



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

Neutral Citation: [2022] QIC (F) 13

CASE No. CTFIC0018/2022

IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT

14 August 2022

BETWEEN:

MIECZYSLAW DOMINIK WERNIKOWSKI

Claimant

v

CHM GLOBAL LLC

Defendant

JUDGMENT

Before:
Justice George Arestis
Justice Rashid Al Anezi
Justice Fritz Brand

ORDER

1. The defendant shall pay to the claimant the sum of Thirty-Three Thousand Qatari Riyals (QAR 33.000).
2. Failing payment in full of the foregoing sum within 21 days of the issue of this judgment the claimant shall further be entitled to recover from the defendant interest on any outstanding sum at the rate of 7% per annum from that date until payment.
3. The claimant is entitled to recover from the defendant such reasonable costs, if any, he has incurred in raising and pursuing his action, to be assessed by the Registrar if not agreed.

JUDGMENT

1. The claimant is Mieczyslaw Dominik Wernikowski, a Polish national. The defendant is CHM Global LLC, a corporate entity established in the Qatar Financial Centre. The claim is for benefits allegedly owing to the claimant by the defendant in terms of a written employment contract (the employment contract) which was entered into in March 2021 in terms whereof the claimant was employed by the defendant as Offshore Marine Consultant. The claim was formulated under the following four headings:

- (a) Unpaid salary from 1 April 2021 until 16 May 2021 in the sum of QAR 33,000.
- (b) Additional payment in the sum of QAR 2,200 for work done during Eid holidays in 2021.

(c) Damages in an amount of QAR 30,000 resulting from a travel ban imposed on the claimant by the authorities at the behest of the defendant.

(d) Accommodation allowance in the sum of QAR 5,750 incurred by the claimant while in quarantine upon his arrival in Doha.

2. The case was allocated by the Registrar to the small claims track in accordance with Practice Direction no. 1/2022 of this Court. As contemplated by paragraph 9 of this Practice Direction, the case is to be determined on the written material filed and served by the parties unless either (a) one or more of the parties' requests an oral hearing or (b) the Court considers it desirable to hold an oral hearing. Since neither party requested an oral hearing and we find no reason to consider such a hearing desirable, we decided to determine the case on the written material filed by the parties. Included amongst such written material were the following:

(a) The claimant's claim form dated 24 March 2022 together with annexures.

(b) The defendant's response dated 5 May 2022 together with annexures.

(c) The claimant's reply dated 22 May 2022.

(d) The written answers submitted by both parties on 2 July 2022 in response to requests for further information by this Court.

3. The terms of the written employment contract between the parties are not in dispute. Nor was it in dispute that the employment relationship between the parties was terminated on 26 October 2021. But various disputes were raised on the papers regarding matters such as the defendant's business reputation; the way in which the defendant treated its employees in general; as to whether the claimant turned up for work regularly during the period of his

employment; as to whether the claimant was obliged to return his port pass to the defendant upon termination of his employment; and so forth. But as we see it these disputes are of no relevance to the outcome of the claimant's claims. In consequence we will have no regard to them. The defendant also raised certain expenses allegedly incurred by it pertaining to the claimant's employment, but in the absence of any counterclaim for repayment of these expenses, we find these allegations equally irrelevant.

4. The claimant's first claim arises from the fact that while the claimant was employed in terms of the written employment contract from 1 April 2021, he was only able to take up his duties on 16 May 2021. The delay was due to matters beyond the control of both parties, such as the claimant's difficulties in acquiring an entry visa into Qatar and the fact that upon arrival in Doha he was placed under mandatory hotel quarantine for 7 days as a result of the Covid pandemic. It is not disputed by the defendant that the claimant's salary for this period amounted to QAR ,33000 in aggregate and that he received no payment of this amount or any part thereof. The defence raised by the defendant is that the claimant was not entitled to his salary because he was not engaged in the activities of the defendant during this period.

5. When asked by the Court to motivate this defence with greater particularity, the defendant responded as follows:

“As stipulated in the previous submissions by the defendant the claimant was offered an employment opportunity as an Offshore Marine Consultant and was provided a draft employment contract in the month of March 2021 in accordance with the provisions of the QFC Employment Regulations so as to keep the claimant informed of all the terms of employment. All the arrangements for obtaining work visa and other formalities relating to employment was initiated only after providing the Employment Contract. Once the draft

employment contract was mutually accepted by the parties in April 2021 all the formalities as mentioned above were completed in due course of time and the claimant was able to travel to Qatar in the month of May and commenced his employment on 16 May 2021.

The claimant upon commencing his employment in May 2021 enquired with the defendant as to whether he will be entitled to any salary between the period beginning from April 2021 up till the date he commenced his employment on. The defendant clearly communicated with the claimant that any salary which shall be paid to the claimant will only be calculated from the date the claimant commenced his employment. This was readily accepted by the claimant and no claim (either formally or informally) regarding the non-payment of salary was raised by the claimant during his period of employment with the defendant and it can be implicitly inferred that this claim is fabricated and does hold any substantive value.”

6. Despite the strong terms in which it was put, we do not believe the defence thus raised can be sustained. In terms of clause 12.1 of the employment contract it is “*governed by and will be construed in accordance with the QFC Employment Regulations*”. The articles in the QFC Regulations we find pertinent are the following:

“17 **Employment Contract.**

17.1 The employer shall give each employee a written employment contract which shall include at a minimum:

- (a) the name of the employer and the employee
- (b) the date of the commencement of employment
- (c) the employee’s salary or method of calculation of salary

...

27 **No unauthorised 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 by 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.”

7. The commencement date of employment is stated in the employment contract as 1 April 2021. In terms of the contract, the claimant was therefore entitled to his salary as from that date. The fact that he was unable to take up his duties for reasons beyond his control did not entitle the defendant to make any deductions from his salary under article 27. The defence that the claimant expressly or impliedly by conduct agreed to this deduction is precluded by article 27(2) which effectively declares such agreement invalid and of no effect, unless recorded in writing. No such written agreement is contended for by the defendant. That is why we find its defence against this claim unsustainable.

8. As to the claim for additional payment of QAR 2,200 as compensation for work done during the Eid holidays, the position is governed by clause 7.3 of the employment contract which provides that “*If the employee is requested to work during such holidays [including Eid holidays] he must be compensated with another rest day*”. No provision is made in the contract

for compensation by way of a salary payment in lieu of such holiday as is provided for, by way of example, with regard to accrued annual leave in terms of clause 7.6. In any event, the defendant contends that the claimant had in fact been provided with rest days as stipulated in clause 7.3 and we have no reason to reject that answer. In the result, this claim cannot succeed.

9. As to the claimant's claim for accommodation in the sum of QAR 5,750 while being in mandatory quarantine, we agree with the defendant's answer that this claim is excluded by clause 6.1(a) of the employment contract which pertinently provides that "*employees will be responsible for their accommodation arrangements*". It is true, as pointed out by the claimant in reply, that he could not be expected to pay for his own accommodation while not entitled to being paid. But since we hold that the claimant is indeed entitled to payment of his salary during the period of his quarantine, this argument takes the matter no further. It follows, that this claim must also fail.

10. This brings us to the claimant's claim for damages in an amount of QAR 30,000 allegedly caused by a travel ban imposed on him by the authorities at the behest of the defendant. In this regard it is not denied by the defendant that the travel ban had been imposed by the authorities on the claimant at its request. The defence is that the request was justified because the claimant was in the process of seeking employment with a competing company. In support of this defence the defendant relies firstly on clause 11 of the employment contract and, secondly on article 19(1)(D) of the QFC Employment Code. The latter provision clearly finds no application because it only binds an employee during the course of his or her employment. Hence it cannot apply in this case where the employment contract had by all accounts already been terminated when the travel ban was imposed.

11. Clause 11 of the employment contract provides:

“11 Non-Compete

11.1 For a period of 12 months after the termination of this agreement you shall not either on your own or in concert with another party, solicit or seek business from any customers or clients of the company who were customers or clients of the company at any time during the 12 months immediately preceding the termination of this agreement.”

12. The clause therefore only prohibits the employee from soliciting or seeking business from customers or clients of the defendant. There is no allegation that the claimant had done any one of these things. Consequently, the clause does not apply. This means that the defendant acted wrongfully in instigating the imposition of a travel ban on the claimant by the authorities. In principle the claimant is therefore entitled to the damages he suffered as a result of this wrongful conduct. Our difficulty lies with the formulation and quantification of this claim. In his claim form the claimant alleged that he suffered this loss, *“towards air ticket prices, car rent, medical appointments etc”*. When pertinently asked by this Court to elaborate on how this claim for damages was calculated and arrived at, he alleged that, as a result of the travel ban *“I could not attend medical and lost opportunity. QAR 30,000 is my claim towards lost earnings equal to one month’s salary from mentioned company”*. Apart from the apparent conflict in the alleged cause of the loss, we find this formulation inadequate to support and substantiate the claim. Although we are prepared to accept that the claimant probably suffered some loss, it is not for the Court to assist the claimant by constructing a claim for him without supporting evidentiary material. This is particularly so when the claimant had been specifically asked and afforded ample opportunity to provide such material but had failed to do so. In the result this claim is also bound to fail.

By the Court,

[Signed]

Justice Fritz Brand



A signed copy of this judgment has been filed with the Registry.

Representation:

The Claimant was self-represented.

The Defendant was represented by Mr. Rahul Kumar of International Law Chambers LLC,
Doha, Qatar.