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

3 April 2018

CASE NO's: 02-22/2017

PETER KUNCEWICZ AND OTHERS

Appellants

v

EMPLOYMENT STANDARDS OFFICE

Respondent

and

OOREDOO GROUP 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 is an appeal brought by Peter Kuncewicz and others against a decision of the Employment Standards Office ("the ESO") dated 24 July 2017, whereby the ESO decided that it had no jurisdiction to determine the appellants' complaint that there had been a breach of the QFC Employment Regulations 2006 ("the Regulations"). The appellants are former employees of a company now known as Ooredoo Group LLC (formerly Qtel International LLC). On 20 December 2017 this Tribunal made an order permitting Ooredoo Group LLC to be joined in the proceedings as an interested party. That company's application to be so joined was unopposed by the appellants and the respondent.

2. By agreement between the parties this appeal is being determined on the papers without an oral hearing. The Tribunal is satisfied that this procedure is in the interest of the efficient administration of justice and does not prejudice any of the parties.

The appellants' complaint to the ESO

3. The appellants complained to the ESO that Ooredoo Group LLC was in breach of the Regulations in two respects:

   (a) in failing to pay to them any award under a Long Term Incentive Plan ("LTI plan") for the 2014 financial year; and

(b) in miscalculating the LTI plan award for the 2013 and 2015 years.

4. The LTI Plan consists of a number of Rules and from its terms the Plan is seen to be one approved by the Board of "The Company". The definition rule, Rule 1.1, makes it clear that that means the parent company of Ooredoo Group LLC, a body once known as Qtel Q.S.C. but at the time of the ESO's decision known as Ooredoo QSC. That company seems to have had a number of subsidiaries, including the present Interested Party. Any participant in the LTI Plan was entitled to receive a cash amount equivalent to the market value of a certain number of shares in the parent company at a future date. The CEO would, under the Rules, have a discretion as to the "Eligible Employees" to whom awards would be made and Eligible Employees were defined as employees of the parent company, its subsidiaries and associate companies: Rules 2.1 and 1.1. So on the face of it, this was a group scheme.

5. Rule 9 of the Rules provides:

> *"Notwithstanding any other provision of the Plan*
>
> *(a) the Plan shall not form part of any contract of employment between any member of the Group and an Eligible Employee;*
>
> *(b) unless expressly so provided in his contract of employment, an Eligible Employee has no right to be granted an Award*
>
> *(c) ...*
>
> *(d) If an Eligible Employee ceases to hold an office or employment within the Group, he shall not be entitled to compensation for the loss of any right or benefit or prospective right or benefit under the Plan ... whether by way of damages for unfair dismissal, wrongful dismissal, breach of contract or otherwise."*

6. The appellants' employer, Ooredoo Group LLC, is an entity registered in the Qatar Finance Centre. The parent company, Ooredoo Q.S.C, is not, though it is a company incorporated under the laws of the State of Qatar.

7. However, the appellants relied on the fact that in almost all cases they had received a written letter before they had been employed, and in the majority of those cases the letter, offering them employment, had made mention of the L.T.I. Plan. Thus the letter to the appellant Fabio Affortunato, dated 16 January 2011, after setting out salary, housing and transport allowance and the like, had a section headed "Long Term Incentive Bonus." Its opening sentence stated:

> *"The Qtel Group Long Term Incentive plan (LTI) is a performance based incentive to focus management attention on reaching the long term goals of the company."*

It then went on to describe the form of the award and the approach to its calculation. The letter was signed on behalf of Qtel International LLC, now Ooredoo Group LLC, the Interested Party.

8. On acceptance of an offer of employment, a written Employment Agreement was entered into by the employee and Qtel International LLC/Ooredoo Group LLC. Indeed, this had been expressly envisaged in the earlier letter of offer ("the Offer Letter"), which on page 6 had stated that the terms of the offer were subject to several matters, including

> *"(c) Completion of a definitive employment contract upon arrival in Qatar."*

The Employment Agreement broadly followed the terms indicated in the letter of offer, but made no mention of the LTI Plan. At clause 16 there is an "entire agreement" clause, stating

> *"This Agreement sets out the entire agreement between the parties regarding the Appointment and supersedes all prior discussions and correspondence between them."*

The ESO Decision

9. The ESO investigated the appellants' complaint in order to assess whether there had been a contravention of the Regulations. In its decision it began by considering whether it had jurisdiction to make a decision on the subject matter of the complaint, which depended on whether the Ooredoo Group LLC's failure to pay the LTI award amounted to a breach of the Regulations. It noted that the Regulations contained no express provision dealing with long-term incentive payments or bonuses but the requirements of the Regulations were minimum ones and nothing in the Regulations precluded an employer from providing in a contract of employment terms and conditions more favourable to the employee (Article 8 of the Regulations). The ESO emphasised the words "*in any contract of employment*". It also observed that Article 25(1) of the Regulations provided that "*upon the end of service of an Employee, the Employer shall comply with the terms of the employment contract in respect of termination of contract.*" (Emphasis by ESO).

10. Thus at paragraph 25 of its decision the ESO stated that:

"25. The key issues for determination are therefore as follows:

a. whether the LTIs are an entitlement under the "employment contract" (given that the matter is not expressly regulated by the Regulations); and

b. whether the LTIs could otherwise constitute an "end of service" payment within the meaning of Article 25 of the Regulations."

In dealing with the first of those issues, the ESO referred to the conditionality of the Offer Letter, including the fact that it was subject to the completion of a "*definitive employment contract*" on arrival of the offeree in Qatar (see paragraph 8 above). The ESO also noted the "*entire agreement*" clause in the Employment Contract (ibid). As a result the ESO concluded that the Employment Contract superseded the Offer Letter.

11. It then noted that the Employment Contract made no reference to the LTI Plan. LTI's were, of course, referred to in the Rules and consequently the ESO took the view that it would only have jurisdiction on the basis of sub-paragraph (a) above (paragraph 10) if the Rules formed part of the Employment Contract. In answering this question the ESO noted Rule 9 of the Rules, which stated that the "*plan shall not form part of any contract of employment between any member of the Group and an Eligible Employee*". It again referred to the "*entire agreement*" clause in the Employment Contract, and as a result of these matters it concluded that the Rules were not intended to form part of the employment contract under the Regulations. There was thus no entitlement under the Employment Contract to payment of an L.T.I.

12. The ESO went on to consider whether it had jurisdiction under Article 25(1) of the Regulations dealing with end of service payments (see paragraph 9 above). It observed that under the Rules the vesting of LTI awards was dependent on ongoing employment and that where an employee ceased to be employed, invested LTI awards are usually forfeited. In all cases an LTI award did not arise as a consequence of the termination of employment. Accordingly, the ESO determined that such awards could not be considered an "*end of service*" payment under the Regulations and so it could not derive jurisdiction from Article 25(1).

13. It therefore determined that it did not have jurisdiction to deal with the complaint.

The Appellants' Case

14. The appellants challenge the ESO's conclusion that the LTI Plan did not form part of their employment entitlement. They rely on the Letters of Offer and contend that, as soon as an appellant accepted the terms of the Letter of Offer, an agreement had been concluded between the parties. This was not invalidated by the "*entire agreement*" clause in the Employment Contract, because the Letter of Offer was not a mere prior discussion or correspondence between the parties. Therefore "*the Letter of Offer, Employment Agreement and LTIP Rules, including all other policies in place, constitute the written agreement between parties related to the employment relationship and should be referred to as one when establishing and/or denying the different rights and obligations of the parties*": Notice of Appeal, paragraph 5.

15. The appellants also refer to the fact that from time to time awards were made to employees. But the essence of their case is encapsulated in a passage towards the end of their Notice of Appeal, where they submit that the LTIP Rules should be deemed as forming part of the entirety of the employment contract agreed between the appellants and the Ooredoo Group LLC, thus giving jurisdiction to the ESO.

Discussion

16. It seems to this Tribunal that that last passage just quoted goes to the heart of the issues in this case. The appellants do not seek to place emphasis on the argument about the LTI payments being part of an "*end of service*" benefit within Article 25(1) of the Regulations, and in our view they are right not to pursue that argument. Quite apart from the points on that issue made by the ESO in its determination, it has to be noted that Article 25(1) is dealing with an employer's obligation to comply with the terms of the employment contract. If the LTI payments were not part of an employee's employment contract, Article 25(1) can have no application.

17. It is clear from our summary of the ESO's determination that it dealt with this complaint as a matter of jurisdiction and so with the issue of the LTI plan and the employment contracts in that context. In a sense, that is entirely understandable, since its role is "*to investigate any contravention of, and to enforce*" the Regulations: Article 7(1). Likewise, a complaint to the ESO is that there has been a contravention of the Regulations: Article 55(1). Since the Regulations do not expressly refer to LTI payments, the only way (if any)

in which a contravention could arise on the present facts would seem to be under Article 26(1):

> "*Salary and other payments due to the Employee should be paid in the currency stated in the employment contract or any other currency agreed between the Employer and the Employee*" (our emphasis).

The provision which allows for the terms and conditions of employment to be above the minimum set out in the Regulations refers to such improved terms being provided in any "*contract of employment*".

18. So in the present case any jurisdiction of the ESO would have to be founded on an alleged breach of the terms of the contract of employment. This alleged breach is also of course the substance, the subject-matter, of the complaint, which the ESO would have had to decide upon if it did have jurisdiction. In short, it seems to this Tribunal that the central issue is the same, whether it is treated as a matter of jurisdiction or as the substantive issue: did the contract of employment between each of the appellants and Ooredoo Group LLC include an entitlement to payment of an LTI?

19. While the LTI plan is not referred to in the individual Employment Agreements entered into by each appellant and Ooredoo Group LLC, it is referred to in the earlier Letter of Offer. It is also to be noted that the Letter of Offer was signed, certainly in the example put before us, on behalf of Ooredoo Group LLC (under its previous name of Qtel International). On the face of it, the acceptance of this offer by a potential employee could

give rise to a contract of employment or at least could constitute part of an eventual contract of employment. This in essence is the appellant's argument.

20. However, the Tribunal finds it impossible to construe the documents and events in such a way. First of all, the Letter of Offer is made conditional on the completion of a definitive employment contract. We have emphasised that adjective because it indicates that the later Employment Contract is to take precedence. That is then confirmed by the provisions of clause 16 in the Employment Contract, the "*entire agreement*" clause, set out in paragraph 8 of this judgment. That provision needs to be read as a whole. It not merely refers to the Agreement superseding "*all prior discussions and correspondence*" between the parties, but also says in terms that the Agreement "*sets out the entire agreement between the parties regarding the Appointment*". In our judgment, this means that the Employment Agreement in each case constitutes the contract of employment between that appellant employee and Ooredoo Group LLC. In so far as the earlier offer and acceptance, with its various detailed terms, constituted a contract of employment, it was superseded by the Employment Agreement. One cannot envisage two detailed contracts of employment between the same two parties.

21. If one goes further and looks to the content of the LTI Plan, one sees the provisions of the Rules, and in particular clause 9, by which "*the Plan shall not form part of any contract of employment between any member of the Group and an Eligible Employee*". That might be construed narrowly and be confined to contracts of employment, rather than contracts generally, but whatever approach one takes to it, it confirms the intention of the parties,

already evident from the matters set out in the previous paragraph of this judgment, that the LTI plan is to form no part of the contract of employment.

22. There is some suggestion in the submissions lodged by the ESO in this appeal that the appellants may have some contractual right as against the parent company in the group, Ooredoo QSC in respect of payment of LTIs. This, it is said, may arise under a contract, albeit not a contract of employment, and any claim would have to be heard before the main courts of Qatar, not the ESO or this Tribunal. It is unnecessary for us to express a view on this and indeed we take the view that it would be improper for us to go beyond our proper constitutional role.

Conclusion

23. The Tribunal concludes that the ESO was right in its decision that the contracts of employment between the appellants and the Interested Party, Ooredoo Group LLC, did not include any entitlement to payments under the LTI Plan. In those circumstances, there was no breach of the Regulations which could have given rise to the ESO possessing jurisdiction over these complaints. Even if it had had jurisdiction, it would have had to dismiss the complaints on their substantive merits. In those circumstances, the outcome of the ESO's consideration of the complaints was the correct one, and these appeals must be dismissed.

By and on behalf of the Tribunal,

The Rt. Hon. Sir David Keene

Chairman of the Tribunal

Representation:

For the Appellants- Al Ansari & Associates, Doha, Qatar

For the Respondent- Ben Jaffey QC, Blackstone Chambers, London

For the Interested Party- Eversheds Sutherland, Doha, Qatar

With the agreement of the Parties, the Appeal was determined on the papers, i.e. without the need for an oral hearing.