

## Bonus Pay: the Cassation Decision

### Description

By Dagnachew Tesfaye, Managing Partner at DMLF

### Introduction

The Federal Supreme Court Cassation Division on Cassations File Number 241752 on July 03, 2023 rendered a binding decision on the issue of when a bonus will be paid even after the employment contract of an employee is terminated. The case has been between the applicant Ato Melaku Kasaw Alemu versus respondent Ethiopian Electric Power. The case was first brought by the current applicant in the Federal First Instance Court as a plaintiff. Then still the applicant appealed to the Federal High Court. Finally the applicant filed an application to the Federal Supreme Court Cassation Division. The argument in each level of the court and the final judgment of the Cassation Division shall be looked into in brief.

### Federal First Instance Court

The applicant argued in the FFIC that the applicant has worked for the respondent since 1988 in different positions. The applicant's employment was terminated on August 7, 2022 due to retirement. The applicant claimed that the applicant has to be paid in cash accumulated annual leave from 2011-2020 of 462 days. Moreover the respondent has paid a bonus for the budget year 2021/2022(2014EC) of one month and half month salary to those employees of the organization. The applicant argued that the applicant has served for the full year of the budget year of 2021/2022 but the respondent refused to disperse and pay the bonus payment to the applicant. Hence the respondent be ordered to pay the bonus pay even if the applicant's employment is terminated having served and contributed to the profitability of the respondent that led to the payment of bonus.

The respondent on the other hand argued that annual leave of 462 days is barred by a period of limitation of two years as per Article 79(4) of the Labor Proclamation 1156/2019. The respondent further argued that the accumulated annual leave claim is barred by 6 month period of limitation as per Article 163(3). Regarding bonus, eligible employees according to the internal directive on bonus payments of the respondent goes to employees that are still working in the organization and their employment is not terminated. The employment contract of the applicant has been terminated. Thus the respondent argued this will inhibit the payment of bonus to the applicant. On the other hand, the respondent mentioned an argument on penalty stating the fact that there are no legitimate delayed payments to the applicant. As a result the request for three months salary for delay is unjustified.

The Federal First Instance Court gave a decree stating that the unused annual leave cannot be postponed for more than two years. Hence the request of the unused and accumulated annual leave by the applicant is barred by 2 years period of limitation as per Article 79 of the Labour Proclamation No 1156/2019.

On the merit of the case, exhausting the hearing of the arguments of the parties, the court rendered a judgment on the bonus payment claim. The court ruled that the employer's directive state bonus

payment is for employees working in the employer and whose employment is not terminated. The employment contract of the applicant is terminated due to retirement. Thus the court ruled that the applicant is not entitled to bonus payment.

### **Federal High Court**

The applicant lodged an appeal to the Federal High Court. The appellate court affirmed the ruling of the lower court and dismissed the appeal of the applicant.

### **Federal Supreme Court Cassation Division**

The applicant filed an application to the cassation division. The content of the application is as follows: the right to get unused annual leave materialize when the employment contract is terminated; the applicant filed a claim of accumulated annual leave within 6 months from the date of termination; the labour proclamation forbids annual leave not to be postponed for more than 2 years; however the law doesn't state the consequences of postponement for more than two years; the annual leave has been postponed due to the employer; hence the 462 days of accumulated annual leave should be considered in light of Article 1845 and be paid to the applicant. Regarding bonus payment, the applicant argued that he has contributed for the profitability of the respondent for the full year bonus has been paid. When bonus is paid, the applicant should have been entitled to get the bonus payment even if the employment is terminated. On C/F/No 20869, the applicant argued, the cassation division gave an interpretation that the bonus payment should be paid to an employee who has contributed to the profitability of an organization even when the employee left the job. Thus the 2021/2022(2014 E.C) bonus payment has to be paid to the applicant together with penalty for delay of payment.

The cassation division accepted the issue of bonus for further look. Hence the respondent was ordered to respond and the applicant as well gave a reply.

The respondent's response briefly is as follows: bonus has to be paid based on agreement of employer and employee and bonus is not obligatory claim as stated in C/F/No 64758; as per September 7/2022 directive of the organization, bonus for the year of 2021/2022(2014E.C) is paid for an employee who is still working and his employment is not terminated. The employment contract of the employee is terminated before the enactment of this directive. For the mere fact that the employee served on the budget year doesn't justify the payment of bonus. The employer has not delayed any justified payment of the employee. As a result, the penalty request is unacceptable. Therefore the lower courts' decisions need to be confirmed.

The applicant gave a reply on April 11,2023. The applicant reaffirmed the argument presented on the application.

The cassation division examined the case. The issue to be resolved is whether a rejection of bonus payment of the 2014 E.C year due to the fact that the employee's employment contract is terminated due to retirement is appropriate or not?

The Cassation Division first stated the facts of the case. Then the cassation division looked into different cassation bench interpretation on Article 53(2)(c) of the Labour Proclamation on bonus. The cassation decisions were C/F/No 20669, 101825 and 202839.

The conclusion reached by the cassation division is that if there is no precondition for disbursement of

bonus by a directive or collective agreement, the employee is entitled to get bonus payment even when the employment is terminated. However when there are clear preconditions for payment of bonus in collective agreement or work rules or directives of the employer, the employer may not be obliged to pay bonus to an employee who doesn't meet those requirements.

Though after termination of employment of the applicant, the respondent has enacted a directive on September 7, 2022 stating the fact that 2021/2022(2014E.C) year bonus shall be paid to employees whose employment is not terminated and still working in the organization. The applicant does not meet the conditions for payment of bonus as the applicant's employment is terminated and no longer serving the organization. Therefore, the cassation ruled that the respondent is not obliged to pay bonus to the applicant as the latter does not meet the condition of the directive of the organization that entitles payment of bonus.

The cassation division further ruled regarding the 462 unused annual leave. The Labour Proclamation Article 79(4) prohibits the postponement of annual leave for more than 2 years, and as such the applicant's claim is unacceptable. To sum up, the cassation bench confirmed the lower court's decision.

### **Conclusion**

The request for the payment of bonus by an employee depends upon meeting pre-conditions provided by the employer in the form of collective agreements, directives or work rules. In the absence of any pre-condition, even an employee whose employment is terminated could seek the payment of bonus given the employee had been working for the profitability of the organization that resulted in bonus payment. However, when there are conditions for example that bonus shall be paid to employees who still work in the organization and their employment is not terminated, those employees whose employment is terminated cannot request for the payment of bonus.

Regarding unused annual leave, see the issue in the article dealt [here](#).

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