

# Case: Quantum Foods (Pty) Ltd v Commissioner H Jacobs N.O. and Others

(JA85/2022) [2023] ZALAC 27

## INTRODUCTION

The case of Quantum Foods (Pty) Ltd v Commissioner H Jacobs N.O. and Others (JA85/2022) [2023] ZALAC 27 highlights the effects of the inclusion of contractual bonuses into the calculation of the minimum wage of employees as envisioned by the National Minimum Wage Act 9 of 2018 (hereinafter NMWA).

## BACKGROUND

To meet the requirements of NMWA, Quantum Foods (“**the Appellant**”) restructured its payslips to include contractual bonuses paid to its employees. The General Workers Union of South Africa, acting on behalf of its members (“**Third Respondent**”) took exception to this practice and contended at the CCMA that the bonuses should be excluded for the purposes of calculation of minimum wage in terms of section 5 of the NMWA. Section 5 reads as follows:

*“(1) Despite any contract or law to the contrary, the calculation of a wage for the purposes of this Act is the amount payable in money for ordinary hours of work excluding -*

*... (c) gratuities including bonuses, tips or gifts; and ...”*

The CCMA found that the mere fact that there might be a contractual right to payment does not mean that it must be factored into their payments to comply with the provisions of the NMWA. The Appellant brought a review application against the CCMA’s award. However, the Acting Judge of the Labour concurred with the CCMA decision, by ruling that the Appellant was prevented from including the bonus in the calculation of the minimum wage. The Appellant brought an appeal against the whole judgment to the Labour Appeal Court (“**the LAC**”).

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## EVALUATION BY THE LABOUR APPEAL COURT

1. The LAC considered the definition of ‘gratuity’ as per the Shorter Dictionary as meaning a gift or money given in return for some service or favour. The Supreme Court Appeal authoritatively interpreted the term ‘gratuitous’ in paragraph 31 of Estate Welch v Commissioner for SARS [2004] 2 All SA 586, as meaning something made by pure liberty without expecting anything in return nor having an obligation to pay.
2. The LAC held that the other payments, which in terms of section 5(1)(c) are included in the definition of a gratitude, must be read in accordance with the eisdem generis rule, which meant that their meanings must be restricted to the generic meaning of a ‘gratitude’. Alternatively, their meanings must be inferred noscitur a sociis, which means that the meaning of words can be interpreted by considering the accompanying terms.
3. The LAC referred to the New Oxford Dictionary meaning of a ‘bonus’ as being “a payment or gift added to what is usual or expected, in particular: an amount of money added to a person’s wages, especially as a reward for good performance”. Therefore, the LAC found that the meaning of the “bonus” referred to in section 5(1)(c) is gratuitous in nature and would therefore align with the classification of a ‘gratuity’ envisioned by that subsection. Therefore, it was evident to the LAC that the concept of a “bonus” referred to in section 5(1)(c) is indeed the type of gratuitous payment that is included, noscitur a sociis, in the genus of a ‘gratuity’ mentioned in that subsection.
4. The LAC found that the nature of the bonus paid by the Appellant is a contractual obligation and not a gratuitous payment, which means it would not fit in the definition of bonus, despite it being labelled as a bonus. The LAC concluded that the CCMA and the Labour Court erred by not analyzing the nature of the payments, that being the Appellant is contractually obligated to pay the ‘bonuses’ and has no discretion to withhold them, and instead focused on the terminology used by the Appellant, in order to conclude that the payments made were

gratuitous and therefore fell within the ambit of section 5(1)(c) of the NMWA.

## CONCLUSION

The LAC found that the contractual bonus that Quantum Foods pays to its employees must be factored into the calculation of the minimum wage, therefore the appeal was upheld.

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