



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 CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE
APPELLATE DIVISION**

18 March 2019

CASE NO: 04/2019

CEM BUSINESS SOLUTIONS LLC

Applicant

v

EMPLOYMENT STANDARDS OFFICE

Respondent

and

ANAND JAMBUNATHAN

Interested Party

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Bruce Robertson

Justice Rashid Al Anezi

ORDER

1. The Application seeking Permission to Appeal is refused; and
2. The Applicant is ordered to pay the reasonable costs of the Respondent and the Interested Party as agreed between the Parties or, failing such agreement, as assessed by the Registrar.

JUDGMENT

Introduction

1. This is an application for permission to appeal a Decision of the Regulatory Tribunal (Sir David Keene, Chairman, Justices Gianviti and Li) in Case No 2/2018 dated 12 December 2018.

Relevant Framework

2. Article 35 of the QFC Civil and Commercial Court Regulations and Procedural Rules provides as relevant:

35.2 The Appellate Division Court shall, in addition, have power to hear appeals from determinations and decisions of the Regulatory Tribunal as set out in Article 8(3)(c) of the QFC Law, but only:

35.2.1 if the Regulatory Tribunal has made a determination in relation to its jurisdiction and there is a dispute in relation to that determination; or if there are substantial grounds for considering that a judgment or decision is erroneous and there is a significant risk that the decision will result in serious injustice; and

35.2.2 with the permission of the President of the Court or with the permission of two of the Judges.

3. Jurisdiction is not raised in this case. So the only matter requiring consideration is the assertion that “there are substantial grounds for considering that a judgment or decision is erroneous and there is a significant risk that the decision will result in serious injustice”.

Background

4. The Applicant, CEM Business Solutions LLC, is a duly incorporated company in the QFC and accordingly bound by the QFC Employment Regulations and subject to the supervision of the Employment Standards Office ('ESO').
5. Anand Jambunathan was employed in April 2015 as Country Manager of the Applicant. Under an agreement dated 7 April 2015 he was to receive a monthly salary of QAR 21,000 plus a monthly advance towards incentive of QAR 4,000 together with a further QAR 5,000 for medical and insurance benefits.
6. In March 2018 the ESO sent the Applicant a Notice of Requirements requesting a copy of all employment agreements for its employees and a salary report from January 2017 to December 2017. This was routine.
7. Receipt of the Notice was acknowledged and there was some dialogue over the next few weeks but on 8 April 2018 some information was provided but not all. Further requests were made but there were still deficiencies in responding and on 11 April a request was made for a meeting which was held on 18 April. In the course of that it was admitted that full pay for all employees had not occurred.
8. An interchange continued for several weeks but it was apparent that proper compliance had not and was not occurring.
9. There were some issues about a previous employment relationship in Dubai but the ESO made clear that this could not be relevant to the position in the QFC.
10. Discussions, assurances and advice continued until early July but there was no satisfactory outcome and the ESO accordingly made a determination under Article 57 of the Employment Regulations which provides
 - (1) Without prejudice to its other powers, the Employment Standards Office may, if satisfied that a person has contravened a provision of these Regulations or any rule, policy or order issued thereunder, make a

determination to that effect and may order the person to do one or more of the following:

- (A) comply with the requirement;
- (B) remedy or cease doing an act or thing; and
- (C) pay any costs incurred by the Employment Standards Office in connection with an investigation.

(2) In addition to paragraph (1) above, if satisfied that an Employer has contravened a provision of these Regulations or any rule, policy or order issued thereunder, the Employment Standards Office may order the Employer to do one (1) or more of the following:

- (A) pay all due salary payments to an Employee;
- (B) pay a person compensation;
- (C) pay a person any amount which the Employment Standards Office determines is owing under any provision of these Regulations or any rules, policies or orders issued under these Regulations and any reasonable and actual out of pocket expenses incurred because of the contravention;
- (D) take within a specified period, any action the Employment Standards Office considers reasonable that eliminates or reduces the adverse effect on the complainant of any matter relating to the complaint;
- (E) without prejudice to any more severe penalty stipulated in any other law, rules or regulations applying in the QFC, the Employment Standards Office may impose a financial penalty on an Employer; or
- (F) post notice, in a form and location specified by the Employment Standards Office or in respect of
 - (i) a determination; or
 - (ii) a requirement, or information about these Regulations.

- (3) The Employment Standards Office shall serve an Employer with notice of a requirement imposed under paragraphs (1) and (2) above.
- (4) A person on whom the Employment Standards Office imposes a requirement under this Article shall comply with that requirement.
- (5) If satisfied that the requirements of these Regulations or any rules, policies or orders have not been contravened, the Employment Standards Office shall dismiss the complaint.
- (6) The Employment Standards Office may vary or cancel a determination if circumstances have changed.

11. The Determination and orders were made on 31 July for the Applicant to pay to Mr. Anand Jambunathan:

- (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.

12. By notice of 29 August 2018 an appeal was commenced before the Regulatory Tribunal with responses and submissions filed until 24 October 2018. The Regulatory Tribunal noted that the Applicant accepted that there had been non-regular payment of salaries but it raised three arguments seeking a “recalculation”:

- (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”);
- (2) It argues that Mr. Anand had failed to submit timesheets and should be treated as absent from work on the days without timesheets; and

(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.

13. The Regulatory Tribunal considered each ground and concluded that none gave "any basis in law or in contract for the recalculation" sought and the appeal was dismissed.

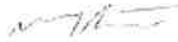
The Application for Permission to Appeal

14. The relevant document of 10 February 2019 is somewhat discursive but in essence appears to assert that Mr Anand as the Senior Executive of the Applicant was responsible for the profitability and successful operation of the company and had failed in this fundamental duty with serious consequences. Particular emphasis is placed on a failure to submit timesheets. Reference is also made to the Applicant's track record of proper compliance with the regulatory requirements with regard to other employees. Finally it contends that its financial position is weak and if the orders and directions remain it will have no choice but to shut down its operations. There is a section entitled "additional points justifying the grounds of appeal" but there is nothing substantive there which is new or different.

Conclusion

15. Nothing is now advanced which suggests that the Regulatory Tribunal's Decision is "erroneous" and poses a "significant risk" and that it could cause a "serious injustice". That is the only relevant ground of appeal. Accordingly, permission to appeal is refused. There is no reason why costs should not follow the outcome and the Applicant is ordered to pay the reasonable costs of the Respondent and the Interested Party as agreed between the Parties or, failing such agreement, as assessed by the Registrar.

By the Court



Justice Bruce Robertson



Representation:

The Application seeking Permission to Appeal was considered on the papers.

The Applicant 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.