



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**

12 December 2018

CASE NO: 02/2018

CEM BUSINESS SOLUTIONS LLC

Appellant

v

EMPLOYMENT STANDARDS OFFICE

Respondent

and

ANAND JAMBUNATHAN

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 from a Determination and Order of the Employment Standards Office dated 31 July 2018 (the “**Determination**”).
2. The questions for our consideration are relatively discreet and concern the application of the QFC Employment Regulations (the “**Regulations**”). The essential facts are not in dispute. The parties have agreed that the matter may be decided on the papers, which we now do.

The Parties

3. The Appellant, CEM Business Solution LLC (“**CEM**”), is a company incorporated in the QFC. As such it must comply with the Regulations and is subject to the supervision of the Employment Standards Office (“**ESO**”). This includes the power of the ESO to enforce the Regulations.
4. Since April 2015, CEM employed Mr. Anand Jambunathan (“**Mr. Anand**”) in the role of “Country Manager”. According to their agreement dated 7 April 2015, Mr. Anand was to enjoy a monthly base salary of QAR 21,000 plus a monthly “advance towards incentive” of QAR 4,000 and, amongst others, annual medical and insurance benefits in the amount of QAR 5,000.

The Regulations

5. Articles 26 and 27 of the Regulations states:

“Article 26: Payment of salary

- (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.*
- (2) *The Employer shall pay the Employee his salary at least monthly.*
- (3) *The Employer shall give to the Employee a written itemised pay statement that includes: (A) the amount of wages or salary payable; (B) the amount of any variable and fixed deductions, if any, from that payment; and (C) the purposes for which they are made.*

Article 27: No authorised deductions

An Employer shall not deduct from an Employee's salary or accept payment from an Employee, unless:

- (1) the deduction or payment is required or authorised by law or regulation or the Employee's contract of employment;*
- (2) the Employee has previously agreed in writing to the deduction or payment;*
- (3) the deduction or payment is a reimbursement for an overpayment of wages or expenses; or*
- (4) the deduction or payment has been ordered by the QFC Employment Standards Office, the Civil and Commercial Court or the Regulatory Tribunal."*

6. Article 56 provides for the ESO to carry out investigations. Article 57 empowers the ESO to order compliance with the Regulations, payment of salaries due to an employee, payment of compensation, payment of a financial penalty etc.
7. Article 62 gives any person directly affected by a determination of the ESO a right of appeal to this Tribunal.

ESO's Determination

8. Between March and July 2018, the ESO conducted a review of CEM's compliance with the Regulations. In the Determination, it concluded that CEM had failed to pay the full amount of salaries and the medical insurance due to Mr. Anand. It ordered CEM to pay Mr. Anand:¹
 - (1) For the shortfall in salaries, an amount of QAR 343,686.50;
 - (2) For medical and insurance benefits, an amount of QAR 16,667.00; and
 - (3) As compensation for late payment and non-payment of salaries, an amount of QAR 25,000.00 plus, if payments are not made before certain specified dates, QAR 40.00 per day.
9. As mentioned above, pursuant to their agreement, CEM was to pay Mr. Anand a base salary of QAR 21,000 per month plus an "advance towards incentive" of QAR 4,000

¹ See: Determination ¶58.

per month and, amongst others, medical and insurance benefits of QAR 5,000 per year. The “advance towards incentive” was subject to achievement of certain sales targets. The parties are on common ground that those targets were not met.

10. The shortfall of QAR 343,686.50 was calculated as monthly base salary (QAR 21,000) times 40 months (from April 2015 to July 2018) minus the total amount CEM actually paid Mr. Anand (QAR 496,313.50). The amount of medical and insurance benefits at QAR 16,667 was calculated on a pro rata basis (QAR 5,000 / 12 months x 40 months).
11. By a Notice dated 29 August 2018, CEM appealed to this Tribunal (“**CEM Notice**”). The ESO lodged a Response dated 26 September 2018 (“**ESO Response**”) and further submissions by email dated 24 October 2018 (“**ESO Further Response**”). Mr. Anand provided a Response dated 27 September 2018 (“**Mr. Anand Response**”). CEM sent its reply submissions by 2 emails dated 24 October 2018 (“**CEM Reply Submissions**” and “**CEM Further Submissions**”).

CEM’s Appeal

12. CEM admits to “non-regular payment of salaries” to Mr. Anand.² Indeed, it has openly and readily said so during the ESO’s review.³ By the CEM Reply Submissions, it also agrees to pay the medical and insurance benefits.⁴
13. What CEM seeks is a “recalculation” of the outstanding amount of salaries due to Mr. Anand.⁵ It raises 3 arguments:
 - (1) It contends that Mr. Anand had been overpaid for his employment with a related entity in Dubai, CEM Business Solutions FC LLC (“**CEM Dubai**”);⁶
 - (2) It argues that Mr. Anand had failed to submit timesheets and should be treated as absent from work on the days without timesheets;⁷ and

² See: CEM Notice ¶3; CEM Reply Submissions ¶1b.

³ See: Determination ¶¶30, 50.

⁴ See: CEM Reply Submissions ¶2k.

⁵ See: CEM Notice page 1.

⁶ See: CEM Notice ¶¶4-5, 13; CEM Reply Submissions ¶21.

⁷ See: CEM Notice ¶¶11-12; CEM Reply Submissions ¶¶2a-f; CEM Further Submissions, third paragraph.

(3) It says that Mr. Anand had received double benefits in the forms of a transport allowance and also CEM's payment of a car rental service.⁸

14. We deal with these arguments in turn.

15. First, regarding the alleged overpayment previously by CEM Dubai to Mr. Anand, as the ESO explained in its Determination and in the ESO Response, payments by a non-QFC entity are outside its jurisdiction. It follows that the matter cannot be a subject of appeal determinable by this Tribunal.

16. Moreover, Article 27 of the Regulations prohibits deductions from salaries except when a deduction is "*required or authorised by law or regulation or the Employee's contract of employment*". CEM has not suggested any basis in law or in the relevant employment agreement allowing deductions for or netting of overpayments by another entity. Such deductions cannot be made.

17. CEM seems willing to concede the point. The CEM Reply Submissions states, "CEM understand[s] that it is not allowed to deduct the sum [paid by CEM Dubai] and would restrain from claiming the same as a part of its deductions."⁹ Thus, the argument has fallen away.

18. Second, regarding the alleged non-submission of timesheets, this argument has not been raised with the ESO before. We can well understand CEM's reluctance to advance this argument. As we have noted, Article 27 of the Regulations prohibits deductions from salaries unless allowed by law or contract. CEM has not cited any basis in law, and we do not see any basis in the employment agreement, which provided for a monthly salary and was silent as to timesheets or even deductions for absence from work.

19. CEM accepts that it has reported in its financial statements the full amounts of salaries to Mr. Anand as expenses, without any deduction for non-submission of timesheets or absence from work.¹⁰ Moreover, even though CEM claims its policy on submission of

⁸ See: CEM Notice ¶9; CEM Reply Submissions ¶1c.

⁹ See: CEM Reply Submissions ¶21.

¹⁰ See: CEM Reply Submissions ¶2h.

timesheets to be an “organization wide policy”, it acknowledges that it has not enforced the policy “due to its relationship with Mr. Anand”.¹¹

20. In the circumstances, we do not see any proper basis for CEM to seek to recalculate Mr. Anand’s salaries now by making deductions for alleged non-submission of timesheets.
21. Third, regarding the alleged double transportation benefit, again this appears not to have been raised with the ESO before. As the ESO also pointed out, CEM has only made a bare assertion without producing any proof of payment or calculation of the amount.¹² CEM does not dispute this but repeats its allegation.¹³
22. We return to Article 27 of the Regulations and its clear prohibition: no deduction from salaries unless required or authorised by law or contract. CEM does not suggest there to be any such provision in law or in the employment agreement. On the contrary, it seems to implicitly accept that it has no basis for the deduction when it states the issue to be a “moral” one and that Mr. Anand to have a “moral responsibility”.¹⁴
23. In short, we do not see CEM’s 3 arguments as giving any basis in law or in contract for the “recalculation” which it seeks. Its appeal falls to be dismissed.

Application for Stay

24. Towards the end of the CEM Reply Submissions, CEM added a request to the Tribunal to “stay the ... ESO determination until further judgment with retrospective effect”.¹⁵ We do not have the ESO’s and Mr. Anand’s response to this.
25. Article 10 of Schedule 5 of the QFC Law states that an appeal to the Tribunal does not automatically operate as a stay of the decision being challenged and that a motion for a stay must be “*based on a justifiable reason*”. No such reason has been shown.

¹¹ See: CEM Further Submissions, third paragraph.

¹² See: ESO Response ¶4.7.

¹³ See: CEM Reply Submissions ¶1c.

¹⁴ See: CEM Reply Submissions ¶1d.

¹⁵ See: CEM Reply Submissions ¶2n.

Application for Costs

26. In its response to CEM's appeal, the ESO sought costs on the basis that CEM "did not fully cooperate ... during the ESO investigation and therefore obstructed the ESO and contravened Article 60 of the QFC Employment Regulations."¹⁶
27. No such allegation, let alone finding of obstruction and contravention, was made in the ESO's own Determination.
28. In any event, Article 24.1 of the Regulatory Tribunal Regulations and Procedural Rules provides that the Tribunal will not normally order one party to pay another party's legal costs, unless it considers justice so requires. The natural focus is more on the parties' conduct in the appeal than on the process before the appeal. In the present case, CEM was entitled to exercise its right of appeal. It is not contended that CEM has conducted the appeal in an unreasonable manner or in a way which has increased the ESO's costs in the appeal. We do not see any reason to deviate from the normal rule.

Conclusion

29. In sum, CEM's appeal is dismissed with no order as to costs.

By the Regulatory Tribunal,



Justice Laurence Li



Representation:

The Appellant was represented by its Manager, Mr. Sathyanaath Kalyanasundaram.

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

The Interested Party was represented by Kochery & Partners, QFC, Qatar.

¹⁶ See: ESO Response ¶1.4.