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Should Laid-Off Bankers Get Pro Rata Bonuses?

Posted by Deal Journal

Dawn Cowie, of Financial News, files this dispatch from the investment-bank bonus front lines. Financial News is a Dow Jones publication and a contributor to Deal Journal.

Investment banks that don't consider pro rata bonuses for staffers who have or will lose their jobs this year may face litigation.

While the majority of bonuses aren't guaranteed and are instead at the discretion of employers, inconsistency of approach among different banks could help any claimants who try to claw back some portion of their bonus, lawyers say.

"A claimant could argue that his employer has used its discretion 'perversely' in refusing to pay a pro rata portion of bonus for the previous year if he can point to other banks that have paid bonuses to former employees," said Sarah Henchoz, senior associate at Allen & Overy.

Ronnie Fox, principal at law firm Fox, said he had heard of only one example of a bank that wasn't prepared to pay some amount of pro rata bonus payment.

UBS is one of those banks that is looking at the option of making pro rata bonus payments to staffers made redundant, according to a person familiar with the matter. UBS declined to comment.

Recent attempts by former employees to claim part of their bonus after they are made redundant suggest the law is employer-friendly.

In one landmark case, *Commerzbank v. Keen* in 2006, a court ruled against a trader who argued that his employer had exercised its discretion "irrationally or perversely" in respect of bonus payments made in 2003 and 2004 that he argued had been lower than the level recommended by his line manager. The court also upheld the position that the trader wasn't entitled to any portion of his 2005 bonus, having been made redundant in June of that year.

Simon Watson, head of the international employment group at Simmons & Simmons, said: "There is no obligation for a bonus to be paid to someone who is not employed on the payment date for that year but there will be people who are prepared to have a go, especially in the current environment."

Of course, one factor that may deter claims is the fact that the amounts involved in this year's bonus round may not be worth the battle. "The size of the bonuses paid last year made them worth fighting for and claimants sought to argue that they had a contractual entitlement to them," Henchoz said, "but the fact that this year's bonuses are likely to be nil or low will probably lead to less chance of litigation, particularly given the cost of litigation."