weighted because the regulatory salary for dismissal is that which would correspond to the worker at the time of termination of contract and not that which he received at the beginning of the leave of absence. It should be pointed out that one thing is that the applicant should be entitled to receive her updated salary (salary per month in proportion to 3,599.72 euros) and another, quite different, that, as a result of a bonus (amount of 20,170.48 euros) which she received just before starting her leave, the amount to which she was granted must be included in the modular salary, since there is no reason to include that bonus.

By way of recapitulation, and following the aforementioned judicial doctrine:

1º.- When a variable remuneration is fixed according to the degree of attainment of the objectives on which only the company whose management power is responsible for setting them, both of a general nature and the objectives to be demanded of its employees, depends, or what is the same, when the objectives on which the perception of the supplement was dependent are not known, this is an incentive pact subject to the exclusive will of one of the contracting parties (contrary to what is known in the contract law). 1256 of the Civil Code) and, therefore, an incentive pact in the amount promised.

2º. - In the absence of "rules of the game" on the accrual of a bonus, a priori, it is a variable remuneration that, if paid freely and voluntarily by the employer, is nonconsolidable in the future. And even more so, if it is proved in court that when it was paid it was in a situation of corporate profits.

3º. - The validity of the bonuses subject to the accreditation of certain conditions, provided that they are not impossible to fulfil or manifestly arbitrary.

4º. - The salary to be taken into account for calculating severance pay, after an unjustified refusal to readmit a voluntary surplus, is the updated salary corresponding to the time of reinstatement and not the superior that was received at the time of the leave of absence (by including a bonus).

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