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) 3

IN THE REGULATORY TRIBUNAL
OF THE QATAR FINANCIAL CENTRE

Date: 13 November 2022

CASE No. RTFIC0002/2022

SHARQ INSURANCE LLC

Appellant

v

QFC EMPLOYMENT STANDARDS OFFICE

Respondent

DECISION

Before:

Justice Sir William Blair, Chair

Justice Sean Hagan

Justice Muna Al-Marzouqi

DECISION

1. This appeal arises from a Determination made by the Employment Standards Office of the Qatar Financial Centre (the Respondent) dated 29 March 2022. In the Determination, the Respondent concluded that Sharq Insurance LLC, previously known as Doha Bank Insurance LLC, (the Appellant) was in breach of both: (a) the Qatar Financial Centre Employment Regulations made pursuant to QFC Law No. (7) of 2005 (the Employment Regulations) and (b) the terms of the employment contract dated 8 December 2016 between the Appellant and the Complainant, a former employee of the Appellant (the Employment Contract). It is the Complainant's complaint to the Respondent that gave rise to the Determination and to this appeal.

2. As noted in paragraph 5 below, the parties invite us to deal with the 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.

3. According to the Determination, the Appellant's breaches arose primarily from its failure to pay the Complainant the full amount of his salary and benefits during the period of 17 March 2020 through 13 September 2020. During most of this period, the Complainant was prevented from returning to Qatar after his annual leave in India because of travel restrictions imposed as a result of the Covid-19 pandemic.[1] Upon his return to the office on 14 September 2020, the Complainant continued to work for the Appellant until 25 April 2021, when his employment terminated following his submission of a letter of resignation on 25 February 2021.

4. The Appellant contests the Determination and asserts that its treatment of the Complainant was fair and in the best interests of the Complainant. It also argues that its actions were entirely consistent with the terms of the Employment Contract and the Employment Regulations.

5. In terms of the procedural history, the Notice of Appeal was filed on 26 May 2022 and the Respondent filed its Response on 22 June 2022. The Appellant was granted an extension of time to

[1] Although the Complainant was able to return to Qatar on 29 August 2020, he was unable to return to the office until 14 September 2020 because of Covid-19 quarantine restrictions.

file its Reply, which it did on 3 August 2022. Although the Appellant had originally sought an oral hearing, the Tribunal was informed on 4 September 2022 that both the Appellant and the Respondent were content to have the matter resolved by the Tribunal without a hearing.

6. For purposes of assessing the merits of the case, it is helpful to break down the period when the Complainant was unable to return to the office into two periods: (a) 17 March 2020 through 15 July 2020 (the First Period), during which time the Complainant provided services to the Appellant, services for which he was ultimately paid an amount equivalent to 50 percent of his salary; and (b) 11 August 2020 through 13 September 2020 (the Second Period), during which time the Complainant did not provide any services to the Appellant and also did not receive any compensation. It should be noted that these two Periods do not cover the intervening period of 16 July 2020 through 10 August 2020, when the Complainant was either on paid annual leave or benefitted from the official holidays – he received 100 percent of his salary for this intervening period. Importantly, Annex 25 of the Respondent's Determination and paragraphs 1 through 6 of the Appellant's Notice of Appeal are generally consistent with each other with respect to both the classification of all of these periods and the assessment of the overall amounts of salary that are subject to dispute.

A. The First Period

7. The evidence shows that the Appellant sent different – and somewhat conflicting –communications to the Complainant during the First Period regarding his status. On 23 March 2020, it sent to all employees – including the Complainant – a document setting forth its remote working plan (Determination, Annex 9). Moreover, according to the Appellant's own internal audit report, dated 28 February 2021 ("Internal Audit Report") (Notice of Appeal, Annex 15 A), which included an *ex post* analysis of the appropriateness of the Appellant's treatment of "stranded" employees, including the Complainant, these instructions were supplemented by an email from the Acting Chair of the Appellant dated 8 April 2020, giving all employees instructions regarding remote work procedures, including instructions on how to record attendance (Internal Audit Report, page 1).

8. However, on 7 June 2020, the Complainant received an email stating that "at this stage and going forward, your absence will be considered as LWP" [i.e., Leave without Pay]. (Notice of Appeal, Annex 9). Notwithstanding this communication, the Internal Audit Report concluded that the stranded employees, including the Complainant, continued to work in accordance with the 8 April 2020 instructions and procedures until as late as July 16, when their ability to access the Appellant's online system was revoked. (In the case of the Complainant, access to the online system was revoked on July 12) (Internal Audit Report, page 1). Accordingly, notwithstanding the 7 June 2020 communication, the status of the Complainant during this First Period cannot reasonably be considered as being one of "leave" within the meaning of "leave without pay".

9. For most of the First Period, the Complainant did not receive any salary. While his pay slips confirm that he received his full salary for March and April (Determination, Annex 23.10), he did not receive any salary for the rest of the First Period. However, consistent with the recommendations set forth in the Internal Audit Report, the Appellant eventually decided (on 13 June 2021) to compensate the Complainant for the work conducted during the entirety of the First Period – but only at a level that corresponded to 50 percent of his salary. This salary recalculation required applying a 50 percent reduction of the full salary that it had paid to the Appellant for the period of March 17-31 and the entire month of April (Notice of Appeal, Annex 10).

10. There is some dispute regarding the nature of the work that the Complainant conducted during the First Period. Specifically:

    (a) The Appellant argues that the Complainant was only paid half his salary for this period because it was not possible for him to perform his normal duties from outside Qatar, since his presence at the office was required. The Appellant points out that "this is the difference between employees who worked remotely inside Qatar and were partly attending the company's headquarters" (Memorandum of Reply, page 2).

    (b) From the Appellant's perspective, a key reason why a deduction was appropriate was that, since the Complainant was only working remotely (and could not attend company headquarters part time on a rotating basis), he did not have access to the Company's operating system. As stated

in the Appellant's Reply: "no employee has been granted remote access to work on the Transactions Applications (Premia) software. This access was only available from the headquarters to those employees who were in Qatar, and actually attended to the office on a rotating basis" (Memorandum of Reply page 3). Since the Complainant did not have access to the online system, the Appellant argues that it severely affected his ability to do his work: "The work in Sharq company requires all employees to have access to the company's operating system called PREMIA. It is estimated that any employee who worked only using email could contribute about 15-20% maximum of his required duties" (Notice of Appeal, page 12).

(c) The Appellant also emphasizes that the decision to reduce the Complainant's salary by 50 percent during the First Period was based on the recommendations contained in the Internal Audit Report, which, as noted earlier, had been prepared for the specific purpose of determining whether the stranded employees, including the Complainant, had been treated fairly. This report concluded that the "remote work that [the stranded} employees did during this period fell far short of the work requirements that had to be done from the office" (Internal Audit Report, page 2).

(d) However, the Complainant asserts that, in fact, he was able to perform his normal duties as an underwriter because he collaborated closely with those colleagues who were working in person, who had access to the Premia software (Determination, paragraph 10). Moreover, he asserts that his duties as an underwriter did not require a physical presence in the office (Determination, paragraph 9).

(e) In its Determination, the Respondent cited witness testimony that supported the Complainant's assertion. For example, one witness stated, in part, "not having access to the core system (Premia) did not impact [the Complainant's] performance of his duties" since an arrangement was put in place where the Complainant's colleagues who were periodically working from the office during the pandemic made the entries on the Appellant's system on his behalf (Determination, paragraph 69). The same witness also stated that, because the Complainant worked in underwriting, "his duties were technical in nature and even when working in Qatar has rarely needed to physically meet with clients" (Determination, paragraph 69).

11. Relying, at least in part, on this testimony, the Respondent concluded in its Determination that "the impact of the lack of access to Premia on the Complainant's performance was mitigated by the support given by his colleagues working on shifts from the Office who had access to Premia, and the Complainant's work can be 'considered reasonable in the circumstances' as provided for by Article 57 of the QFC Contract Regulations and confirmed by the witnesses" (Determination, paragraph 94).

12. In the Tribunal's view, it is not necessary for it to make a determination as to whether the work assigned to - and performed by - the Complainant was entirely consistent with his normal duties as an underwriter. If the Appellant believed that the Complainant could not perform his normal duties, it had the option of either (a) terminating the Complainant's employment under the contract, which it could do at any time without cause (provided that it adhered to the notice requirements) or (b) reaching a written agreement with the Complainant as to a modified salary that was commensurate with the "simple" work that it believed the Complainant was performing. In the Tribunal's view it could not, however, continue to provide the Complainant with work instructions (which – by the Appellant's admission – the Complainant followed) while not making the monthly payments as required under Article 3 of the Employment Contract.

13. This approach was inconsistent with the provisions of the Employment Contract, and also constituted a breach of Article 26 of the Employment Regulations, which provides, inter alia, that "salary and other payments due to the Employee should be paid in the currency stated in the contract" and shall be paid to the employee "at least monthly". As noted by the Respondent, the failure to make monthly payments during this period can also be described as a 100% deduction of the Complainant's salary, thereby constituting a breach of Article 27 of the Employment Regulations. In that context, the fact that the Complainant, during the First Period, "did not express any clear, explicit and justified objection at the time" (Notice of Appeal, page 5) is not relevant, in the Tribunal's view. As required under Article 27, any deductions made with respect to the Complainant's salary required the Complainant to have "previously agreed in writing to the deduction", which did not occur.

14. It should be emphasised that, in reaching this conclusion, the Tribunal is not challenging the business judgement of the Appellant – as expressed, inter alia, in the Internal Audit Report – that the Complainant was unable to perform all his duties as an underwriter during this period. For example, even if he could perform his duties with the help of his colleagues in the office (who had access to the Premia software), it would have been reasonable for the Appellant to conclude that this was not the most efficient use of the time of these colleagues. Rather, the Tribunal is deciding that, for the reasons stated above, the way in which the Appellant addressed this problem was not consistent with the terms of the Employment Contract and the provisions of the Employment Regulations.

15. The question arises as to whether these violations were effectively "cured" as a result of the Complainant's signature of an Acknowledgement and Acceptance document dated 25 April 2021 (Acknowledgement and Acceptance) (Determination, Annex 19). This document included an attachment which set forth the recalculation of the Complainant's salary for the year taking into account the decision to pay the Complainant 50 percent of his salary for his service performed during the First Period (Notice of Appeal, Annex 10). The Acknowledgement and Acceptance provided, inter alia, that "I received all my rights for that period, and I absolve/release Sharq Insurance Company from it" (Determination, Annex 19). When signing the attachment to the document, the Complainant added the following phrase to the attachment that specified the amount to be received: "accepted with humble reservations".

16. For purposes of determining the legal implications of the Acknowledgment and Acceptance, it is necessary to make a distinction between its impact on (a) the failure to pay any salary during the months of May, June and a portion of July and (b) the 50% deduction of the full salary that had been paid to the Complainant for the month of March and April.

17. *Regarding the nonpayment of the salaries for the months of May, June and a portion of July*: Since the decision to make no payments during this period was made without first securing any form of written consent from the Complainant, the Acknowledgement and Acceptance is not enforceable, since the right to receive the monthly salary set forth in the Employment Contract without unilateral deductions (as required under Articles 26 and 27 of the Employment Regulations) are minimum

requirements that cannot be waived. As noted by the Respondent, Article 8 of the Employment Regulations provide that "the requirements set out in these Regulations are minimum requirements and a provision in an agreement to waive any of these requirements, except where expressly permitted under these Regulations, has no effect."

18. *Regarding the 50 percent deduction for the full salary that had been paid to the Complainant for the month of March and April*: this deduction only took place after the Acknowledgment and Acceptance document had been signed. Article 27 provides that a deduction is permitted if, inter alia, the "the Employee has previously agreed in writing to the deduction or payment". Accordingly, the question arises as to whether the inclusion of the phrase "accepted with humble reservations" is sufficient evidence that the Complainant did not intend for his signature to constitute a legally binding agreement with respect to the deduction. The Respondent addressed this question, although it did so as *obiter* since, for the purposes of its analysis, it did not make a legal distinction - as we think is necessary - between the 50 percent deduction for the months of March and April, on the one hand, and the subsequent unilateral 100 percent deduction for May, June and a portion of July. It considered that "on a balance of probabilities, the Complainant did not consider himself willingly to be entering into an approved or agreed amendment to his Contract of Employment, nor did he agree that the document should be considered as having binding legal effect" (Determination, paragraph 112).

19. The Appellant argues that the reservation "can carry more than one explanation or interpretation" (Notice of Appeal, page 7) and that because it was not "clear and specific" (Memorandum of Reply, page 8), it did not nullify the release. The Appellant argues that it could have reflected the Complainant's concerns regarding the timing of the payment rather than the overall amount. (Notice of Appeal, page 11). We disagree and concur with the conclusion of the Respondent regarding the unenforceability of the Acknowledgement and Acceptance. Whether or not the Complainant was actually able to perform all his duties during this period, it is clear from the evidence that *he* thought he was able to do so, in part because he continued to rely on the work instructions that were provided by the Appellant. His "humble reservations" need to be viewed in the context of this perception of unfairness with respect to the deductions being proposed. (We

note, in passing, that the phrase used by the Complainant was not "simple" reservations, as indicated by the Appellant (Memorandum of Reply, page 8).

B. The Second Period

20. The period of 11 August through 13 September 2020 is clearly different from the First Period inasmuch as the Complainant was not working remotely for the Appellant. The Appellant terminated the Complainant's access to the Appellant's online system to ensure that no further work would be conducted by him. It should be reiterated that, while the Appellant continued to have the right to terminate the Complainant at that time, it decided not to do so, and continued to describe the Complainant's status as being one of "leave without pay". Unlike the First Period, the Complainant received no compensation with respect to this Second Period.

21. The Appellant argues that this approach was entirely appropriate under the circumstances and in the best interests of the Complainant. Placing the Complainant and the other stranded employees on "open unpaid leave" was designed to "ensure the preservation of their jobs rather than the termination of their services" (Notice of Appeal, page 7). Moreover, the Appellant argues that it would be "contrary to all professional standards and principles established by law and custom" to pay an employee when no work is performed. (Notice of Appeal, page 14).

22. The Respondent makes the following contrary arguments:

23. First, while the Appellant had the authority to terminate the Complainant's contract, it had no authority to unilaterally place the Complainant on leave without pay since this is not provided for under either the Employment Regulations or the terms of the Employment Contract. (Respondent's Response, paragraph 20).

24. Second, the Appellant failed to comply with its obligations to "provide the Employee with all resources needed to carry out his work" as required in Article 21 of the Employment Regulations. This failure arose because the Appellant "unilaterally decided to revoke the Complainant's access

to the System that, until that date, allowed the Complainant to perform his work and cooperate with his colleagues to accomplish the work assigned to him" by the Appellant (Determination, paragraph 103).

25. Third, taking into account the above, the Complainant should have received all of his benefits during this period, in light of Article 21, which also provides: "If the Employee arrives at the place of work ready to perform his duties but cannot do so due to reasons beyond his control, the Employee will be regarded as having worked and shall be entitled to all benefits stipulated in his employment contract." (Determination, paragraph 105).

26. Critically, the above determination is based on the Respondent's assessment that the Complainant had in fact arrived at his "place of work" within the meaning of Article 21 by virtue of the fact, during the First Period, the Complainant had worked successfully online pursuant to the Appellant's own instructions and work procedures. Applying the same analysis, the Respondent also concluded that the Complainant had adhered to his obligation under Article 8 of the Employment Contract to work in accordance with the instructions and under the supervision of the [Appellant] in the "place and premises or branches specified by the [Appellant]". According to the Respondent, the "place of work" and "place and premises" specified by the Appellant "can and did include the System, the Respondent's virtual workplace that, thanks to technology, did not require the employees' physical presence in the Office for them to execute their work" (Determination paragraph 98).

27. We cannot agree with the Respondent's analysis in the following respects. We acknowledge that a determination may be made that working online satisfies the requirements of the above-cited provisions of the Employment Contract and the Employment Regulations. However, in our view, this assessment is one that should be made by the employer, taking into account reasonable business considerations. While, during an initial emergency period, it may have been reasonable for the Appellant to have permitted the Complainant to work online, in our view it was also reasonable for it to have modified its position over time to require all employees, even if they were working online, to be physically located in Qatar so they could come to the office on a rotating basis. There is considerable discussion in the submissions as to whether there was adequate evidence that, from a business perspective, working online presented an actual security threat or effectively undermined

the ability of the employee to perform his duties. However, and consistent with the text of Article 8 of the contract (which states that the place and premises is to be "***specified*** by [the Appellant]"), we believe that considerable deference should be given to an employer when making these assessments, particularly where the employer is confronted with circumstances outside its control, as was the case during the pandemic.

28. Notwithstanding the above, the decision of the Appellant to unilaterally place the Complainant on leave without pay status is problematic since, as noted by the Respondent, neither the Employment Contract nor the Employment Regulations gives it the authority to do so. Article 3 of the Employment Agreement specified the salary to be paid monthly and this agreement was never amended. Moreover, Article 26 of the Employment Regulations requires that an employer shall pay its employees at least monthly. Finally, the decision by the Appellant not to make any payments during this "leave without pay" period effectively constitutes a 100 percent deduction of the Complainant's salary, which is precluded under Article 27 of the Employment Regulations in the absence of prior written consent of the employee, which did not occur here.

29. Accordingly, in the absence of its amendment or termination, the Employment Contract and the Employment Regulations required the Appellant – as was the case during the First Period - to pay the salary of the Complainant specified in the Employment Contract on a monthly basis and, absent prior agreement, without deduction. Because, as noted earlier, Articles 26 and 27 of the Employment Regulations are minimum standards, they cannot be waived. Accordingly, we concur with the Respondent's conclusion that the Appellant is required to pay the Complainant the full salary for the period of 11 August 2020 through 13 September 2020, which is the period during which he was placed on leave without pay status.

30. We recognize that this outcome will mean that the Complainant will receive a salary during a period when he provided no services to the Appellant. This conclusion is however also consistent with the decision reached by the First Instance Circuit of the Court on 14 August 2022 in the case of *Mieczyslaw Dominik Wernikowski v CHM Global* [2022] QIC (F) 13. In that case, the Court concluded that Article 27 of the Employment Regulations precluded the employer from making deductions from the contractual salary without prior written agreement during the period when the

employee was prevented from working because he was initially unable to enter the country and then, upon arrival, was placed in quarantine as a result of the pandemic.

31. In its Appeal, the Appellant refers to the fact that other companies in Qatar responded to the crisis by either amending their employees' employment contracts (to lower salaries) or terminating them, but that it had decided to take a different approach which included both unilateral salary deductions and the imposition of leave without pay in order to treat stranded employees "in a humane manner, and to preserve their jobs and positions" (Notice of Appeal, page 11). Unfortunately, the alternative approach of the Appellant – which the Tribunal accepts was well-motivated - was not consistent with the legal framework for the reasons mentioned above.

32. Taking into account the amounts specified in Annex 25 of the Determination and paragraphs 1 through 6 of the Appellant's Notice of Appeal (which as noted above are generally consistent with each other), the total amount to be paid to the Complainant in order to compensate him for the salary he should have received during both the First Period and the Second Period is QAR 34,625.22.

C. Other benefits

33. Having determined that the Complainant was entitled to his salary, without deduction, during both the First and Second Periods, it is necessary to address the question of his benefits and, in particular, his airfare allowance. Article 4, Section 2 of his Employment Contract provides that the Complainant would be entitled to receive:

(a) Economy class ticket (Doha - Mumbai – Doha) for every year of service and return ticket (Doha -Mumbai) when employee's service with the Bank comes to an end.

(b) Economy Class tickets (Doha-Mumbai – Doha) for employee's wife & three of his children below the age of (18) for every year of employee's service and return tickets (Doha-Mumbai) when staff's service with the Bank comes to an end, provided if the employee's family is residing in Qatar.

34. In paragraph 6 of its Notice of Appeal, the Appellant states that the amount of the airline ticket allowance paid to the Complainant for 2020 was QAR 7,269. Also, the recalculation memo attached to the Acknowledgement and Acceptance mentioned above indicates that this amount reflects a downward adjustment to take into account the fact that the Appellant was on leave without pay for 34 days. In light of our conclusion that the Complainant should have been paid the full amount of salary during this period, he should also receive the full amount of his airfare allowance for 2020, without adjustment. Annex 25 of the Respondent's Determination indicates that this full amount should have been QAR 19,500. Although the Appellant has not provided its own figure in terms of the full amount of the travel allowance, we assume that it does not dispute the Respondent's calculation since, if it did, it would have specifically raised this in the filings – as it has helpfully done with respect to all of the other arguments made by the Respondent. Accordingly, the remaining amount to be paid to the Complainant for the airline allowance is QAR 12,230.90 which, taking into account a relatively small end-of-service gratuity adjustment, brings the total amount to be paid to the Complainant to QAR 47,572.64.[2]

D. Disposition and costs

35. For the reasons set out above, the Tribunal has not accepted all of the submissions of the Respondent, and in particular agrees with the Appellant that whether working online satisfied the provisions of the Employment Contract and the Employment Regulations was an assessment to be made by the Appellant as employer, taking into account reasonable business considerations (see paragraph 27 above).

36. However, it has accepted the Respondent's case that the Appellant was required to make the monthly salary payments specified in Article 3 of the Employment Contract until the Employment Contract was terminated The amount in question is the same as that which the Respondent ordered to be paid, being the difference between the full salary and benefits the Complainant was entitled to during the period from 17 March to 13 September 2020 and what the Complainant already received; namely, QAR 47,572.64.

[2] With respect to the end of service gratuity adjustment of QAR 716.52, see Annex 25 of the Determination.

37. Neither party has succeeded in full therefore. In the circumstances, the Tribunal will follow the approach of the Tribunal in *Sharq Insurance LLC v QFC Employment Standards Office (No 1)*. 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, the Tribunal considers that justice requires that the Appellant should bear half of the Respondent'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.

38. We thank the parties and their legal representatives for their thorough and helpful written submissions in this case.

By the Regulatory Tribunal,

[signed]

Justice Sean Hagan

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

Representation:

The Appellant was represented by the in-house legal team of Sharq Insurance LLC.

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