

Battle for bonus closely watched

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A lawsuit quietly winding its way through the courts in British Columbia should be of great interest to the research analysts, bankers and brokers who move among institutions — sometimes at a cost of walking away from their bonus entitlement in the process.

Robert Hastings v. Raymond James Ltd. underscores the extent to which analysts, traders and bankers depend on bonuses as the meat of their compensation, and how institutions use the payments to keep their top performers tied up.

If the lawsuit succeeds, and many practitioners feel privately it has an uphill battle, it could make it easier for departing employees to demand and get their share of the bonus pool for work they completed before leaving.

The claim was filed in the Superior Court of British Columbia by Mr. Hastings, who was the utilities analyst at Raymond James Ltd. He is suing his former employer for \$200,000 in bonus money he says is owed to him for four months ended May 31, 2004 — even though he left to join Canaccord Capital before bonuses were paid out in mid-July. He is also seeking damages.

‘EVERYBODY KNOWS WHAT THE RULES OF THE GAME ARE’

Bonus programs at investment dealers usually spell out that to be eligible, the employee must still be working there the day bonuses are handed out. Many institutions have moved to annual bonuses to prevent high performers from leaving mid-year.

Where the payouts are more frequent — at Raymond James they are three times a year — cheques are often cut six or eight weeks after the period has ended, meaning anyone who waits for the payout before leaving is still forced to walk away from some accrued bonus.

Asking to be paid your bonus after you've left flies in the face of industry practice, says a senior executive at a Canadian investment bank. "Everybody in this environment knows when people are leaving to go to a competitor, you work to the end of the period, you get your share of the bonus pool, then you move on," he says. "You don't move before you actually receive the money. If you leave before you get your bonus cheque, too bad for you, because everybody knows what the rules of the game are."

David Church, of Vancouver's Church & Company, which is representing Mr. Hastings, declined to discuss the case because the matter is before the courts.

But the statement of claim says Mr. Hastings, who was a senior vice-president, notified the firm May 14, 2004, that he would be leaving. It argues he did all the work for the four-month period ended May 31, so he is entitled to the money.

He was earning \$8,333.33 a month in base salary at the time, or \$100,000 a year, and was eligible for a share of the bonus pool. In 2003, the last full year he worked there, he made \$350,000 in bonuses, or 3.5 times his base salary.

Mr. Hastings says the last bonus he received was \$135,000 for the four-month period ended Jan. 31, and it was handed out in March, 2004.

According to court documents, in the last few days of April, Mr. Hastings was told by Ken Shields, the firm's president, that his take for the next bonus period would be \$200,000. The firm had sent out a memo earlier claiming a "record-breaking quarter in terms of revenue and pre-tax profits from on-going operations."

On May 14, Mr. Hastings gave Raymond James written notice he planned to leave at a date yet to be worked out. He insists he did not state he was resigning immediately, but offered to stay as

long as necessary to finish whatever work he might be needed for. He says his bonus for the four-month period was fully accrued at that point.

According to the court documents, after trying in vain to persuade him to stay, Darren Martin, Raymond James' director of research, "dismissed [him] summarily, without notice and without pay in lieu of notice" and asked him to leave the premises immediately.

Mr. Hastings says in his lawsuit that despite repeated demands, and in breach of his employment contract, the investment dealer has refused to pay him his bonus.

Raymond James has a different view of the facts, saying Mr. Hastings quit May 14 and started working for Canaccord on Monday, May 17.

The dealer says it was aware Mr. Hastings was considering joining a competitor when Mr. Shields gave him the "preliminary projection" about his potential bonus entitlement. It says the \$200,000 figure was designed to act as an incentive to induce Mr. Hastings to stay, and assumed he met all the criteria.

In tendering his resignation May 14, Mr. Hastings "knew that his entitlement to a bonus would be forfeited or, alternatively, prejudiced," Raymond James says.

It alleges he quit at that point "in order to take advantage of certain financial or other incentives from the competitor, including qualifying for [initial public offering] shares and becoming immediately entitled to participate in the bonus program."

Steve Winder of Borden Ladner Gervais, which is acting for Raymond James, declined to discuss the case because it is before the courts. But the statement of defence says participation in Raymond James' bonus plan is discretionary. To be entitled to a bonus, employees generally have to have worked the "entire" four-month period, the company says, and "continued to provide services ... up to and including the date on which the bonus was determined and paid out to employees."

Another condition of eligibility is that the employee "has not resigned, or advised of their intention to resign, in order to work for a competitor."

The company says since Mr. Hastings resigned, there has been no breach of employment, and since he started right away at Canaccord, it denies he has suffered any loss.

Don Jordan, an employment practitioner at Taylor Jordan Chafetz in Vancouver, says bonus disputes are normally a matter of straight contract law, and the courts look to the language of the plan to determine who is right.

‘THERE HAVE BEEN HOT-BUTTON ISSUES FOR THE COURTS IN THIS AREA’

"That said, there have been hot-button issues for the courts in this area, and they've been whether or not an employer can rely on the solely discretionary terms of the plan to deprive an employee of a bonus when they have already done the work," Mr. Jordan says. "This could be that type of situation."

He says if the B.C. court finds for Mr. Hastings and orders he be paid, "that would be very big. That would be going behind the contract."

One headhunter says he doubts Mr. Hastings' suit will spawn a rash of copycat suits. "It's a cynical group out there, and there are people who will say he was a bit foolish — even though he was told what his bonus would be — to announce before the end of the bonus period, because everyone knows if you're looking, or caught looking, you've basically got a footprint on your backside. They walk you out the door. You do not pass go, and you do not collect \$200."

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