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

Emir of the State of Qatar

IN THE REGULATORY TRIBUNAL

OF THE QATAR FINANCIAL CENTRE

08 May 2017

CASE NO: 01/2017

PHILLIP LEUNG

Appellant

v

EMPLOYMENT STANDARDS OFFICE

Respondent

and

QATAR FINANCIAL CENTRE REGULATORY AUTHORITY

Interested Party

DECISION OF THE REGULATORY TRIBUNAL

Members of the Regulatory Tribunal:

Rt. Hon. Sir David Keene, Chairman

Edwin Glasgow QC

Gopal Subramanium

DECISION

INTRODUCTION

1. This is an appeal by Phillip Leung ("the Appellant") against a decision of the Employment Standards Office ("the ESO") dated 18 January 2017, by which the ESO dismissed a complaint by the Appellant brought under Article 55(1) of the QFC Employment Regulations ("the Employment Regulations"). The appeal raises a point of construction of the Appellant's contract(s) of employment with the Qatar Financial Centre Regulatory Authority ("the QFCRA"). By agreement of all three parties, this appeal has been determined without an oral hearing.

2. The Appellant is an Australian citizen. He began his employment with the QFCRA on 27 August 2006 under a contract dated 22 June 2006 ("the First Contract"). That employment was for a term of three years, with provision for renewal. On 18 May 2009 he and the QFCRA entered into a second contract of employment ("the Second Contract") and on 9 September 2009 into a third such contract ("the Third Contract"). Under these two contracts the Appellant's employment was to continue until such a time as it was terminated by either party. All of these contacts were in writing.

3. His employment by the QFCRA in fact ceased on 31 August 2016 when he resigned on securing employment with another QFC employer. Each of the three employment contracts to which we have referred made provision, directly or indirectly, for "repatriation benefits", and the Appellant claimed from the QFCRA the cost of an economy class flight from Doha to Melbourne, Australia. The QFCRA rejected this claim, on the basis that he was not returning to Australia but instead continued to work in the QFC and to live in Doha. He complained to the ESO that the QFCRA had failed to comply with the terms of his employment contract and so was in breach of Article 25(1) of the Employment Regulations. As already noted, his Complaint was dismissed by the ESO.

4. The Appellant's Complaint was based upon the terms of the Second Contract, and it was on the interpretation of that contract that the ESO pronounced. It was unaware of the Third Contract. Nonetheless, in their written submissions to this Tribunal, all parties have sought to deal with the contractual position overall and with the significance (if any) of the various contracts of employment. Copies of those contracts have been put before the Tribunal, as have other documents which were not before the ESO. There seems to be no dispute that the Tribunal is entitled under Regulation 19.7 of the Regulations and Procedural Rules of the Regulatory Tribunal to admit fresh evidence on an appeal, "whether or not it was available at the time that the decision that is challenged was made." Nor has any objection been raised to the Tribunal determining the extent of the Appellant's right to the payment claimed on the basis of the contractual position as it is now seen to be.

5. In this situation, it is the Appellant's contention (see paragraph 3(a) of his Response of 10 April 2017) that the First and Second Contracts govern the position and that under those contracts he is entitled to the benefit claimed. The ESO and the QFCRA argue that it is only the Third Contract which applies and that the Appellant is not entitled to the repatriation benefit. However, both sides to the dispute also submit that, even if they are wrong as to the applicable contract, their respective contentions on the issue of entitlement remain valid.

The Contractual Terms: The First Contract

6. The contract of 22 June 2006 provided by Clause 9.1 for "Recruitment and Travel Expenses" in the following terms:

> *"The Employer shall bear the cost of:*
>
> *(A) The initial flight expenses of the Employee and his dependents by economy class travel from his point of recruitment to Doha, Qatar to commence his Employment;*

(B) The final return flight expenses (The "Return Flight") of the Employee and his dependents to a specific city in his designated home jurisdiction by economy class travel after the conclusion of the Fixed Term or any agreed extension thereof;

(C) ...

(D) The actual cost of shipping (The "Shipping Costs") the Employee's personal effects from his point of recruitment to Doha, Qatar, up to the equivalent of shipping a 20 ft sea container, and upon completion of his employment, the actual cost of shipping a 20 ft container to a specified city in his designated home jurisdiction....."

7. As already noted, this First Contract provided for the Appellant's appointment for a period of three years from 13 August 2006: clause 2.1. The same such-clause went on to state that at the end of the three years

> *"this Agreement shall automatically terminate, but may be renewed by either the Employer or the Employee giving notice to the other and the recipient of such notice confirming to the other that the terms of the Agreement shall continue beyond the Fixed Term....."*

That, however, was not the course adopted by the Appellant and his employer, since rather than simply continuing the terms of the First Contract, they entered into a new contract, the Second Contract, containing its own detailed provisions.

The Contractual Terms: The Second Contract

8. This contract, dated 18 May 2009, makes reference to the First Contract, which is described as the "Initial Employment Agreement." By clause 3.1 it provided that

> *"this Agreement seeks to continue the terms and conditions of employment as set forth in the Schedule, providing seamless and continuous*

employment between this Agreement and the Initial Employment Agreement."

The Schedule is in fact a list of certain matters, such as the Appellant's basic salary, his job title, annual leave entitlement, notice period and effective date of his employment under this agreement (27 August 2009). It refers to his "Date of Joining: 27/08/2006". It refers to "Home Jurisdiction: Melbourne, Australia", "class of airfare: economy class" and "shipping entitlement: 20 ft container."

9. Clause 3.2 then stated:

"This Agreement confirms the Employee's ongoing employment with the designation specified in the Schedule from the Effective Date and subject to the terms of this Agreement."

10. Under the heading "Repatriation and Travel Benefits", clause 10.1 provided

"The Employee having completed three (3) years of employment from the Date of Joining has accrued the following benefits, the cost of which shall be borne by the Employer upon termination of employment for any reason:

(A) The final return flight (the "Return Flight") of the Employee and his/her Dependents to his/her designated Home Jurisdiction by the class of airfare specified in the Schedule; and

(B) The actual cost of shipping (the "Shipping Costs") the Employee's personal effects from Doha, Qatar to his/her Home Jurisdiction or point of recruitment, up to the equivalent of the shipping entitlement specified in the Schedule. The Employer shall bear the cost of insuring the shipment as outlined in the Staff Handbook."

11. This Second Contract was not for a fixed term of years or any fixed period of time, but was terminable by either party on three months' notice.

The Contractual Terms: The Third Contract

12. This Third Contract, dated 9 September 2009, begins with a preamble, part of which states that the Employer had given notice to the Employee of "its intention to revise its general policies and procedures regarding the provision of remuneration and benefits to its employees with a view to ensuring that such policies and procedures remain consistent with best market practice in the region." The preamble then continues as follows:

> *"(C) The Employer has agreed with the Employee that in order to achieve the aforementioned objectives, the Initial Contract of Employment will be terminated and that the relationship between the Employer and the Employee will be governed by the terms of this Agreement with effect from the Effective Date."*

The Initial Contract of Employment is, according to clause 1.1, the contract dated as specified in the Schedule, which in turn identifies it as that dated 18/05/2009, that is to say the Second Contract.

13. The provisions of the QFCRA Staff Handbook are incorporated in this Third Contract (clause 2.2), though the terms of the Third Contract prevail in the event of any conflict (clause 1.3).

14. Clause 3.1 is of importance. It provides:

> *"This Agreement supersedes and replaces the Initial Contract of Employment which the Employee and the Employer hereby agree shall be terminated with effect from the Effective Date. The Employee and the Employer agree that notwithstanding the termination of the Initial Contract of Employment, the employment of the Employee shall be*

deemed to have continued without interruption from the Initial Date of Employment until it is terminated in accordance with this Agreement."

The "Effective Date", according to the Schedule, was 1 January 2010.

15. Clause 23.1 states that

> *"this Agreement and the Schedule hereto contain the entire agreement between the Parties with regard to the Employee's employment with the Employer and accordingly supersedes cancels and terminates all prior agreements written or oral, and documents in whatever form concerning the same."*

16. There is a section of the agreement entitled "Transitional Arrangements" which continues, for a period of time, certain benefits to which the Employee may have been entitled under the Second Contract. This transitional period is limited to the period up to 31 December 2011 and the benefits are "specified more particularly in Clause 10." These do not include repatriation benefits. Indeed, no separate provision is made in this Third Contract for repatriation benefits, but the Staff Handbook does make such provision, to which we shall come.

17. Before we do so, it is to be noted that this agreement contains reference to the status of non-Qatari employees in Qatar. By clause 3.4, the agreement

> *"is contingent on continuing compliance by the Employee with all labour and immigration formalities including a medical certificate by the State of Qatar and the Employer's ability to obtain for the Employee the appropriate residence and employment visas."*

Clause 19.4 provides:

> *"upon termination of this Agreement, the Employer shall comply with its obligations under the QFC Immigration Regulations (Regulation No. 11 of 2016)."*

The Immigration Regulations required all non-Qatari employees to be sponsored by their employer. While there could be a transfer of sponsorship from one QFC employer to another such employer, those Regulations provided that if a person's employment terminated without a transfer of sponsorship, that person was required to leave the QFC within 30 days of the termination of his employment.

18. The QFCRA Staff Handbook deals with repatriation benefits at paragraph 9.18. For those in the Appellant's Job Grade, it provides, under the heading "Relocation/repatriation":

> *"Job Grades (A-E)*
> *The RA relocates Employees and their approved dependents from their point of recruitment abroad to Doha (inbound) and repatriates them to their home abroad (outbound), as outlined below. The repatriation (outbound) benefit accrues after three years of employment.*
>
> - *Airfare (inbound)- one way economy class tickets for the Employee and approved dependents; and*
> - *Airfare (outbound)- the cash equivalent of one way economy class tickets for the Employee and approved dependents, paid to the Employee as early as 90 days prior to the final date of employment. The value of the airfare is determined by the RA.*
> - *Relocation of personal goods- Repatriation allowance of QAR 10,000.*
>
> *Approval: HR Director (approves dependents to be covered and the repatriation destination)."*

DISCUSSION

19. The first issue which arises is which contract governs the Appellant's rights in respect of repatriation. His argument on this issue is essentially that he had accrued rights under the First and Second Contracts, once he had completed three years of employment. He points to the wording of clause 10.1 of the Second Contract (set out more fully in paragraph 10 of this judgment), where it is stated that

> *"The Employee having completed three (3) years of employment from the Date of Joining has accrued the following benefits... ",*

including "the" final return flight to his designated home jurisdiction. His case is that those "accrued" rights persisted, despite the replacement of the Second Contract by the Third Contract. As he puts it in paragraphs 15 and 16 of his Response:

> *"...the correct legal position is that terminating a contract only terminates the duties of the parties to perform unperformed contractual obligations. Accrued contractual obligations remain enforceable.*
> *16. The Third Contract does not interfere in any way with the contractual benefits that have already accrued under the First and Second Contracts."*

20. We cannot accept this argument. It is important, first of all, to be clear about the meaning of the word "accrued" in the context of these employment contracts. The word is used here to indicate that there is a pre-condition to be satisfied before the employee is entitled to the repatriation benefits - namely, a period of three years employment. It does not mean that the employee had certain rights vested in him which would automatically and inevitably continue, whatever the terms of a replacement contract. These were always contractual rights, the terms of which the parties were at liberty to vary or even annul by subsequent agreement. One needs therefore to look at the terms of the Third Contract to see what it was that the parties agreed on this topic.

21. Clause 3.1 provides that this Third Contract "supersedes and replaces" the Second Contract. That is reinforced by clause 23.1 whereby the Third Contract, including its

Schedule, "contains the entire agreement between the Parties with regard to the Employee's employment with the Employer and accordingly supersedes, cancels and terminates all prior agreements written or oral." Moreover, it is not as if the Third Contract makes no provision for repatriation benefits. By incorporating the QFCRA Handbook in the agreement, the Third Contract contains detailed terms for the provision of repatriation benefits. The Appellant chose to agree the terms contained in the Third Contract, and he continued his employment with the QFCRA on those terms, which left no room for the continuance of the earlier repatriation provisions contained in the First and Second Contracts. On this issue, we therefore conclude that the right to such benefits is governed by the Third Contract.

22. We turn therefore to the interpretation of that right in the Third Contract. In doing so, it is to be borne in mind that, by virtue of clause 22.1 of that agreement, it is to be construed "in accordance with the law of the QFC and, in particular, ... the QFC Contract Regulations" 2005. Those require a contract to be interpreted "according to the common intention of the parties" or, where that cannot be proved, "according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances." (Emphasis added).

23. That seems to this Tribunal to be very close to the approach familiar in English law, as set out in the well-known House of Lords case of *Investor Compensation Scheme Limited v West Bromwich Building Society* [1997] UKHL 28; [1998] 1 WLR 896, where it was emphasised that the intention of the parties to a contract was to be ascertained objectively. That means asking what the words would mean to a reasonable person possessing the background knowledge which the parties would reasonably have had. That approach has been followed by the United Kingdom Supreme Court in *Arnold v Britton* [2015] AC 1619, cited to us by the ESO in its submissions. There Lord Neuberger referred to "identifying what the parties meant through the eyes of a reasonable reader", with such meaning normally to be gleaned from the language of the provision. Again, as in the *Investors Compensation* case, emphasis was placed on interpreting the words used against the "facts or circumstances which existed at the time" and which were known to the parties.

24. That is the approach we shall adopt. Before we apply it to the relevant provisions in this case, there is a submission by the QFCRA which it is necessary to address, albeit briefly. The QFCRA contends that the intention of the parties, even if objectively ascertained, is not the appropriate test to apply when dealing with a provision which is incorporated in a contract from the Staff Handbook, such as paragraph 9.18 which deals with repatriation benefits. The argument is that the provisions of the Staff Handbook can be changed from time to time by the Regulatory Authority and are not the subject of agreement by the Regulatory Authority and the employee. It is certainly true that the QFCRA has the power to amend the Staff Handbook. However, it does not follow that the normal approach to the interpretation of contractual provisions is inapplicable. The parties to the Third Contract agreed to the incorporation of the Staff Handbook into the agreement, whereupon those incorporated provisions became contractual. That is underlined by the fact that, if there is a conflict between the terms of the Third Contract itself (the document dated 9 September 2009) and the terms of the Staff Handbook, the former prevail: clause 1.3. So the parties are to be taken to have agreed to the terms of the Staff Handbook, save to the extent that the written Third Contract amends or conflicts with them. The employee has agreed to incorporate future changes to the Staff Handbook in the contract, but that does not exclude the normal approach to the interpretation of a contract.

25. To that we now turn. The critical provision is that part of paragraph 9.18 of the Staff Handbook set out in paragraph 18 of this judgment. The language there used is, of course, of fundamental importance. The paragraph is headed "Relocation/repatriation." That in itself suggests that the paragraph is dealing with the case of an employee who is moving from Qatar to another location, not just changing jobs in Qatar. But the paragraph continues in the relevant section

> *"The RA relocates Employees...from their point of recruitment abroad to Doha (inbound) and repatriates them to their home abroad (outbound), as outlined below. The repatriation (outbound) benefit accrues after three years of employment."* [Emphasis added].

It is true that the paragraph goes on to provide for the payment of the cash equivalent of the outbound airfare, but this is simply the mechanism by which the benefit is provided. It is not some independent right to be seen as separate from the earlier part of the paragraph. It is perfectly clear from the words emphasised above that those provisions relate to employees who are recruited abroad and who are then, at the end of their employment by the QFCRA, being repatriated "to their home abroad." If an employee recruited from abroad is not being repatriated by the QFCRA to his or her home abroad, the benefit provided by paragraph 9.18 is not applicable.

26. That plain meaning of the words of the paragraph is reinforced when one considers the factual circumstances existing at the relevant time when this agreement was signed, circumstances undoubtedly known to the parties. The labour and immigration formalities applicable to foreign employees in Qatar are referred to in the Third Contract: residence and employment visas are required, as noted earlier. By clause 19.4 the employer is required, on termination of the agreement, to comply with its obligations under the Immigration Regulations, which deal with the necessity of a non-Qatari employee having a sponsoring employer. So the parties to the Third Contract were, as one would expect, very well aware of the sponsorship and other immigration requirements.

27. Those meant, in effect, that an employee was required to leave the QFC within 30 days of the termination of his employment, unless he was transferring from one QFC employer to another. It is in that context that the presence and meaning of paragraph 9.18 of the Staff Handbook is to be understood. When an employee comes to the end of his employment with the QFCRA, he would normally have to leave Qatar, unless he was transferring to a new sponsor. But without such a transfer, he was required to leave, and clearly provision had to be made to enable him to leave. So paragraph 9.18 is there in order to ensure that the legal obligation to leave Qatar can be complied with. It also enables the employer to meet its legal obligations. If, however, the ex-employee has a new sponsor, he is not required to leave and then repatriation benefit is not required. In our judgment, this bears out the plain meaning of the words of the paragraph.

28. Some reliance has been placed by the Appellant on two instances where it seems that an employee of the QFCRA was paid repatriation benefit on redundancy, even though it was not clear whether the employee would be relocating out of Qatar. As we understand the position, those were cases where the benefit was paid as part of an agreed settlement, rather than because the QFCRA accepted that there was any entitlement to repatriation benefit. In any event, it does not affect our interpretation of the contractual provisions in play in the present appeal.

29. The Tribunal therefore concludes that the provisions of the Third Contract, incorporating as they do those in the Staff Handbook, do not entitle an employee who is remaining in Qatar to any repatriation benefit. This conclusion is self-evidently based on our interpretation of the Third Contract, given our earlier conclusion that it superseded the earlier two contracts. However, for the sake of completeness, we should say that we have given consideration to the position, were that earlier conclusion wrong. For similar reasons to those set out in respect of the Third Contract, we have reached the view that the Appellant would not be entitled to repatriation benefit under either of the two earlier contracts. The First Contract provided for payment to him of "the final return flight expenses…to a specific city in his designated home jurisdiction": see paragraph 6 of this judgment. The Second Contract was in similar terms. Both have to be read in the factual context of the obligation on both parties for the employee to leave Qatar at the end of his employment by the QFCRA, unless there was a transfer to a new employer. For the reasons already stated, such repatriation benefit was provided for to enable that obligation to be met, but only if that obligation arose. If there was no final return flight, there was no entitlement to repatriation benefit.

CONCLUSION

30. For the reasons set out herein, the Tribunal concludes that the Appellant is not entitled to the payment of repatriation benefit by the QFCRA. It confirms the decision of the ESO, although principally upon the basis of the contract of 9 September 2009. Our conclusion and decision would be the same, even if either of the two earlier contracts applied. The appeal is therefore dismissed.

By and on behalf of the Tribunal,

The Rt. Hon. Sir David Keene

Chairman of the Tribunal