محكمة قطر الدولية
ومركز تسوية المنازعات
QATAR INTERNATIONAL COURT
AND DISPUTE RESOLUTION CENTRE

In the name of His Highness Sheikh Tamim Bin Hamad Al Thani,

Emir of the State of Qatar

Neutral Citation: [2022] QIC (RT) 2

IN THE REGULATORY TRIBUNAL

OF THE QATAR FINANCIAL CENTRE

Date: 30 August 2022

CASE No. RTFIC0001/2022

SHARQ INSURANCE LLC

Appellant

v

QFC EMPLOYMENT STANDARDS OFFICE

Respondent

DECISION

Members of the Court

Justice Laurence Li SC

Justice Edwin Glasgow QC

Justice Sean Hagan

DECISION

A. This Appeal

1. By a Summary dated 7 February 2022 and a Statement dated 10 February 2022, Sharq Insurance LLC ("**Sharq**") appeals against a Determination of the Employment Standards Office ("**ESO**") dated 13 December 2021.

2. After Sharq's Summary and Statement, the ESO filed a Response dated 10 March 2022, and Sharq later filed a Reply dated 7 April 2022.

3. The parties invite us to deal with this appeal on the papers. We agree that this is a sensible course. We have carefully considered all the submissions and the materials enclosed therewith. Our decision is as follows.

B. The Subject Matter

4. The subject matter of this appeal concerns an employment contract dated 1 September 2019 (the "**Contract**") between Sharq (then known as Doha Bank Assurance Company LLC) and a senior employee Mr Mohammad Abdelhaleem Ghazwi ("**Mr Ghazwi**").

5. The Contract is itself titled "Employment Contract for Indefinite Period". Article 2 therein states:

> *"The Second party [Mr Ghazwi] starts duly on 01st September 2019 and shall be under probation for a period of six months starting from the date of work commencement. In case of the employee is found unfit, the First Party [Sharq] shall be entitled to terminate (the contract of the services of the Second Party) by giving the Second Party before no less than two weeks notice and shall bear the expenses of returning to his/her country of origin."*

6. Article 3 states that Mr Ghazwi shall be paid monthly certain sums in basic salary, *"high cost living allowance"*, *"housing allowance"*, and *"transport allowance"*.

7. Article 4 then provides that Mr Ghazwi shall be entitled to various benefits. Item 2 thereunder describes a benefit in terms as follows:

> *"2-a) A one way Business Class ticket (Toronto – Doha) to join service, thereafter an annual Business Class ticket (Doha – Toronto – Doha) for every year of service and return ticket (Doha – Toronto) when employee's service with the Company comes to an end.*
>
> *b) A one way Business Class tickets [sic] (Toronto – Doha) for employee's wife and three of his children below the age of (18) when they come for the first time to Qatar on Residence Permit, thereafter annually Business Class tickets (Doha – Toronto – Doha) for every year of employee's service and return tickets (Doha – Toronto) when staff's service with the Company comes to an end provided if the employee's family is residing in Qatar."* (underlining added)

8. On 1 August 2021, Sharq notified Mr Ghazwi that *"It has been decided to terminate your services from Sharq with immediate effect. You will be paid salary in lieu of notice pay in line with the organization policy and the local labour law …"*

9. Mr Ghazwi did not object to the termination or to the payment of salary in lieu of notice. In a Complaint Form to the ESO dated 29 September 2021, however, Mr Ghazwi complained that:

> *"My Employment contract (Copy attached for your reference) stipulates that I am entitled for annual leave with paid annual leave air tickets paid for myself and my family up to three children for flights to my home country (Canada). Upon ending my employment by Sharq Insurance on August 31st 2021 without reason and one month Notice period, I unfortunately faced problems dealing with HR to get my end of service benefits finalized as per my entitlement per the terms of my employment contract to include my entitlement for prorated annual leave tickets.*
>
> *Sharq Insurance HR is controlled by Doha Bank HR who usually pays the airfare for staff annual air tickets on January every year for the entitlement of the previous year (i.e., pay in January 2019 for entitlement of 2018). I was paid pro-rata for my and family's air tickets in January 2020 for my employment in 2019 (from Sep until December 2019) as a compensation for our entitlement of 4 months service from 2019. I was also paid in January 2021 for my entitlement of annual leave airfare for the year 2020. However, I was not paid for my annual Airfare tickets for the service period in the year 2021 of 8 months …"* (underlining added)

C. ESO's Determination

10. In its Determination dated 13 December 2021, the ESO found that Sharq had (1) contravened Article 23 of the Qatar Financial Centre Regulations No. 10 of 2006 ("**Employment Regulations**") in terminating Mr Ghazwi's employment without notice and unilaterally deciding to provide payment in lieu of notice without agreement with him; and (2) breached the terms of the Contract in not paying Mr Ghazwi the benefit of annual air tickets for himself and his family prorated to his 8 months of employment in 2021.

11. The ESO also referred to contravention of Article 25 of the Employment Regulations, which requires an employer to adhere to the agreed terms of employment. Such a contravention follows automatically from any finding of breach of the Contract.

D. Termination Date

12. Article 23 of the Employment Regulations states:

> *"Article 23 - Termination of employment with notice*
>
> *(1) Except as otherwise provided for in these Regulations Employers and Employees must provide notice of their intent to terminate employment.*
>
> *(2) The notice required to be given by an Employer or Employee to terminate an Employee's employment, where the Employee has been continuously employed for one (1) month or more, shall not be less than:*
>
> *(A) two (2) weeks if the continuous period of employment is less than three (3) months;*
>
> *(B) one (1) month if the period of continuous employment is three (3) months or more but less than five (5) years; and*
>
> *(C) three (3) months if the period of continuous employment is five (5) years or more.*
>
> *(3) All such notices shall be given to the other party in writing and the Employer shall pay the Employee his salary during the notice period.*
>
> *(4) This Article shall not prevent an Employer and Employee from agreeing to a longer or shorter period of notice nor shall it prevent either party from waiving notice or from accepting a payment in lieu of notice.*

> *(5) This Article shall not affect the right of the Employee to terminate the employment without notice in the event of a material breach of the employment contract or these Regulations by the Employer."*

13. As noted earlier, Sharq's notification to Mr Ghazwi dated 1 August 2021 referred to terminating his *"services with immediate effect"*, but at the same time also stated that he *"will be paid salary in lieu of notice pay in line with … the local labour law"*. The reference to labour law appears to be a reference to Article 23 of the Employment Regulations, in particular clause (3) and/or clause (4) thereof.

14. Clause 3 of Article 23 would require Sharq to pay Mr Ghazwi salary during the notice period. Clause 4 would allow Mr Ghazwi to waive (and hence allow Sharq to invite Mr Ghazwi to waive) the notice period by accepting a payment in lieu.

15. Sharq's notification to Mr Ghazwi could have been worded better. But on a careful reading, we do not agree with the ESO that it meant Sharq was "terminating employment with immediate effect and unilaterally deciding to provide payment in lieu of notice without agreement with [Mr Ghazwi]". Importantly, the notification did not state that Mr. Ghazwi was being given any "payment in lieu of notice", but rather was being paid *"**salary** in lieu of notice **pay** in line with the organization policy and the local labor law"* (emphasis added).

16. Contemporaneous evidence shows that, as a matter of fact, Sharq and Mr Ghazwi both understood the notification as informing him to cease work but to remain technically employed until 31August 2021. In particular, Mr Ghazwi's service certificate, signed by Sharq and Mr. Ghazwi on 4 August 2021, specifically provided that Mr. Ghazwi was "under the employment" of Sharq "from 01/09/2019 to 31/08/2021".

17. Taken together, it is sufficiently clear that, while Mr. Ghazi was informed to cease work with immediate effect, he would be and was in fact employed until 31 August 2021.

18. Accordingly, we determine that the ESO has erred in determining Sharq to have contravened Article 23 of the Employment Regulations. We uphold Sharq's appeal in this regard.

E. Annual Air Tickets

19. Turning to Mr Ghazwi's real complaint to the ESO, the question is whether he is entitled to a benefit equivalent to air tickets for himself and his family prorated to the 8 months of his employment – from 1 January to 31 August – in 2021. The answer to this question depends on the interpretation of item 2 under Article 4 of the Contract.

20. Sharq's case is that the description *"annually Business Class tickets (Doha – Toronto – Doha) for every year of employee's service"* should be read as referring to an annual entitlement for each completed calendar/ Gregorian year of service. Having considered Sharq's arguments carefully, we cannot agree. There are 4 main reasons.

21. First, the natural meaning of the phrase *"every year of employee's service"* is simply "year of service", not "calendar year" of service. Indeed, to read it as referring to calendar year would be unnatural and would be adding a word which the parties have not chosen or agreed upon. As the ESO has noted, Article 54 of the QFC Contract Regulations expressly provides that, absent evidence of an intention of the parties, a contract shall be interpreted according to the meaning that reasonable person of the same kind as the other party would give to it in the same circumstances.

22. Second, item 3 of Article 4 of the Contract also refers to year of service. It provides for *"an end-of-service gratuity equivalent to the salary of 21 days for each year of continued service lasing for a duration of 5 years of less, and 28 days of each year of continued service for the following 5 years up to 10 years, and 35 days for each year of continued service exceeding 10 years and up to 15 years, and 39 days for each year of continued service exceeding 15 years."*

23. Obviously, this benefit is meant to inure to an employee for his/her actual years of service, not "calendar years" of service. Indeed, the calculation of end-of-service benefits in this case, which Mr Ghazwi signed on 4 August 2021, shows that the gratuity under item 3 of Article 4 of the Contract was due to his 2 years of service. It would be very strange if the same concept of year of service has different meanings for 2 items within the same article in the Contract.

24. Third, commercial sense also tends against Sharq's interpretation. Item 2 provides for air tickets in 3 instances: (1) one way tickets for the employee and his family to come to Qatar to commence his employment; (2) one way tickets to return to their home country when their employment ends; and (3) annual return tickets.

25. The purpose of annual return tickets is obviously for an employee and his family to make an annual visit to their home country. The logic of such purpose cannot in any way be dependent on the calendar year.

26. Put in other words, it would be illogical to think an employee who starts employment on September 1 would or should be entitled to, or have any less need or desire for, annual trips home than an employee who starts on January 1. Yet, on Sharq's case, the latter would receive annual air tickets every year (since his year of service always coincides with the calendar year) whereas the former would always not receive the benefit for his last year (since those 8 months would fall short of a calendar year).

27. Fourth, to any extent that may be necessary, the rule of *contra proferentem* would apply to favour an interpretation against the interests of Sharq, who drafted the Contract.

28. For all the above reasons, the correct interpretation of item 2 of Article 4 of the Contract is that it refers simply to year of service, not calendar year of service.

29. Sharq points to its human resources policy as saying otherwise. Paragraph 5.2 of the relevant Allowance Policies states, *"The annual period covered for airfare payment will be January to December each year and will be paid to all staff during the month of January."*

30. Sharq relies on an Acknowledgement of Understanding which Mr Ghazwi signed on his first day of employment to acknowledge that he was *"aware of the work organization regulations/ policies"* and further that he had read, understood and would be *"subject to all the material contained in … the above mentioned policies."*

31. Indeed, as quoted earlier, Mr Ghazwi in his complaint to the ESO himself referred to Sharq's policy on payment of annual air tickets. Evidently he was aware, or at least can be deemed to have been aware, of paragraph 5.2 of the Allowance Policies.

32. We do not, however, think the paragraph assists Sharq's case. There are 2 main reasons.

33. First, a policy that annual air tickets would be calculated per calendar year is, without more, an administrative rule. It does not deal with any partial beginning or ending year. It does not say that no (prorated) benefit would be due for those years.

34. As Sharq itself submits, it has a further (apparently unwritten) policy that it would pay prorated benefit for the partial beginning year. In fact, it did pay Mr Ghazwi a prorated benefit for his 4 months of service in 2019. This underscores the point that paragraph 5.2 of the Allowance Policies is not necessarily exclusionary.

35. Second, a company policy cannot take precedent over the expressly agreed terms of an employment contract. The Contract does not contain terms to incorporate or subject itself to Sharq's policies. We note, for example, that item 7 of Article 4 refers to the *"terms and conditions of the Company's applicable Policy"* on reimbursement of child education expenses. There is no such reference in item 2 of Article 4.

36. We therefore uphold the ESO's determination that, pursuant to item 2 of Article 4 of the Contract, Mr Ghazwi is entitled to and Sharq should pay a benefit equivalent to a set of return air tickets for himself and his family prorated to the 8 months of his employment in 2021.

F. Quantum

37. Sharq paid Mr Ghazwi a prorated benefit in 2019 and a full benefit in 2020 on the basis that a set of return air tickets for him and his family would cost QAR 175,792.50. In its Determination, the ESO calculated the prorated benefit for 1 January to 31 August 2021 to be QAR 117,195, being eight-twelfth of the same amount.

38. Sharq argues that this calculation was wrong because ticket prices fluctuate. It contends that prices in August 2021 were at lower amounts, and exhibits a quotation from a travel agency showing a quote of QAR 76,070 for return air tickets for 3 adults and 1 child as at 10 February 2022. It also relies on oral advice to the effect that return air ticket prices in August 2021 were in around QAR 21,000 for an adult and QAR 13,000 for a child.

39. The Contract does not provide for how to calculate the benefit. Indeed, contracts rarely provide for every such detail. They probably cannot. This is all the more so for employment contracts given the great many variations in an ongoing personnel relationship.

40. The clear and obvious intent of the Contract is to enable the employee and his family to make an annual visit home. It follows that the amount of the benefit should be reasonably contemporaneous.

41. Paragraph 5.1 of the Allowance Polices provides for the benefit to be based on "*the highest quotation received from Qatar Airways and one of [Doha Bank's] approved travel agency*". But as Sharq points out, it is difficult to follow this procedure precisely in retrospect, given that more than a year has passed since Mr Ghazwi's departure.

42. The evidence suggests that Mr Ghazwi and his family took annual leave in 2021. But it is not clear whether they went back to their home country on that trip.

43. In the circumstances, and taking into account the limitations inherent in a retrospective estimation, we think a fair and practical approach will be to assess the benefit due to Mr Ghazwi based on the cost of air tickets at the time of Sharq's termination of his employment, i.e., 31 August 2021. We remit the question of quantification to the ESO.

G. Disposition and Costs

44. In conclusion, we allow Sharq's appeal as to the ESO's erroneous finding that it had contravened Article 23 of the Employment Regulations, uphold the ESO's finding that Sharq should pay Mr Ghazwi a prorated benefit for 2021, and remit the question of quantification to the ESO.

45. Neither party has succeeded in full. Article 24.1 of the Regulations and Procedural Rules of the Regulatory Tribunal provides that the Tribunal will not *normally* order one party to pay another party's legal costs, but is entitled to do so "if justice so requires". In the present case, and in recognition that it is all along the duty of an employer to pay its employees their due benefits, we consider that justice requires that Sharq should bear

half of the ESO's costs. If the costs cannot be agreed between the parties, the matter may be referred to the Registrar for assessment in the normal way.

46. We thank the parties and their legal representatives for their very thorough written submissions.

By the Regulatory Tribunal,

[signed]

Justice Laurence Li

A signed copy of this Decision has been filed with the Registry

Representation:

The Appellant was represented by the in-house legal team of Doha Bank.

The Respondent was represented by K & L Gates LLP, Doha, Qatar.

DIGITALLY SIGNED AND VERIFIED
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