SHAPING OF REMUNERATION CONDITIONS BY THE EMPLOYER

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Abstract: The aim of the article is to examine whether the current labor law allows the employer to shape the terms and conditions of remuneration unilaterally, if so, to what extent, and also whether such actions occur in economic life and to assess them legally.

Keywords: labor law, procedural position of employees, salary, agreement, employer, employment relationship.

1. Introduction

Remuneration for work is an essential element of the employment relationship (Art. 22 § 1 of the Labour Code). The remuneration for work corresponding to the type of work, with the indication of the remuneration components, is determined in the employment contract. Therefore, the change of the remuneration conditions can be made only in the mode provided for the change of the employment contract, i.e. by means of the agreement of the employee and the employer and by means of the changing notice (Article 42 of the Labour Code). Moreover, the change of remuneration conditions may be made following an agreement between the employer and a trade union organization representing the employee on suspension, in whole or in part, of application of the provisions of the labour law determining the rights and obligations of the parties to the employment relationship in a situation when it is justified by the financial situation of the employer. Similarly, if it is justified by the financial situation of an employer who is not covered by a collective bargaining agreement or who has less than 20 employees, an agreement may be concluded on the application of terms and conditions of employment that are less favourable than those resulting from the employment contracts concluded with those employees, to the extent and for the period determined in the agreement (Art. 23-la of the Labour Code) Finally, pursuant to Art. 241-27 of the Labour Code due to financial situation of the employer, parties of the company agreement may conclude an agreement to suspend with a given employer, in whole or in part, this agreement and a multi-company agreement or one of

them, for a period not longer than 3 years. Within the scope and for the period determined in the agreement, the terms and conditions of employment contracts and other acts constituting the basis for establishing the employment relationship, resulting from the multi-employer agreement and the company agreement, shall not be applied by force of law.

The topic has been considered in three aspects: one concerns the stage of salary determination (some of its elements), the second - the possibility to modify the salary determined in the employment contract, the third - the issue of the so-called discretionary bonuses and awards and the position of the employer in granting bonuses.

Remuneration for work has received relatively little attention in the labor law literature. It is different in the legal science of Western countries, where the issues of remuneration for work are given much attention, considering that remuneration for work (and the institution of working time) is of fundamental importance from the perspective of both the employer and the employee.

2. The position of the employer in setting the conditions of remuneration

The labor law has evolved from the principle of determining the conditions of remuneration in the employment contract, with the actual dictate of the employer, through their determination in collective bargaining agreements, maintaining the principle of privilege, i.e. the possibility to deviate from the provisions of the agreement, if it was to the benefit of the employee [7]. Nowadays the method of determining remuneration for work exclusively in the employment contract is applied in case of employers with less than 20 employees, of course taking into account the strictly binding provisions on the minimum remuneration. The employer employing at least 20 employees, not covered by the company collective bargaining agreement or a post-company collective bargaining agreement, determines the terms and conditions of remuneration for work in the remuneration regulations (article 77-2 § 1 of the Polish Code of Labour). The institution of the remuneration regulations was introduced in order to prevent situations in which, due to the lack of a trade union organization in newly created business entities and the impossibility to introduce a collective bargaining agreement, the employees were deprived of certainty regarding their working conditions, while the employer gained the position allowing him to dictate the working and pay conditions to the employees. The purpose of this regulation was also to strengthen the employees' procedural position in potential lawsuits against the employer.

In light of the current regulations, the remuneration regulations are set by the employer (art. 772 § 4 first sentence of the Civil Code). Therefore, it is a case of unilateral shaping of remuneration conditions by the employer. It does not exclude that in the contract of employment the terms of remuneration are set more favourably than those provided for in the regulations (art. 18 of the Labour Code). 78 § 1 of the Labour Code), as well as those introducing the ban on discrimination (Article 113 of the Labour Code) and the right to equal pay for equal work (Article 183c of the Labour Code) [Baran, 2018].

If, however, a company trade union organisation is active with a given employer, the employer agrees remuneration regulations with it (Article 772 § 4, second sentence, of the Code of Civil Procedure). On the grounds of the cited regulation, it is assumed that without agreeing on the content of the remuneration regulations with the company trade union, the regulations will not have legal effect, i.e. they will not become the remuneration regulations within the meaning of the cited provision, i.e. an act having the nature of a source of labour law within the meaning of art. 9 of the Polish Civil Code. However, it will be possible using a different legal mechanism. The terms and conditions will be able to be introduced into individual employment relations under the general rules of the employer's offer included in the draft regulations and accepted directly or implicitly by the employed (newly hired) employees. The provisions of the Labour Code regarding "coming into force" after the lapse of 2 weeks from informing the employees in a manner adopted by a given employer will not be applicable then. At the same time the employees will be able to refuse the proposed conditions [Wratny, 2016]. In such a case, the pay conditions provided in the draft payroll regulations can be introduced by way of termination of the existing conditions or by way of an agreement of the parties, and in the case of new hires - by way of determination of the conditions of employment in accordance with the draft payroll regulations. In practice, employers often take advantage of the above regulation and its consequences in such a way that they draft terms and conditions of employment, assuming in advance that they will not be accepted by the trade union.

During the transition to a market economy, the state did not completely abandon wage controls due to the need to control the level of inflation. For this purpose, it used a financial instrument in the form of the so-called "popiwek" (superannuation). In a situation of a further threat of an excessive level of inflation, a new solution was introduced to maintain the state's influence on the level of salaries of entrepreneurs, which included entities of the national economy conducting economic activity, including organizational units operating under the Banking Law, the Law on Public Trading in Securities and Trust Funds, as well as independent public health care institutions employing more than 50 people. Namely, the Act of 14 December

1994 on the Negotiating System of Shaping the Increase in Average Remuneration at Entrepreneurs and Amendments to Certain Acts introduced a legal instrument of shaping remuneration in the form of employer's decrees on the increase in monthly average remuneration. According to Article 4 of the Act, the increment of the average monthly remuneration in a given year was determined by the parties authorized to conclude a company collective bargaining agreement. The agreement should take into account the situation and financial capabilities of the entrepreneur and the indicators set by the Tripartite Commission (par. 1). In the case of entrepreneurs who did not conclude an agreement, the increase in the average salary was determined by the employer by way of a regulation by 10 March of each year (paragraph 3). Pursuant to paragraph 3a of Article 4, the determination of the increment could be changed if justified by a change in the situation and financial capabilities of the employer [Żywolewska, 2016, p. 83].

As to whether the employer's regulation was an act which unilaterally shaped the conditions of remuneration, the literature expressed an opinion that the employer's regulation was not a source of labor law in the meaning of Article 9 of the Labor Code and was not a source of individual rights of employees; it had to be made specific and introduced into the content of individual employment relationships by way of a separate act of the employer, in the form of an annex to the employment contract, constituting an offer to increase remuneration. Changes in the increment of individual salaries required termination of the existing conditions and proposing new conditions in writing. Similar solutions to those presented above are contained in the Act of July 22, 2006 on transferring funds to health care providers for salary increases.
In practice, there are also other types of employer regulations, especially those introducing the use of acts called bonus (reward) regulations. Their occurrence can be ascertained in the case of employers with less than 20 employees, which do not have a collective bargaining agreement in force, but also in the case of employers who have remuneration regulations or a collective bargaining agreement in force. Each of these situations requires separate consideration.

In terms of their construction, the aforementioned regulations do not differ from regulations contained in collective bargaining agreements, or those for which the agreement constitutes a legal basis for their issuance. Without going into the legal nature of the bonus and award and the criteria for their distinction, which will be discussed later, the question should be posed about the legal nature of the employer's regulation, which introduces such regulations. In particular, the question arises whether the employer's order constitutes an act of the employer unilaterally shaping the conditions of work as regards remuneration (bonuses), or whether it has a different meaning.

With respect to the first group of employers, with less than 20 employees, not covered by a collective bargaining agreement, it should be assumed that in a formal sense, the order is a technical and organizational act of the employer, serving to present the employees with an offer in the form of bonus terms and conditions, contained in the regulations. It does not have the nature of a source of labor law within the meaning of Article 9 of the Labor Code. In particular, it cannot be regarded as a type of regulation within the meaning of Article 9 of the Labor Code, because the regulation is not based on a statute, and therefore it lacks the basic characteristic allowing it to be regarded as a type of autonomous source of labor law [Żywolewska, 2016, p. 83].

The acceptance of the offer in the form of bonus conditions contained in the regulations may take place directly in the relevant declaration of the employee or, as a rule, implicitly through its application. Broadening the conditions of remuneration by additional benefits will not, as a rule, be contrary to Article 18 of the Civil Code.

In the judgment of the Supreme Court of 5 June 2007 the thesis was formulated that the employer's regulation is not a source of labor law (Article 9 of the Labor Code), but a statement of will. It may grant additional rights to employees and even after the employee's implied consent it enters into the content of the employment relationship [Gutowski, 2016].

Undoubtedly, a distinction must be made between the regulation, which is a technical and organizational act, and the bonus regulations attached to the regulation, which constitute an offer of new salary conditions.

Consequently, the change of bonus terms to the employee's disadvantage, or the employer's resignation from applying the bonus, will constitute a change in the content of the employment relationship to the employee's disadvantage and cannot be effected by another unilateral act of the employer, e.g. an order repealing the bonus regulations, but only by applying the general rules of changing the content of the employment relationship, i.e. by way of an agreement between the parties or by way of a changing notice.

In the case of employers with at least 20 employees, who are not covered by a collective bargaining agreement, the remuneration conditions are set by the employer in the remuneration regulations. The procedure for introduction of remuneration regulations has already been discussed. In the context of the issue in question the following further issues seem to be important. If the employer has agreed on the contents of the remuneration regulations with the union organization, the changes in the conditions set forth in the regulations can be introduced only in the form of an amendment (annex) to the existing regulations, i.e. in compliance with the requirement to agree with the trade unions. Such position is justified by the firm wording

of art. 772 § 1 of the Polish Civil Code, which states that the conditions of remuneration with such employer are set in the remuneration regulations [11].

In the absence of trade unions in the company, the remuneration regulations are set by the employer himself (art. 77 § 4, first sentence of the Labour Code). In this situation, the employer can independently make changes and additions to the regulations. The ordinance on introducing the bonus regulations may then be regarded as an amendment to the remuneration regulations, which will enter into force according to the procedure set forth in art. 772 § 6 of the Polish Civil Code, i.e. two weeks after it has been announced to the employees in the manner adopted by the employer. On the other hand, in a situation where the company trade union organization does not agree to the remuneration bylaw, the draft cannot become the remuneration bylaw in the meaning of art. 772 of the Polish Civil Code. The introduction of bonus regulations by way of the employer's ordinance in such a situation should be assessed similarly [7].

In a judgment of July 9, 2009, in connection with a case in which the ordinance of the president of a bank operating as a joint-stock company introduced "Bonus regulations for the results of loan collection" the Supreme Court formulated a general view that "Bonus regulations may be treated as a type of remuneration regulations. It is not clear from the reasoning of the judgment what was the legal basis for the issuance of the order introducing the bonus regulations, especially whether the bank had remuneration regulations and whether it provided for the issuance of bonus regulations by the president of the bank. The Supreme Court merely stated that there is no doubt that the bonus regulations were normative in nature - they were an autonomous source of labour law within the meaning of Article 9 §1 of the Code of Civil Procedure [Spoczyńska, 2011].

It follows from the considerations presented above that the assessment of the legal nature of the bonus regulations introduced by the employer's (person acting on behalf of the employer) order depends on a number of circumstances, as discussed above, in particular the existence or lack of a legal basis for the issuance of the relevant order, as well as its type. Although the Supreme Court reserved that bonus regulations may be treated as payroll regulations, such a generally formulated thesis on the legal nature of bonus regulations introduced by employer's ordinance raises reservations. In a judgment of 27 October 2004. Its binding force results from the fact that the unilateral statement of will of the supervisory board acting on behalf of the employer, by enriching the conditions of remuneration, supplements the content of the employment relationship of management board members [Spoczyńska, 2011].

3. Admissibility of modification of the agreed terms of remuneration by the employer

The employment relationship is of the nature of an obligation calculated, as a rule, for a long period of time. During the employment the conditions under which the company operates may change, even substantially, both in a positive and negative sense. These changes may be temporary or long-term.

The applicable law contains instruments that allow for the adjustment of the conditions of employment to a certain extent to the financial situation of the employer. In the area of collective labor law, these are agreements to suspend the application, in whole or in part, of the company's labor regulations (Article 91 of the Labor Code), an agreement to apply less favorable terms and conditions of employment of employees than those provided for in the employment contracts at employers not covered by a collective bargaining agreement or employing fewer than 20 employees (Article 23la of the Labor Code), an agreement to suspend, in whole or in part, the application of a collective bargaining agreement at a given employer due to the employer's financial situation (Article 24127 of the Labor Code). With respect to individual employment relationships, the employer has the option to terminate the employment relationship, to apply a change notice, or to change the existing terms and conditions by mutual agreement. There are certain disadvantages associated with their application [Baran, 2018]. For instance, in connection with the changing termination notice it is necessary to wait for the expiration of the notice period for the previous terms and conditions, uncertainty for half of the notice period as to the final position of the employee, the necessity to consult the trade union, and in the case of termination of the agreement by way of the so-called group layoffs - the necessity to pay the severance to the dismissed employees.

Nowadays in the practice of Polish entrepreneurs one can observe the application of certain solutions which mean burdening the employees with the economic risk of running the enterprise. This phenomenon will be presented on the example of a case heard by the Supreme Court on 24 October 2009 [Baran, 2018].

The plaintiff was employed by the company X, operating as a joint stock company, as the deputy director of the Office of International Forwarding and Transport. In 1998 he was given notice of termination of his remuneration and was offered new ones, according to which he was to receive remuneration comprising PLN 2520, i.e. 70% of his previous basic salary, and PLN 1080, i.e. 30% of his previous basic salary, with the latter being dependent on achieving a positive economic result in the organisational unit which he managed. In the course of time, the claimant was promoted, and in the employment contracts signed subsequently (which followed

the termination of the previous work and pay conditions), the previous division of the basic pay into two parts, in the same proportion of 70% and 30%, was maintained. However, while the right to the second part of remuneration depended on obtaining a positive economic result of the organizational unit which the plaintiff managed, in the agreement preceding the dismissal the remuneration was made dependent on obtaining a positive economic result by the whole establishment. In the statement of claim, the plaintiff demanded remuneration for the periods (not time-barred) in which he was denied part of his remuneration due to the failure to achieve a "positive result on core business" of the company [12].

In the cassation appeal against the judgment awarding the amounts of remuneration claimed by the plaintiff, the defendant company argued that the collective bargaining agreement, as regards the amount of remuneration, referred to the employment contract, in which the amount of remuneration was to be determined. In the absence of binding provisions of the agreement as to the amount of remuneration for the position held, it was permissible - according to the claimant - to change the previous rules by way of a changing notice.

The Supreme Court dismissed the cassation appeal. In its justification, it pointed to the principle that the employer bears the economic risk in the employment relationship, which means that it is inadmissible to burden the employee with the consequences of negative results of economic activity by making a part of the basic remuneration dependent on those results. According to this provision, remuneration for work should be determined in such a way that it corresponds in particular to the type of work performed and the qualifications required for its performance, and also takes into account the quantity and quality of work performed.

The legal problem in the case requires additional commentary, especially that the case decided by the Supreme Court is not an isolated one. The court proceedings revealed that an analogous practice was also applied in the company to other employees in managerial positions. However, this aspect of the case was not the subject of the evidence, and therefore the details of the other employment contracts are not known. However, it is necessary to keep in mind the widespread practice of copying model employment contracts, especially of managerial employees, from foreign models. In western countries the practice of making some benefits for employees dependent on the economic situation of the employer is quite widespread, and in scientific literature they are evaluated in various ways, from their approval to expressing various, also fundamental, reservations towards them.

Bearing by the employer economic risk, technical risk and personal risk is a characteristic feature of the employment relationship and one of the criteria allowing to distinguish it from civil law relations, the subject of which is also rendering of work. The economic risk consists

in the fact that if the activity of the establishment does not make a profit or even makes a loss, "this in principle does not affect the amount of remuneration due to the employees". The proviso "in principle" refers to the fact that employees participate in part in bearing this risk by using benefits, the granting (amount) of which has been conditioned on making a profit. The bearing of the economic risk by the employees in this respect is regarded as acceptable, moreover, as an acceptable form of interest of the employee in the enterprise and its fate. The borderline between unacceptable and acceptable burdening the employee with the economic risk has not been clearly drawn in the theory of labor law.

The literature rightly points out that under an employment relationship the employee is obliged to work conscientiously and diligently (Article 100 of the Labour Code), and not to achieve a specific result, as it is the case with outcome contracts, e.g. a contract for specific work. This also applies to the result in the form of economic effects of the employer's activity. Therefore, it should be assumed that the equivalent of such work is the basic remuneration, as stipulated in the employment contract. As a consequence, it should be concluded that imposing an economic risk on the employee is not permissible within the scope of the basic (essential) remuneration [Gutowski, 2016].

On the other hand, there are no obstacles to tying certain additional benefits for employees to the results of business activity. In practice, these are profit bonuses (prizes) and certain other types of bonuses which provide for the establishment of a bonus fund conditional on the achievement of certain economic results (the so-called first-degree premise in the bonus arrangement).

4. The position of the employer in the area of bonuses

The title issue deserves separate attention due to the employer's role in the bonus granting process. In the system of employee compensation, the basic salary should play a fundamental role. If the basic salary is not strongly related to the work performed, the whole remuneration system becomes defective and bonuses alone are not able to change it. At the same time, there is no doubt that properly used bonuses (and rewards) may significantly influence the effectiveness of the remuneration system and thus affect the performance of employees and the whole workplace. In practice, designers of remuneration systems often do not know how to do it well and as a result bonuses become a fiction, spending money without any benefits for the organization. The literature emphasizes that bonuses, especially some of its types in the form of so-called discretionary bonuses, give the employer a lot of power over the employees and

therefore they are interested in using them. On the part of labor science and management, conditions for the proper use of bonuses and rewards are formulated, and numerous objections are raised to bonus systems used in practice. A number of objections have also been raised in the science of labour law, but for the most part they have been formulated in other socio-economic and legal conditions of using bonuses (and rewards). This does not diminish their importance; many of them are still relevant. Nevertheless, in connection with the title study, it seems appropriate to revisit some aspects of the use of bonuses and rewards [Florek, 2017, p.77].

The construction of bonuses is essentially straightforward. In a model way, bonus regulations formulate the prerequisites for a bonus (bonus tasks) and define the bonus payable if these prerequisites are met. In light of the established position of labour law doctrine and judicature, the employer's decision to grant a bonus is a declaratory statement that due to the fulfilment of the conditions, the employee has acquired the right to the bonus. There are complications in the area of differentiating a bonus from an award when the conditions for the bonus are formulated in general terms and thus give the employer a considerable margin of discretion in assessing whether they have been fulfilled; moreover, the regulations make the award of the bonus contingent on the employer's discretion (the so-called discretionary bonuses), and also in connection with the so-called deprivation, i.e. reduction or deprivation of the employee's bonus for breaching their employment obligations (application of bonus disciplinary reducers). These issues will be considered in turn below.

As regards the distinction between a bonus and a reward, it should first be recalled that, according to Article 105 of the Labour Code, rewards and distinctions may be granted to employees who, by performing their duties in an exemplary manner, showing initiative at work, and improving work productivity and quality, make a special contribution to the performance of the company's tasks. Similar formulas are sometimes used in reward regulations included in collective bargaining agreements. As an example, one can point to appendix no. 5 to the company collective bargaining agreement of the energy industry company entitled "Rules for using the employer's reward funds", according to which "The employer's reward funds are intended to be used to reward employees, in particular for performing additional urgent and important tasks, which have a significant impact on improving the company's results, and for outstanding achievements in professional work" [Florek, 2017, p. 77].

On the basis of grammatical interpretation of the provision of Article 105 of the Labour Code, it should be concluded that the award is a benefit that the employer may grant to the employee after ex post assessment of the employee's attitude (results achieved by him). Until

such an assessment is made and the award is granted, there is no special legal bond between the employee and the employer relating to the award. This bond arises only at the moment of the employer's decision to grant the award.

In my view, this assessment is not undermined by the fact that reward (award) regulations (rules), which specify the titles of awards and the procedure for awarding them, are quite common. In socially-owned work establishments, the rationale for introducing reward regulations was the need to document expenditures from state assets which were not directly justified by salary claims. Today, this motive is still present in state-owned enterprises or state-owned companies, while in the case of private employers, the reason for their introduction seems to be the trade unions' desire to secure influence on the employer's pay policy (in a broad sense) by participating in their establishment. This influence was formally decreed in article 22 paragraph 3 of the Trade Unions Act, as amended by the Act of 26 July 2002. According to this provision, the regulations on rewards and bonuses are established and amended in agreement with the company trade union organization; this also applies to the principles of distribution of funds for remuneration for employees working in a state budgetary unit. Moreover, the motivational role of a formalized act in the form of award regulations as an incentive for employees to undertake tasks, which are connected with the possibility of obtaining an award, cannot be underestimated.

The above approach does not negate the commonly accepted view that the characteristic feature of awards is that the employee has no claim on the award and that the decision to grant the award is constitutive in nature and only the decision gives rise to the employee's claim for payment of the award. By taking part in establishing the rules of awards, trade unions can ensure their participation in awarding them. The additional obligations of employers towards trade unions arising in this respect are not matched by any claims of employees towards the employer for payment of awards.

In the case of bonuses, the bonus regulations formulate a specific task (objective to be achieved) and the related bonus entitlement. Leaving aside the more complex prerequisites, a simple example can be found in § 2 of the additional protocol to the company collective labour agreement of the herbarium company. It states that "Employees of the company shall receive a monthly bonus depending on the company's achievement of the planned sales value cumulatively from the beginning of the year (...), 2. The amount of the bonus paid to the employee shall be 10% of his basic salary (...)". In the case of a mining company, for employees of the chief mining engineer's department, the bonus regulations provide (§ 12) in bonus group I (Chief Mining Engineer) for a bonus task defined as "(a) 50% bonus for extracting the ore in

wet weight, (b) 50% bonus for achieving the planned % Cu content in the ore" [Baran, 2018, p. 94].

As a result of the acceptance of the regulations, when they have the nature of an offer, or due to their nature as an act of normative character, if they have been included in a collective bargaining agreement or in the remuneration regulations, the arrangement of rights and obligations of the employee and the employer provided for in the regulations (the arrangement) enters into the content of the employment relationship and becomes the source of a specific obligation between the parties to the employment relationship. Apart from the employment contract, the content of the employment relationship is determined by the provisions of the law in force, including the provisions of the autonomous law, which include the bonus regulations as the acts included (based) in the collective labour agreements (remuneration regulations); it can be complemented by an additional agreement between the employee and the employer, also on the basis of the employer's offer and its acceptance, explicitly or implicitly, by the employee. As a result of the aforementioned acts, an obligation arises in the scope of which we are interested, in which the obliged (potentially) party is the employer, and the entitled (conditionally) party is the employee.

In the case of the so-called discretionary bonuses, there is also a goal to be achieved (a task for an employee or a team of employees) and a bonus linked to the achievement of this goal, whereas additionally the regulations include a reservation that if the employee achieves the results, the employer may grant the bonus. E.g. For example, § 3 of the regulations for the creation and distribution of the bonus fund of another mining company states that: "1. Within a defined bonus fund, employees can receive a monthly discretionary bonus for the performance of assigned tasks and individual work results (...). 3. 3. decisions on the amount of individual bonuses are made by the fund administrator on a discretionary basis. The amount of the individual bonus cannot exceed 30% of the employee's basic salary" [Baran, 2018, p. 102-109].

The use of discretionary bonuses has long been criticized in the labor law literature for the overly general formulation of bonus tasks and the employer's wide margin of discretion, up to and including discretion in awarding them. Their character as bonuses in the legal sense has also been questioned because they are not claimable. The view has also been expressed that they are rather a kind of reward in the broad sense of the word, leading to the consolidation of the employer's power and hence are very attractive to the employer. They should be abolished and included in the basic salary.

This criticism, so far, has not proved very effective. While sharing the criticism of discretionary bonuses, I would like to draw attention to another aspect of the issue. First of all,

it is important to bear in mind the wide variety of bonuses that occur in practice. It is accompanied by great carelessness on the part of the authors of regulations in formulating the entire system of bonus conditions. There are also no strict criteria for distinguishing bonuses from "discretionary" bonuses. The phrase contained in the regulations that "a bonus is discretionary" does not constitute such a criterion, because it is generally accepted in the case law and literature that the decisive factor should be the type and manner of formulating the terms of a benefit, and not its name in the regulations.

Undoubtedly, some of the so-called discretionary bonuses occurring in practice should be qualified as awards in the legal sense, because they meet the characteristics of an award as formulated above. In the case of the remaining ones, where bonus tasks have been formulated, even in a general manner, and the performance of those tasks is associated with bonuses granted on a discretionary basis, the admissibility of introducing this type of reservation in the regulations should be considered. This type of "discretionary" bonus fulfills the features of a classic bonus in the sense that it specifies the tasks the bonus is tied to. In such situations, by virtue of the bonus regulations, an obligation arises between the employer and the employee, in particular the employer's undertaking that if the employee performs the designated tasks (achieves the designated result), he will receive a bonus. The stipulation contained in the regulations that a bonus may be awarded after the task has been completed, or the stipulation that its award depends on the employer's discretion, raises reservations from the perspective of the principles of performance of obligations.

The general rules for performance of obligations are set forth in Civil Code art. 3531. This provision, based on art. 300 of the Civil Code, is applicable to employment relationships. According to Article 3531 of Kodeks Cywilny (the Polish Civil Code) the parties entering into the agreement may arrange the legal relationship as they see fit, as long as the content or purpose thereof does not contradict the nature of the relationship, the law or the principles of social interaction. In the context of the problem we are interested in, the limitation of the freedom of contract by the rules of social co-existence deserves particular attention. In the jurisprudence of the Supreme Court in civil cases the position has become established that those bond contracts which shape the rights and obligations of the parties to the relationship in a way that does not correspond to the contractual fairness violate the principles of social co-existence. These include, in particular, contracts opposing fairness and professional integrity, as well as contracts grossly unbalancing mutual rights and obligations. In the resolution of 22 May 1991, III CZP 15/91 it was assumed that it is against the nature of the obligation to create a legal relationship, the content of which could then be freely shaped by one of the parties [Gutowski, 2016].

It seems that the so-called discretionary bonuses grossly unbalance the mutual rights and obligations of employees and the employer, to the disadvantage of the employees. They provide for certain additional tasks to be performed by employees beyond their normal duties, or for certain results to be achieved, while compensation in the form of a bonus depends on the employer's discretion.

Adopting the above position, one should consequently hold that the relevant clauses introducing the discretionary nature of the bonus award, as contrary to the law (Civil Code Art. 3531 in conjunction with Civil Code Art. 300 and in conjunction with Art. 9 § 2), are not binding, and the employees, in the event of performance of the assigned tasks, are entitled to claim a bonus [Gutowski, 2016].

Another area of the employer's authority in respect of remuneration for work is the use of bonus disciplinary reducers. Bonus disciplinary reducers are the bonus conditions (negative) included in the bonus regulations, which provide for the possibility to reduce the bonus due or to deprive the employee of the bonus in full for breaching the employee's duties, particularly the so-called formal work discipline duties (absence from work, lateness). In many cases, bonus regulations refer to the fact of punishing an employee with a performance penalty and link the reduction (deprivation) of a bonus to the very fact of a prior punishment.

The practice of using disciplinary reductions was very widespread in the socialist economy. Nowadays, its scope has been somewhat limited, which is partly related to the reduction of the number of bonus titles. More fundamental seems to be the introduction of a market economy, which by its very nature encourages employees to treat work differently and to some extent reduces the "need" for bonus sanctions. Nevertheless, also under the new conditions these sanctions are still used.

I share the criticism of the use of disciplinary reducers voiced in the labour law literature both in the past and nowadays. Without going into details, it can be said that this criticism was based on more general premises concerning the function of remuneration for work and was expressed in the question whether and to what extent the incentive character of remuneration could be used to discipline employees, as well as the evaluation of the system of that time from the point of view of the rules of applying sanctions, i.e. admissibility of punishing several times for one infringement of work discipline, infringement of the proportion between the gravity of the infringement and sanctions on this account. Pathological phenomena were also pointed out, which were connected with the application of bonus sanctions in the form of the illegal "cancellation" of employee misconduct, or the use of means of order liability in order to prevent the application of often drastic bonus sanctions, often acting automatically, on the basis of the

bonus regulations themselves (e.g. the loss of the right to the so-called miner's card, the socalled 13th or even 14th bonus in companies from the mining industry. It is worth reminding that the attempt made in 1996 to limit the use of reducers by introducing Article 1131 to the Labor Code did not fully succeed, because already in 2002 this provision was repealed. According to Article 1131 of the Labor Code, an employee against whom the penalty provided for in Article 108 has been applied may not additionally be deprived of those rights under the labor law that are contingent on not violating the employee's duties to the extent justifying the employee's liability [Baran, 2018, p. 94].

It has been recently pointed out that in the conditions of market economy, it would be appropriate to move towards the prohibition of disciplinary reductions, "thus strengthening the obligatory character of the employment relationship and limiting the role of the employer as an educator of employees equipped for this purpose with the possibility of punishing and rewarding them". While agreeing with the postulated direction of changes, I would like to point out that the matter seems to be more complex and would deserve a separate attention. As a rule, bonus regulations are not issued unilaterally by the employer. As a rule, they constitute a part of the collective bargaining agreement (remuneration regulations), and come into effect by way of an agreement between the employer and employee representatives, which finds its statutory basis in Art. 27 par. 3 of the Trade Unions Act. As a rule, if the regulations included in the agreement are of a framework character - they refer to detailed regulations to be drafted by the employer in cooperation with the trade union organization. In this sense, disciplinary reducers are also not unilaterally imposed by the employer, but are an expression of a certain common view on the advisability of their application. Of course, this cannot constitute a conclusive argument in favor of the reducers, especially their form and practice of application. It should also be borne in mind that there is a wide variety of bonus conditions (bonus arrangements) provided for in bonus regulations, which do not always fit into the accepted classifications based on bonus systems used in the past [Baran, 2018, p. 117].

De lege lata, an employee's breach of duties affects the right to annual remuneration, as provided for in the Act of December 12, 1997 on Additional Annual Remuneration for Employees of Public Sector Units. Additional annual remuneration, whose predecessor were awards from the company's award fund, the so-called thirteenth salary, has the features of a bonus in the legal sense. The right to annual pay is conditioned on working for a given employer for the entire calendar year (art. 2). According to Art. 3 of the Act, an employee does not acquire the right to the annual remuneration in case of absence from work lasting longer than two days, reporting for work or being at work in an intoxicated state, imposing a disciplinary penalty of

expulsion from work or service, termination of the employment contract without notice due to the employee's fault [Spoczyńska, 2011].

The wording that the employee does not acquire the right to annual remuneration in the mentioned cases of violation of duties draws attention. In some bonus regulations we find similar wording, e.g. in the regulations for the creation and distribution of the bonus fund of a plant that is part of a mining industry company it states: "Ineligible under these regulations to receive a bonus for a given month are employees who, in the month for which the bonus is awarded: a) have abandoned work, b) have unexcused absences, c) have been on the premises of the plant at work in an intoxicated state (...), e) have received a regulatory penalty".

As it results from the quoted regulations, both in the first and in the second case, a proper attitude towards employee's duties is a prerequisite for acquiring the right to a bonus.

It is different in the case of the "classic" disciplinary reductions, which provide for the reduction or deprivation of the bonus, i.e. the benefit to which, in connection with the fulfilment of positive conditions, the employee has already acquired the right, due to a breach of work discipline. As an example of this type of reducer, one may refer to the provision of § 13 of the other bonus regulations of the company, already cited above [Świątkowski, 2016]. It stipulates that "the Branch Director is entitled to reduce or not to grant bonuses to employees, in non-manual positions for: violation of the order or work regulations established at the company, violation of OSH and fire safety regulations, improper quality of work, causing damage to the company, improper quality of work". Restricted to the situation of breach of the employee's obligations, the disciplinary reducer in this case therefore concerns the benefit to which the employee - in the light of the legal mechanism for obtaining the right to a bonus - in connection with the fulfilment of the (positive) conditions, has already acquired the right. Application of the disciplinary reducer in this situation in the form of deprivation (reduction) of the bonus means a reduction of the remuneration due to the employee, or in other words - making a kind of deduction from the remuneration for work by the employer (authorised person).

5. Conclusion

The remuneration for work enjoys special protection, which is reflected, among others, in the introduction of limitations in making deductions from the remuneration by the employer. In accordance with Article 87 § 1 of the Labour Code, only the following dues are deductible from the remuneration for work, after deduction of social security contributions and advance payments for personal income tax:

1) sums enforced by virtue of executive titles to satisfy alimony payments,
2) sums enforced under executive titles to satisfy debts other than alimony benefits,
3) cash advances granted to an employee,
4) penalties provided for in article 108 of the Labour Code.

Receivables other than those mentioned above may be deducted from the employee's remuneration only with his consent expressed in writing (Article 88 § 1 of the Labour Code). Undoubtedly, the reduction or deprivation of the right to a bonus in the circumstances described above does not fall within the limits of permissible deductions from remuneration provided for in Article 87 of the Labour Code. The relevant provisions of the bonus regulations as contrary to the provision of Article 87 § 1 of the Labour Code. - in my opinion - should be considered invalid.

It has been noted that bonuses for the proper performance of employee duties are permissible. Bonus regulations on this account could include provisions providing that an employee who has committed a certain breach obtains a bonus in a lower amount, i.e. solutions similar to those contained in the law on additional annual remuneration. "Reducer" would apply to conduct by the employee that was culpable. It could not be applied to events not culpable by the employees, as was the case in the past with respect to so-called "attendance" bonuses. Bonuses accrued for working an entire month and were subject to reductions up to and including forfeiture in the event of absence from work. This resulted in many unfavorable phenomena, such as coming to work despite being unable to do so due to illness, which had a negative impact on the employee's health.

We should agree with the assessment that economically forcing a sick person to come to work instead of staying in bed and recovering for fear of losing a bonus is unethical and unwise, also due to the possibility of complications in the course of the disease and infecting other employees (e.g. with flu).

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