



Neutral Citation: [2018] QIC (RT) 2

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**

**IN THE REGULATORY TRIBUNAL
OF THE QATAR FINANCIAL CENTRE**

8 July 2018

CASE NO 1 of 2018

ABDULLA JASSIM AL TAMIMI

Appellant

v

EMPLOYMENT STANDARDS OFFICE

Respondent

and

QATAR FINANCE AND BUSINESS ACADEMY LLC

Interested Party

DECISION OF THE REGULATORY TRIBUNAL

Members of the Regulatory Tribunal:

Rt. Hon. Sir David Keene, Chairman

Professor Francois Gianviti

Laurence Li

DECISION

Introduction

1. This judgment deals with a preliminary issue which has arisen in this litigation. It concerns the power of this Tribunal to extend the time limit for the lodging of an appeal to it from decisions of QFC institutions. The facts relevant to this issue are few and not in dispute. In those circumstances the Tribunal decided that it was in the interests of justice that the matter be dealt with on the papers without an oral hearing. All parties have lodged written submissions, which the Tribunal has taken into account.

The Facts

2. The appellant is an employee of the Qatar Finance and Business Academy LLC (“QFBA”), a wholly owned subsidiary of the Qatar Financial Centre Authority. In late 2017 he raised various grievances with his employer and, failing to receive satisfaction, he lodged two complaints with the Employment Standards Office (“the ESO”) under the QFC Employment Regulations (“the Employment Regulations”).
3. On 27 November 2017 the ESO issued a decision refusing to accept one of his complaints on the ground that it was clear that the employer had not breached the Employment Regulations. On 5 December 2017 the ESO rejected his other complaint on its detailed merits. This rejection decision made express reference to the existence of a right of appeal to this Tribunal under the Employment Regulations if notice was lodged within 30 days.
4. The appellant at that stage did not pursue the course of an appeal to this Tribunal against either of the ESO decisions. Instead he commenced proceedings before the QFC Civil and

Commercial Court on 21 February 2018. By a judgment handed down on 13 May 2018 the Court held that it had no jurisdiction in the matter, since the appellant's remedy lay to this Tribunal against a decision of the ESO. On 23 May 2018 he filed an appeal notice with the Tribunal Registry against both ESO decisions. (He also sought to bring before this Tribunal a grievance which the ESO had not determined, but we cannot accept that we have any jurisdiction in that matter.) Reverting to the two ESO decisions, it can be seen that his appeal notice to this Tribunal was filed almost six months after the date of those decisions.

5. This raises the fundamental legal issue of whether the Tribunal has the power to extend, as a matter of discretion, the time for lodging an appeal beyond the period prescribed in the relevant primary and secondary legislation

The Legal Context

6. There are three principal legal instruments relevant to the time limit for lodging an appeal to this Tribunal. The first is the Qatar Financial Centre Law No. 7 of 2005 as amended by Law No. 14 of 2009 ("the Law"). That is the Law which by Article 8(2) sets up this Tribunal, which

"shall exercise its jurisdiction as set out in the provisions of Schedule (5)..."

Schedule 5 of the Law contains a number of detailed provisions concerning the Tribunal.

Clause 8 of the Schedule states:

"Appeals against decisions made by any of the QFC authorities or institutions may be filed before the Regulatory Tribunal within (60) days from the date the decision is published in

the respective gazette if available, or when the concerned party is legally notified as per a registered legal notice.”

Clause 9 is also relevant, providing that

“If a petition is submitted to the concerned body that issued the relevant decision, the time limit mentioned in clause 8 shall be suspended....”

The 60 day time limit then runs from the decision on the petition or, in the absence of a responses, from 60 days from the submission of the petition. This provision is not of direct application in the present case, since no petition was lodged, but it makes it clear that the words “may be filed” in Clause 8 are indeed imposing a time limit, which is in any event their natural reading. Clause 9 does also indicate that detailed consideration was given in the drafting to how Clause 8 would operate in practice.

7. There are in addition two sets of regulations relevant to the present case. The QFC Regulatory Tribunal Regulations and Procedural Rules (“the Tribunal Regulations”) deal with, amongst other things, commencing an appeal before the Tribunal: Article 10. By Article 10(2):

“Subject to Article 10(3) below, an appeal must be filed with the Regulatory Tribunal (in accordance with paragraph 8 of Schedule 5 to the QFC Law)

10.2.1 within 60 days from the date when the decision that is sought to be challenged (“the decision”) is published in the relevant gazette, if applicable; or

10.2.2. within 60 days from the date when the appellant is notified by an official notice in writing; or

10.2.3 where the decision is a failure or omission to notify a decision, within 60 days of the deemed date of the decision as provided by Article 8.3 above.”

Article 10.3 there referred to makes provision for the instance where a petition has been submitted in accordance with Schedule 5, paragraph 9.

8. Article 9(5) of the Tribunal Regulations is of importance, because it purports to grant the Tribunal a discretion to extend or abridge certain time limits. It provides as follows.

“Subject to any contrary provision in the QFC Law or in QFC Regulations, the Chairman has the power (which he may delegate to a Judge or to the Registrar) to extend or abridge any time limit imposed by these Regulations and Procedural Rules or ordered by the Regulatory Tribunal; but nothing in this article empowers the Regulatory Tribunal to abridge any time limit set out in the QFC law.”

9. Finally, the Employment Regulations impose by virtue of Article 62 a 30 day time limit from receipt of a determination, decision or fine made or imposed by the ESO. No express provision for extending time appears in these Regulations.

Discussion

10. It appears evident that the two sets of Regulations to which we have referred are to be seen as of subordinate status to the Law. It is the Law which, by Article 9, creates the power to make Regulations. In addition, Schedule 5(12) of the Law refers to Regulations “issued by virtue of” the Law. This relationship is confirmed by references in the Tribunal Regulations, such as Article 1.1.8, which speaks of Regulations made “pursuant to the QFC Law provisions”.

11. We do not propose in this judgment to resolve every possible issue which might arise in connection with the provisions set out above, but only those necessary for the determination of these appeals. It is quite clear that the appellant has failed to act in time, whether one is considering the 60 day time limit in the Law, its equivalent in the Tribunal Regulations or the 30 day time limit applicable to appeals specifically from decisions of the ESO.
12. Insofar as a 60 day time limit is imposed by the Tribunal Regulations, the Tribunal would seem to have the power to extend in appropriate cases that time limit. That is the effect of the power granted by Article 9(5) to “extend or abridge any time limit”, though only “any time limit imposed by these Regulations and Procedural Rules” or ordered by the Tribunal. On the face of it, that provision would not empower the Tribunal in an appeal against a decision of the ESO to extend or abridge the 30 day limit imposed in such cases by the quite separate Employment Regulations. Of course, in such a case, as in all its decisions, the Tribunal would have to bear in mind its overriding objective set out in Article 4 of the Tribunal Regulations “to deal with all appeals justly”. Against that, there is the fact that the Article 9(5) power is “subject to any provision inQFC Regulations”, which would seem to include the 30 day limit in the Employment Regulations. However, the issue of the extent of the power to extend the 30 day limit issue does not need to be determined in the present case, given that the appellant failed to comply with any 60 day limit as well.
13. The appellant is in breach of the 60 day time limit imposed both by the Law and by the Tribunal Regulations. It is in that context that one must consider the effect of the power in Article 9(5) of the latter to extend or abridge time. As we have indicated already, if the sole source of that time limit was Article 10(2) of the Tribunal Regulations, there would be little

difficulty in accepting that the 60 day limit could be extended. But those Regulations are not the sole source, since the Law imposes the same limit. It is to that problem that we now turn.

14. As a matter of interpretation of the language of Article 9(5), it is difficult to see how it can be read as empowering the Tribunal to relax or extend the 60 day limit in the Law. First, the whole provision is “subject to any contrary provision in the QFC Law”. Secondly and of greater significance, the power then referred to is confined to time limits “imposed by these Regulations and Procedural Rules “ or ordered by the Tribunal. It does not encompass a power to relax or extend a time limit imposed by the Law. That seems to us to be sufficient to outweigh any implication by omission to be derived from the closing words of Article 9(5) with its prohibition on abridging any limit set out in the Law.
15. We reach this conclusion without enthusiasm, since it is one which may well lead to injustice in some cases. Nonetheless, that by itself cannot override the clear position resulting from the provisions of the Law.

Conclusion

16. On this preliminary issue the Tribunal determines that it has no power to extend the 60 day time limit for appeals to it as set out in Schedule 5(8) of Law No. 7 of 2005 as amended. Given the lapse of time in the present case, that is sufficient to dispose of these appeals, which are therefore dismissed.



By and on behalf of the Tribunal,

The Rt. Hon. Sir David Keene

Chairman of the Tribunal

Representation:

For the Appellant-	The Appellant represented himself
For the Respondent-	K&L Gates LLP, QFC Branch, Doha
For the Interested Party-	Ben Jaffey QC, Blackstone Chambers, London

The Appeal was determined on the papers, i.e. without the need for an oral hearing.