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Supreme Court rules that monetary benefit given to employee constitutes salary and must be paid



18 August 2020 | Contributed by Elias Neocleous & Co LLC

Litigation, Cyprus

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Introduction

The Supreme Court recently overruled a first-instance decision which had acquitted the respondent (the employer) and its director (the second respondent) of the charges against them.⁽¹⁾ The company had faced the charge of non-payment of monthly salaries to monthly paid staff and its director had been charged with abetting the non-payment of monthly salaries to monthly paid staff.

The Supreme Court held that the first-instance court had incorrectly:

- applied Law 35(I)/2007 on the Protection of Wages to the facts of the case; and
- concluded that the employee was entitled only to a bonus and not to a '13th salary' (ie, an extra payment given to employees at the end of the year).

Facts and counter arguments

In 2013 the appellant (the employee) did not receive his 13th salary. On his recruitment, it had been agreed that, in addition to his monthly salary, he would receive a bonus equivalent to approximately one month's salary every Christmas. During his employment, he received the said monetary benefit and signed an acknowledgement that he was receiving it as a bonus and not as a 13th salary.

According to the first-instance court, the monetary benefit given to the appellant did not fall within the definition of 'salary'⁽²⁾ (and to an extent of the '13th salary') and was considered a bonus.

The appellant held that the first-instance court had wrongly found that the employer was not paying a 13th salary, but rather a voluntary, as per the respondent's assertions, bonus.

The appellant justified that this was wrong on the grounds that evidence that the payment had been a 13th salary – in particular, an agreement – had been presented to and accepted by the first-instance court.

Further, the appellant claimed that on the basis of the testimony adduced before the first-instance court, it should have concluded that the monetary benefit in question constituted an 'acquired right' for him, as an employee, and could thus be changed only with the explicit consent of the directly affected beneficiary (ie, him).

The respondent alleged that the law explicitly excludes *ex gratia* payments and that, in light of this legislative approach, the first-instance court had rightly concluded that the monetary benefit in question constituted a bonus and not a salary payment. Therefore, the respondent argued that the appellant's complaint that the first-instance court had misapplied the law to the facts of the case was incorrect and not based on the facts and the evidence presented.

After evaluating the testimony, the first-instance court concluded that:

- the monetary benefit given to the appellant was considered a bonus and not his 13th salary; and
- the substance of the case lay in whether the respondent was paying in general, and was obliged to pay, the aforementioned 13th salary to the appellant.

Decision

Having reviewed the above arguments and the relevant case law, the Supreme Court concluded that:

- it was irrelevant that the appellant had signed an acknowledgement that he was receiving the specific monetary benefit as a bonus; and
- since the benefit had been paid regularly by the respondent since the appellant's first year of employment, without any conditions attached to its payment, and was equivalent to approximately one month of the appellant's salary, it fell within the term 'salary', as defined by Law 35(I)/2007 on the Protection of Wages and the relevant case law.

Consequently, the Supreme Court found the respondents guilty of the charges against them.

Comment

The Supreme Court's approach appears to be a reasonable one. It illustrates the need to ensure employees' right to receive their salary and the benefits to which they are entitled on the basis of their employment agreement.

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Endnotes

(1) *Director of the Department of Labour Relations v Stavrou ao*, Crim Appeals 264/2018

and 265/2018, 3/7/2020.

(2) Article 2 of Law 35(I)/2007 on the Protection of Wages.

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