

# National minimum wage: Do benefits and bonuses count?

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The purpose of the National Minimum Wages Act 9 of 2018 (the Act) is *inter alia* to establish the national minimum wage and section 5 of the Act prescribes the method to calculate this. In *Quantum Foods (Pty) Ltd v Commissioner H Jacobs N. O. and Others*, Quantum Foods, in an effort to comply with the Act, restructured its employees' payslips by including a contractual bonus as well as the provident fund contributions it paid on behalf of its employees. The union disagreed with Quantum Foods as it held the view that the payments should be excluded from the calculation of the minimum wage and lodged a dispute with the CCMA.



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At arbitration, the arbitrator held that the bonus is a guaranteed additional payment and cannot be factored into the calculation of the normal hourly rate. With reference to the provident fund, the arbitrator's view was that Quantum Foods does not make employer's contributions and that if it does, the contribution should not be factored into the calculation of the hourly rate.

The matter was referred to the Labour Court, and it upheld the arbitrator's reasoning. The case was, however, taken on appeal.



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## Gratuitous vs contractual bonus

The Labour Appeal Court disagreed with the Labour Court. It held that section 5 of the Act only excludes gratuitous bonuses from the calculation of the worker's normal hourly rate. Considering the facts of this case, the employees received

a contractual bonus, therefore, it must be considered when calculating the normal hourly rate.

In relation to the provident fund, the Labour Appeal Court stated that the question to be determined is whether it is payable to employees in money for ordinary hours of work and whether it falls under any of the exclusions. The court held that “payable” includes payment made on behalf of the employee. Furthermore, the provident fund contributions do not fall under the exclusions listed in section 5 of the Act and thus, it must be included in the calculation of the employees’ hourly rate.

The key takeaway from this judgment is that an employer is permitted to include contractual bonuses and its contributions to a provident fund in calculating wages to fulfil the purpose of the Act.

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