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: [2023] QIC (F) 39

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 23 August 2023

CASE NO: CTFIC0006/2023

MARK KROMBAS

Claimant

v

EPICURE INVESTMENT MANAGEMENT LLC

Defendant

JUDGMENT

Before:

Justice Dr Rashid Al-Anezi

Justice Fritz Brand

Justice Yongjian Zhang

Order

1. The Defendant must pay the Claimant the sum of QAR 305,630 within 14 days of the date of this judgment.

2. The Defendant is ordered to pay to the Claimant interest on the sum of QAR 305,630, calculated at 5% per annum from the date of the judgment until the date of full payment

3. The Defendant is ordered to pay the Claimant's reasonable costs of the proceedings, such costs if not agreed to be assessed by the Registrar.

Judgment

The Facts

1. The Claimant is Mr Mark Krombas (the '**Claimant**'), a British national who had resided in the State of Qatar until after he filed this case. The Defendant, Epicure Investment Management LLC (the '**Defendant**'), is a company registered in the Qatar Financial Centre ('**QFC**') under License No. 00676. The Defendant is a wholly-owned subsidiary of Epicure Holdings, which is in turn wholly-owned by Qatar Insurance Company QSPC ('**QIC**'), a company incorporated in the State of Qatar but outside the QFC. QIC and Epicure Holdings are not parties to this case.

2. The Defendant was established in 2019 as an investment management company wholly-owned by QIC.

3. The Claimant was employed by QIC on 1 October 2012. He was hired for the position of Vice-President and Head of QIC's GCC Equities, and was responsible for launching that fund.

4. Whilst employed with QIC the Claimant, in addition to his salary, allowances and other benefits (e.g. health insurance, children tuition fees, etc.), always received a yearly bonus.

5. Due to QIC's internal restructuring, the Claimant was informed that he would be moved to the Defendant. On 2 September 2021, the Claimant was provided with an offer of

employment with the Defendant (the '**Offer of Employment**'). The Offer of Employment set out the terms and conditions of the Claimant's employment with the Defendant.

6. There were two funds at the Defendant: one was managed by the Claimant and the other was managed by another employee (Mr Jose). Both the Claimant and Mr Jose were performing similar functions in managing their respective funds. Therefore, the Defendant decided to merge the two funds and assigned the combined fund to Mr Jose. Accordingly, the Claimant's employment with the Defendant was considered surplus and redundant in accordance with clause 4.5.12(6)2 of the Human Resources Policy (the '**HR Policy**').

7. The Claimant's redundancy was communicated to him on 7 December 2022 via email wherein it was explained that the equity team managing the GCC Fund (with the exception of the GCC Fund Manager) had been merged with the equities team headed by Mr Jose, and two options were given to the Claimant: (i) immediate termination with effect from 7 December 2022; or (ii) termination with effect from 1 March 2023. The Claimant chose the first option, i.e. immediate termination. Consequently, the Defendant issued a Termination Letter dated 8 December 2022 to the Claimant stating that his employment had been terminated pursuant to article 23 of the QFC Employment Regulations 2020. The Defendant offered the Claimant a payment equivalent to six (6) months' salary in lieu of a notice, and offered to pay all the end of service benefits.

8. The Defendant actually paid the Claimant the following: salary for December 2022 for 7 days, 6 months' notice pay, end of service benefits, encashment of annual leave, and one month's basic salary as a redundancy bonus, the total of which was QAR 696,850, and which was transferred to the Claimant's bank account on 4 January 2023. The Defendant, however, did not pay the Claimant's air tickets because the latter refused to sign the requested Discharge Note.

9. The Claimant claimed his 2022 bonus but that was rejected and therefore he sought the assistance of the QFC Employment Standards Office. Exchanges of emails between the Employment Standards Office and the Defendant did not solve the problem as the Defendant claimed that it paid the Claimant all his entitlements under the contract and

the HR Policy, including one month's basic salary as a redundancy bonus as stipulated in clause 4.5.12(e)VII of the HR Policy. The Defendant insisted that the Claimant had no right to a performance bonus.

10. The Claimant accordingly withdrew his complaint with the Employment Standards Office via an email dated 4 January 2023, and referred the case to this Court.

11. In answer to the claim, the Defendant filed a Statement of Defence in which it applied for summary judgment, in terms of Practice Direction No. 2 of 2019, on the basis that the claim had no prospect of success.

12. The Court rejected the summary judgment application on 1 May 2023 ([2023] QIC (F) 15) and proceeded to a trial, held virtually on 30 July 2023. At the hearing, both parties were legally represented.

Claimant's arguments

13. The Claimant advanced the following arguments in support of his claim:

    i. QIC and the Defendant are actually one entity. The Claimant's work for the Defendant was exactly the same as performed for QIC, namely managing the team which was responsible for the QIC GCC Equities Fund. The Claimant continued to work at the same building and at the same desk as when employed by QIC, and the notice period in the Employment Offer with the Defendant (6 months) was the same as agreed with QIC. The HR Policy was one. Therefore, the employment relationship between the Claimant and the Defendant was a continuation, with the same rights and duties of the initial employment relationship between the Claimant and QIC.

    ii. Indeed, all salaries, allowances and bonuses form the nucleus of the wide concept of salary and therefore must be paid upon the termination of the Claimant's employment contract. A performance bonus was received by the Claimant throughout the entire duration of his employment with QIC and Epicure, and it must be legally treated in the same way as the salaries or allowances.

iii. The Claimant received a bonus for each year of his employment with QIC from 2013-2020, and with the Defendant in 2021; in fact, the Claimant was paid a bonus for 2021 by the Defendant although he was employed by it only from 2 September 2021. The bonuses received ranged from approximately QAR 250,000 to QAR 421,000. The Claimant states that it can be inferred from the above that the right to a bonus is an implied provision of the contract, and the Defendant's decision to withhold the Claimant's bonus, therefore, is unlawful, discriminatory and extremely unfair; it is also a breach of the QFC Contract Regulations 2020.

iv. The average bonus from 2013-2021 was QAR 319,000. Further, the Claimant worked for 343 days out of the 365 days for the year 2022. Based on the Claimant's days worked in 2022, the Claimant requests the payment of a bonus in the sum of QAR 300,000.

v. Since the Claimant started proceedings against the Defendant, he was not able to sign the Discharge Note, and therefore the Defendant had refused to fulfil its contractual obligation in respect of air fares. Consequently, the Claimant booked and paid for three economy tickets for himself, his wife and son to return to London, for which he requests reimbursement in the sum of QAR 5,630.

vi. The Claimant also asks the Court to order the Defendant to reimburse him for costs incurred in connection with the preparation and conduct of these proceedings.

The Defendant's case

14. The Defendant advanced the following arguments:

i. The Claimant was made redundant when the Defendant decided to merge the two funds into one and thus the Defendant's job was no longer available. Redundancy was defined in the HR Policy as the "*elimination of an approved occupied position from the organization, normally in conjunction with a planned reorganization or workforce right sizing*". The said policy stated that

upon redundancy, the employee is entitled to one month's salary as a redundancy bonus, which had been paid to the Claimant.

ii. The Offer of Employment, the contract and the HR Policy did not provide for the payment of any bonus whether discretionary or otherwise, and thus the claim lacks legal basis.

iii. Whilst it is admitted that the bonus was paid to the Claimant by QIC on a yearly basis, the practices of QIC cannot be equated with the practices of the Defendant for claiming a bonus, since QIC and the Defendant are two companies with distinct legal personalities.

iv. The Claimant cannot claim a performance bonus as a matter of right on a legal or a contractual ground, since the said awarding of such a bonus was at the total discretion of the Defendant.

v. The Defendant paid the Claimant all his benefits mentioned in clause 4.5.12 (d) of the HR Policy, thus adhering to all contractual and legal obligations binding the Parties, including all obligations as per the HR Policy.

vi. It is admitted that the Claimant is entitled to the flight tickets for himself, his spouse and child from Doha to his base country upon termination. The Defendant is ready to make those payments to the Claimant. The Claimant is required to sign the Discharge Note, which he has failed to do so.

vii. Consequently, in view of existing legal precedents and the contractual relationship between the Parties, the Claimant is not entitled to an any bonus.

viii. Accordingly, the Defendant requests the Court to order that the Claimant's claims be dismissed with costs.

Jurisdiction

15. Since the Defendant is established in the QFC, it follows that this Court has jurisdiction to determine the dispute between the parties in terms of article 9.1.3 of its Regulations and Procedural Rules.

Analysis

15. The Claimant argues that QIC and the Defendant are in practice one entity and that the new employment with the Defendant is a continuation of the employment with QIC, with all the benefits and entitlements therein, including performance bonuses.

16. The Court cannot accept this argument. In the opinion of the Court, QIC and the Defendant are two companies with distinct legal personalities. The Court understands that the Defendant is a company wholly-owned by QIC and therefore some connections exist between them. What is important to the Court is whether such a relationship has any impact on the Claimant's entitlement to a performance bonus. In the opinion of the Court, the relationship between the two companies is of organisational nature that bears no impact on Claimant's entitlement to a performance bonus. If for any reason the Claimant is entitled to a performance bonus, it is because of his relationship with the Defendant only.

17. The Claimant argues that his entitlement to a bonus is an implied obligation consistent with article 89(2) of the QFC Contract Regulations 2020. The Court does not share this interpretation. The Court rather considers that the provision regarding bonuses in the HR Policy, which the Court considers incorporated into the contract, is an explicit provision. Bonus was mentioned many times in the HR Policy, for example in clauses 5.2.5 (a), 5.2.6(a) and 7.2.3.(b). The Claimant is entitled to bonus as a matter of right but only when its provisions apply, the most important of which is the discretionary power of the Defendant. But is this power unrestricted?

18. The Defendant argues that the bonus provisions in the HR Policy are not a matter of right, but rather subject to the discretionary power of the Defendant. The term "*discretionary*" has not been defined anywhere in the official documents of the Defendant or QIC, but it can be clearly inferred from clause 5.2.6 of the HR Policy which states the following:

> *If an annual performance bonus is decided to be distributed, it will be paid after the closing of the final accounts for each financial year, to Employees who achieve outstanding performance and productivity levels during the previous year.*

19. This clause clearly sets out the rules governing performance bonuses as follows: after the closing of its final accounts, the Defendant will decide whether to distribute annual performance bonuses or not. This is a purely discretionary decision depending on financial results. But, once the Defendant decides to distribute performance bonuses, its discretion is limited. The bonus cannot be withheld from a particular employee on a basis other than that he has failed to achieve the level of outstanding performance or productivity during the previous year. More pertinently, the Defendant is not permitted, in the exercise of its discretion, to discriminate between employees who have all met these requirements.

20. The Court does not question the discretionary power of the Defendant to give bonuses; but, in the opinion of the Court, this power is not without limitation. On the contrary, it is governed by several restrictions, the most important of which is that it is not permitted to discriminate between employees on irrational or capricious grounds.

21. The measures taken by the Defendant against the Claimant can be characterised as discriminatory in nature. Firstly, the Defendant terminated the Claimant's contract three weeks before the end of the financial year 2022 on the basis of merging two investment funds which resulted in his redundancy, in circumstances in which there seems to be no reason why it could not have delayed the termination of the Claimant's employment until the beginning of the next financial year. It is true that the Claimant was given the option of immediate termination with effect from 7 December 2022 on the one hand, and termination in March 2023 on the other hand, and that the Claimant voluntarily opted for the former. But, it is equally true that the Defendant made it very clear to the Claimant that its preference would be for him to take the first option. Even more significantly, it was in no way suggested to the Claimant at the time that the option of immediate termination would result in the forfeiture of his substantial annual bonus as the Defendant now seeks to argue. This goes to show, in our view, that the discretion of the of the company's senior management was exercised in a way that was unreasonable and unfair. Moreover, the Court believes that the timing of the

termination, three weeks before the end of the financial year, can be ascribed to an ulterior motive, namely to avoid paying him his annual bonus to which, according to the Defendant's own case, it had no other reason to do so

22. In addition, the Defendant granted all employees of the company, including the working group headed by the Claimant, a bonus for the financial year 2022. This can be seen as the performance of the fund was extraordinary and that they deserved a performance bonus; the supervisor of the fund should have been given a performance bonus, too. The only reason advanced by the Defendant why he was not was that he left before the end of the financial year, which we find unpersuasive. This means that he was discriminated against without rational grounds. Since the Defendant's discretion was not unfettered, we hold that it had not been properly exercised as claimed by the Defendant.

23. Stated somewhat differently, the Defendant did not provide any evidence that the Claimant did not perform his duties well. On the contrary, the figures proved that the fund he managed had achieved good results. In addition, the Defendant granted his subordinates working in the same fund for which the Claimant was responsible a performance bonus, which proves that the denial of Claimant of the bonus was not based on rational grounds but on a basis which was irrational, capricious and unfair. In considering the Defendant's conduct, sight should not be lost of the fact that the relationship between an employer and employee is one based on confidence and trust. As Lord Hoffmann explained in *Johnson v Unisys* [2001] UKHL 13 (at paragraphs 35 and 36):

> *At Common Law the contract of employment was regarded by the courts as a contract like any other. The parties were free to negotiate whatever terms they liked…. But over the last 30 years or so the contract of employment has been transformed. It has been recognized that a person's employment is usually one of the most important things in his or her life. … The law has changed to recognize this social reality …. The contribution of the common law to the employment revolution was the evolution of implied terms in the contract of employment. The most far reaching is the implied term of trust and confidence.*

24. While recognising that we are not applying English law, we find no reason why the essential principle of trust and confidence should not apply to employment relationships in this jurisdiction as well. And, as we see it, the Defendant had acted in

breach of that requirement of trust when it deprived the Claimant of his annual bonus without any reasonable ground to do so.

25. It is contended that the discretion exercised by the Defendant has not been exercised in an arbitrary or capricious manner. The Defendant cited the case of *Midland Bank PLC v. Edward John Buchanan McCann* [1998] EAT, 23 July 1998 (EAT/1041/97), in which the Employment Appeal Tribunal held that an employer who is exercising a discretion is under no obligation to do so "*reasonably*", but that he must not exercise his discretion in such a way to destroy the relationship of trust and confidence which must exist with his employees. The Court believes that this case operates against the Defendant: by targeting Claimant in this manner in the exercise of its discretion, the Defendant had destroyed the relationship of trust and confidence which must exist with employees, thus rendering Defendant's exercise of discretion unreasonable.

26. The Defendant referred to further legal precedents of this Court and the Courts of England and Wales. The conclusion of these cases is that the exercise of discretion by senior management in awarding bonuses are subject to certain limitations. The Court does not see in these precedents anything that contradicts its finding that the discretionary power exercised by the Defendant in this case was exercised improperly.

27. The Defendant's witnesses argued that one of the conditions for granting the bonus, in addition to the discretionary power of the company, is that the worker must spend a full calendar year in service. The statements of the witnesses came in a similar paragraph, and all the witnesses acknowledged that their statements were written in coordination with the Defendant's lawyer. The relevant section is as follows:

> *All employees are eligible for benefits depending on their position and employment contracts. There is no policy in the HR Manual stipulating the payment of any bonus to the employees. Bonuses have been paid to employees depending on their performance in a particular year and only individuals who have completed one full financial year has been paid bonuses for the said year. Bonuses are paid at the end of a financial year which is upon the strict discretion of the management of QIC and factors such as financial performance of the company during that particular year play a major role in such decisions. The payment of a bonus is not a fundamental right of an employee rather a privilege subject to performance of the company and at the discretion of board and management. Performance bonuses are paid with an intention to*

acknowledge the contribution of the employees by increasing their morale, targeting at higher retention of employees.

28. This practice was not substantiated. The witnesses referred during cross examination to one or two cases without identifying any solid practice to this effect. That notwithstanding, there was no explanation as to why the Claimant was awarded a bonus in 2021 despite only having worked for part of that year.

29. In view of the clear provisions of the HR Policy, the Defendant cannot rely on unsubstantiated and vague evidence of a practice which would in any event appear to be unjust and unfair (because it would deprive an employee who had worked for one day less than a year of his annual bonus) to deny a bonus that otherwise would have been awarded to Claimant, where such bonuses were given by the Defendant to the Claimant's subordinates in 2022.

30. Furthermore, Mr Doshi who was a member of the Board and later CEO of the Defendant, denied in his evidence that the reason for not giving the Claimant a performance bonus was because he did not work for the whole of 2022; rather, he relied upon the absolute discretion of the Defendant.

31. To sum up, the Claimant's case is well founded.

By the Court,

[signed]

Justice Dr Rashid Al-Anezi

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

Representation

The Claimant was represented by Mr Ricardo Cid of the Essa Al-Sulaiti Law Firm (Doha, Qatar).

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