

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Edith W Baker (First Applicant)  
AND Tracey Johnstone (Second Applicant)

**AND** Cardinal Health N.Z. 217 Ltd (Respondent)

**REPRESENTATIVES** Rowan Williams, Advocate for Applicants  
Kirsti Laird, Counsel for Respondent

**MEMBER OF AUTHORITY** Dzintra King

**INVESTIGATION MEETING** 7 April 2005

**SUBMISSIONS RECEIVED** 9 June 2005 from Ms Baker  
17 June 2005 from Ms Johnstone  
5 July 2005 from respondent

**DATE OF DETERMINATION** 13 July 2005

**DETERMINATION OF THE AUTHORITY**

The applicants, M Edith Baker and Ms Tracey Johnstone, have a dispute about their incentive scheme. The incentive scheme is based a 60% weighting for sales revenue and a 40% weighting for personal objectives. The applicants say that over performance can only relate to sales because the NZ Business Manager, Ms Joanne Forrest, only recognised overachievement for sales revenue.

This is an unusual situation because the respondent's interpretation of the incentive scheme is correct. The argument, which has changed over time, is really about how the scheme was implemented. The issue is that the applicants say that they were never given the opportunity to overachieve on their objectives although the incentive bonus was paid on a combination of sales budget and performance objectives. Both overachieved on sales and scored 100% on performance objectives. They say that had they known that they could overachieve on their objectives they would have written their objectives so that they could be overachieved. The writing of objectives was by agreement with the employer so any desire to write objectives that would be easily achieved would have had to have the employer's consent. No employer would agree to objectives that were easily over achievable. The applicants also say that they had one objective that was written so that it could be overachieved and although both did so they were granted no recognition for it. I accept Ms Forrest's evidence that there was a discretionary balancing in her evaluations and that the applicants were not disadvantaged.

In relation to the performance incentive the contract reads:

*Your role requires that you make your best efforts to achieve the company's allocated goals. To this end, the company will provide an annual Performance Incentive Scheme for*

*over achievement of these goals. The specific details of this Scheme will be discussed with you upon acceptance of this role however the scheme will capture as performance criteria your achievement of certain role specific financial goals, personal role specific objectives with measurable outcomes and the overall performance of the company. Your level of achievement of these goals and objectives will be determined as a percentage achievement by the company in its discretion but in consultation with you at your annual performance review.*

*No payment will be made for achievement of less than 90% of your goals however above 100% of achievement the scheme is open ended and designed to reward beyond the NZ\$14000 level.*

....

*The company reserves the right to modify the Performance Incentive Scheme at any time.*

There is no contractual provision for a review of or an appeal against a performance assessment.

Mr John Brassil, The General Manager, said that the details of the current scheme were set out in a number of documents. A document headed "New Zealand Account Manager Incentive Scheme for period January to June 2003" states "Over-achievement in both incentive criteria is possible". The equivalent document for the period 1 July 2003 to 30 June 2004 repeats this. He said it was well known and also documented in the training material that it was possible to over achieve performance objectives.

Ms Forrest set performance objectives for the employees and measured their performance against these objectives. She said the incentive scheme for the 2003 financial year was introduced to all employees at a sales meeting on 18 December 2002 at which she outlined the processes for setting personal objectives and performance appraisals and explained how they impacted on the incentive scheme. She made particular reference to the SMART criteria for setting personal objectives and that she stressed that the aim of the performance scheme was to reward staff for their efforts and performance and that their objectives should reflect this intention.

Following the meeting she handed each employee a copy of the incentive scheme and a copy was placed on each employee's personal file. This document states clearly that over-achievement in both the incentive criteria is possible. Both employees were unsure about whether they had received this document but I believe they did.

Mr Brassil's rationale for the design of the scheme states that:

*...the scheme needs to aggregate more than one element which will reflect the overall performance of the individual, still pay individuals who despite their best efforts do not achieve 100% of their aggregate financial goals and performance objectives while rewarding via and [sic] open end plan aggregate overachievement.*

His notes for establishing and reviewing performance objectives say:

*Please note greater than 100% is possible where the employee has excelled at one or all objectives. ....You should also note any unanticipated achievements under the results section and rate them as well to provide a comprehensive evaluation.*

It is clear that the scheme encompassed the ability to reward staff for overachievement in both sales and personal objectives.

Ms Forrest said that at the National Sales meeting held in Australia in July 2003 she told staff that the incentive scheme would operate in the same manner for the 2004 financial year as it had done for the 2003 financial year. The only change would be to have an increase in the base amount payable.

She said that objectives were discussed with each employee and that she and the employee would then agree the final version of the objectives. This was not contested.

Also in July, she met with the applicants to appraise their performance. She listened to both of them and ultimately did not consider that either had achieved more than 100% of their objectives. She considered that an overall score of 100% was fair in the circumstances. Neither applicant disagreed with the appraisal at that time.

She denied that she had ever told either of the applicants that it was not possible to overachieve on personal objectives. I think it more likely than not that this is correct given that of the five NZ employees appraised one did overachieve on personal objectives.

It appears that both applicants had difficulty understanding how their entitlements had been calculated. Ms Forrest gave Ms Baker the calculations on a spreadsheet. It seems that at this stage Ms Baker believed the scheme should be interpreted differently. Ms Forrest then met with both women and when they said they still did not understand the calculations and asked how it related to the graph she did not feel she was the best person to explain it and suggested they speak to Mr Brassil. They wanted payments made pursuant to their interpretation of the scheme. The company would not do this.

I do not think that Ms Baker and Ms Johnstone can say that they were unaware of the criteria, specifically that overachievement as possible for personal objectives as well as sales. They participated in the setting of the objectives and made no demur when the performance was carried out.

The respondent's interpretation of the scheme is correct and the applicants have been paid correctly. They have not been disadvantaged or misled.

Costs were reserved. If the parties are unable to resolve this issue the respondent should file a memorandum within 28 days of the date of this determination. The applicants should then file a memorandum in reply within 14 days of receipt of the respondent's memorandum.

Dzintra King  
Member of Employment Relations Authority