

SAMPLE LETTER

RECEIVED JUN 9 2006



3160 Derry Road East · Mississauga, ON · Canada L4T 1A9

Phone: 905 677 1889 Fax: 905 677 5658

May 29<sup>th</sup>, 2006

PERSONAL AND CONFIDENTIAL

Mr. Phil Underwood  
Assistant Chief Designer  
Engineering Division  
Filton

Dear Phil,

We are pleased to inform you that you will receive a discretionary bonus payment of £6,512 which will be payable in the May payroll. The bonus payment is in recognition of your continued efforts in support of Magellan Aerospace (UK) during 2005.

You have agreed to take on the role of Acting Chief Designer for a probationary period of 6 months. On completion of a satisfactory probationary period you will then be eligible to participate on the Magellan Aerospace Corporation Management Incentive Program (MIC) with a potential bonus of 15% of your salary. The terms of the 2006 MIC Plan are attached.

Your salary will be increased by £5,000 per annum. This results in your annual salary being uplifted to £58,710.57 which will be payable in the July payroll and backdated to 1<sup>st</sup> April 2006.

Prior to our processing this uplift to your salary we would appreciate your indicating agreement to this change in your employment contract by signing and returning a copy of this letter within 5 days.

All other terms and conditions of your employment will remain unchanged.

I wish to take this opportunity to thank you for the significant contribution that you continue to make to the Engineering Division.

Yours very truly,  
MAGELLAN AEROSPACE CORPORATION

J.S. Butyniec  
Executive Vice President and  
Chief Operating Officer  
c.c. staff file; Jo-Ann Ball

I, Phil Underwood agree to the above changes to my terms and conditions of employment.

Signed.....

Date.....

05-06-06

DRAFTED BY HUMAN RESOURCES / CIRCULATED BY HUMAN RESOURCES

1750.

PAUL ADAMS



3160 Derry Road East · Mississauga, ON · Canada L4T 1A9

Phone: 905 677 1889 Fax: 905 677 5688

May 29<sup>th</sup>, 2006

PERSONAL AND CONFIDENTIAL

Mr. Paul Nokes  
Inter Group Business Development Manager  
Engineering Division  
Filton

Dear Paul,

We are pleased to inform you that you will receive a discretionary bonus payment of £6,828 which will be payable in the May payroll. The bonus payment is in recognition of your continued efforts in support of Magellan Aerospace (UK) during 2005.

In recognition of your agreeing to the role of Head of Engineering based in Filton, with responsibility for all of the MALUK engineering staff, we wish the following:

1. Change of your job title to Head of Engineering
2. An increase in your car allowance from £4,440 to £6,000 per annum
3. An increase in the employer contribution to the group pension scheme from 5% to 7.5%
4. Inclusion in the Magellan Aerospace Corporation Management Incentive Program (MIC) with a potential of 15% of your annual salary. The terms of the 2006 MIC Plan are attached.
5. No change in your MAL stock options
6. An increase to your annual salary of £2,500, your new salary will be £61,904. This increase will be payable in the July payroll and backdated to 1<sup>st</sup> April 2006.

Prior to our processing this uplift to your salary we would appreciate your indicating agreement to the new terms in your employment contract by signing and returning a copy of this letter within 5 days.

All other terms and conditions of your employment will remain unchanged.

Thank you for the significant contribution that you continue to make to the Engineering Division.

Yours very truly,  
MAGELLAN AEROSPACE CORPORATION

J.S. Butyniec  
Executive Vice President and  
Chief Operating Officer  
c.c. staff file; Jo-Ann Ball

.....  
I, Paul Nokes agree to the above changes to my terms and conditions of employment.

Signed.....

Date.....

9/6/06

January 2005

## Employment

## Discretionary Bonuses: A Word of Caution

Bonuses are an important part of the remuneration of many employees, particularly in the financial services sector. However, even if the bonus is 'discretionary', an employer needs to be cautious when exercising that discretion as the recent case of *Horkulak v Cantor Fitzgerald* show.

Mr Horkulak's fixed term contract provided for an annual discretionary bonus, the amount of which was ultimately determined by the company. He resigned two years before the end of the term because of his employer's conduct and succeeded in his claim for breach of contract. However there was a dispute over the level of damages due to him. Should those damages include compensation for the loss of the discretionary bonus, which he would have expected to be paid if he had stayed in employment until the end of the fixed term?

Previous case law had suggested that the correct approach was to

assume that, where there was no contractual obligation to pay a bonus, the employer would have chosen to exercise its discretion in the way that most suited it, and so award nothing. However the Court of Appeal adopted a different approach and implied a term that the parties have a reasonable expectation that the discretion will be exercised rationally, rather than on arbitrary or capricious grounds. In doing so, it followed its earlier decision in *Clark v Nomura*. It went on to award the full amount of the bonus had the discretion been properly exercised, amounting to nearly £650,000.

## Practical Implications

The fact that a bonus clause is expressed as discretionary does not give management the power to do what it likes, particularly where discretionary bonuses are in practice an important element of the remuneration package. An arbitrary or capricious exercise of a contractual power is likely to destroy the relationship of trust and confidence, and so breach the contract of employment; or as put in this case, the parties have a reasonable expectation of 'a bona fide and rational exercise of discretion'. Employers cannot simply suit their own interests, even though the contract may appear to give them the right to do so.

## Thwarting TUPE

When an undertaking is transferred, the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) protect the employees' position, so that their employment automatically transfers across to the new owner. The European Court's decision in *Suzen* suggested that in a service industry with few assets, if the new owner simply took over a contract but none of the staff, then there was no transfer. This appeared to open a way round TUPE's protection: if a new owner refused to take staff on in order to defeat TUPE, he could do so. However the English courts have since attempted to block this loophole, on the basis that the transfer of staff is just one factor (amongst many) to be

taken into account in determining whether there has been a TUPE transfer. According to this reasoning, if the new owner refuses to take staff on to prevent TUPE applying, then TUPE could still apply and the staff could be deemed to have transferred, even if none has in fact moved over.

*Astle v Cheshire County Council* explores the difficult question of the employer's motive in refusing to take staff on. The Council had transferred their architectural services and staff to a contractor in 1994, a TUPE transfer. Some years later, regarding the contractor's performance as 'a disaster', the contract was awarded to a new contractor, to whom some 65 of the original staff transferred.

The new contractor fared no better, and the Council attributed its poor performance to some of the original Council staff. This time round, the Council decided to terminate the contract and to use a panel of approved consultants, instead of awarding a contract to a single contractor. It also decided not to take on any of the outgoing contractor's staff. Was there a TUPE transfer in this situation?

The Employment Tribunal decided there was not. Whilst the Council wanted to be rid of the underperforming staff, and so to thwart TUPE, there were also sound commercial reasons for operating a panel of consultants rather than a single contract.

Continued on reverse

Simon outbreak  
1 Nov 2004  
→ Dec 8/6

057  
2004

830F

WRONG - was.

£2379 - see doc 1716  
from me. (see P3)

Jo-Ann Ball

From: Jo-Ann Ball  
Sent: Monday, May 15, 2006 9:36 AM  
To: 'm.edwards@edcofin.com'  
Subject: FW: UK Engineering Salary and Bonus Changes - final thoughts / approval

Murray, fine tuning to the tune of 13,012 pounds? Brian told me he had the money to take care of "it". This is what I was talking about when I told you Brian has the potential to bankrupt the company. He has no concept of money and its consequences on other people. I presume you are turning down Brian third or fourth rendition to get the bonus payment he is seeking for these people. I can only guess, because he keeps trying, that he has promised the amounts. Regards, Jo-Ann

← *Rejoice*

From: Brian Little [mailto:brian.little@magellanuk.aero]  
Sent: Monday, May 15, 2006 7:53 AM  
To: Jim Butyniec; Jo-Ann Ball; m.edwards@edcofin.com; Rich Neill  
Subject: RE: UK Engineering Salary and Bonus Changes - final thoughts / approval

Jim - this was the fine -tuning I said I needed to do to get the principles correct and ensure that in the revised contracts of employment ( removing the CEO discretion etc ) everything hangs together - that is why I did that on Thursday pm and went through on Friday am with Jo-Ann . I am trying to get this all completed in one go now and "shut down for ever" - it has gone on too long . In addition it will be up to me to try and sort through with the people . . . The bonuses for 2005 will be paid in May and the other adjustments will be paid in July 2006 (retro april 2006) after contract amendments and those listed people will drop out of the MIC scheme where appropriate . I do not want this carrying on any further - lets us bring to a conclusion . I note one error which I will advise Jo-ann of -- regards brian

←

From: Jim Butyniec [mailto:jim.butyniec@magellan.aero]  
Sent: 14 May 2006 05:23  
To: Jo-Ann Ball; m.edwards@edcofin.com; Brian Little; Rich Neill  
Subject: RE: UK Engineering Salary and Bonus Changes

Jo-Ann I suggest that what was approved by Murray on Thursday is a go, which I assumed was about 70,000 lbs. All the rest should be separately reviewed and dealt with later. The other changes, like bonus and or pension should be reviewed and evaluated by you. Please advise me of your recommendations if any. CASE CLOSED !

←

From: Jo-Ann Ball  
Sent: Fri 12/05/2006 11:06 AM  
To: 'm.edwards@edcofin.com'; Jim Butyniec; 'brian.little@magellanuk.aero'; Rich Neill  
Subject: UK Engineering Salary and Bonus Changes

Attached are the changes Brian had indicated are necessary for retaining the Engineering talent in the UK. The Bonus' are to be paid now and the salary increases retroactive to April 1, 2006. The changes are marked in red. the new total re is £83,306.

Murray, we await your review and approval.

Jo-Ann Ball  
Vice President Human Resources  
Magellan Aerospace Corporation  
3160 Derry Road East

3/14/2007