



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: [2024] QIC (F) 60

IN THE QATAR FINANCIAL CENTRE
CIVIL AND COMMERCIAL COURT
FIRST INSTANCE CIRCUIT

Date: 29 December 2024

CASE NO: CTFIC0025/2024

CHRISTIAN FRIEDRICH LINHART

Claimant

V

OOREDOO GROUP LLC

Defendant

JUDGMENT

Before:

Justice Fritz Brand

Justice Dr Muna Al-Marzouqi

Justice Dr Yongjian Zhang

Order

1. The Defendant is to pay the Claimant:
 - i. The sum of QAR 1,015,376 together with interest on the said amount calculated at the rate of 5% from 7 March 2024 until the date of payment. Payment is to be made no later than 5 January 2025.
 - ii. The reasonable costs incurred by the Claimant in pursuing his claim, to be assessed by the Registrar if not agreed.

Judgment

1. The Claimant, Christian Friedrich Linhart, is a German national who resides with his family in the State of Qatar. The Defendant is Ooredoo Group LLC, a company that is 100% owned by Ooredoo Q.P.S.C and established in the Qatar Financial Centre (the ‘QFC’) where it is licensed to do business, inter alia, in the field of internet technology and artificial intelligence. The present dispute has its origin in a contract of employment entered into between the parties on 3 May 2015 (the ‘**Employment Contract**’). Accordingly, this Court has jurisdiction to determine the dispute by virtue of article 9.1.3 of the Court’s Regulations and Procedural Rules since it arises from a contract involving an entity established in the QFC. In addition, clause 16 of the Employment Contract expressly provides that the contract will be governed by the laws of the QFC, and that disputes arising shall be subject to the jurisdiction of this Court.
2. Although the Claimant was initially engaged by the Defendant in the capacity of Executive Director - Group Procurement, he was promoted in 2016 to the position of Group Chief Procurement Officer. As reflected in the published organisational structure of the Defendant, the Claimant thus occupied a very senior position in the company hierarchy of this very large international group, reporting directly to the Deputy Group Chief Executive Officer, who in turn reported directly to the Managing Director and Group Chief Executive Officer. By all accounts, he was very successful in what he did, as appears for instance from the fact that he was acclaimed as one of the top ten

procurement executives in the telecommunications industry by an international publication in 2023. Hence, it must have come to him as an unpleasant surprise when he was notified at a meeting on 24 May 2023, attended by both the Group Chief Executive Officer, Mr Aziz Fakhroo, and the Deputy Group Chief Executive Officer, Sheikh Mohammed Al-Thani, that in accordance with the company's nationalisation policy, he was to be replaced by a Qatari national within an 18-month timeframe.

3. It is common ground that the employment relationship between the parties was terminated when the Claimant resigned on 15 October 2023 with effect from 15 January 2024. In the event, this gave rise to the present litigation. According to the Claimant's Claim Form, the relief claimed is essentially twofold. First, for damages based on unfair and/or constructive dismissal in an amount equivalent to the Claimant's salary and other benefits calculated from 15 January 2024 to date of judgment, and second, for the additional benefits that the Claimant would have received if his performance assessment was established at grade 5 (as it allegedly should have been) instead of the assessment of grade 3 which he actually received. The exact nature of these claims and the disputes arising therefrom will be better understood against the background that will follow.
4. Following the exchange of pleadings and the disclosure of documents by the Defendant compelled on applications by the Claimant, an in-person hearing was held in this Court on Monday 9 December 2024 during which both parties were legally represented. At the hearing, the Claimant gave evidence in support of his case. While no witnesses were called on behalf of the Defendant, three of its employees were summoned on application by the Claimant for cross examination on his behalf. They were Mr Saad Al-Kuwari, who was the Claimant's former deputy, Ms Sukhi Ghataore, who was the Defendant's senior director of Human Resources at the time, and Mr Rene Werner who is employed by the Defendant as its Group Chief Strategy Officer. As it turned out, the relevant facts proved to be generally undisputed. In consequence, I propose to narrate these facts without reference to the evidential source from which they hail, save where the context requires otherwise.
5. Following the meeting of 24 May 2023 where the Claimant was informed that he was to be replaced by a Qatari national, the Claimant sought a meeting with his direct line

manager, the Deputy Group Chief Executive Officer ('DGCEO'), which was held on 29 May 2023. At that meeting, the DGCEO articulated that he would like to see a handover of the Claimant's duties to the Group Chief Transformation Officer within 2 to 3 months. Furthermore, the DGCEO confirmed that the Claimant would be entitled to his full employment benefits and bonuses until the end of 2023. This was subsequently reaffirmed by the Defendant's Group Chief Human Resources Officer.

6. On 23 July 2023 the Managing Director and Group Chief Executive Officer formally told the Defendant's staff by email (*emphases added*):

I wanted to take a moment to share some recent changes that have taken place.

Our colleague Christian Linhart, currently the Group Chief Procurement Officer, will be handing over his responsibilities in August and will be providing ongoing support as necessary till the end of the year. Christian first joined the Group in 2015 and was appointed GCPO in 2016. During his years of leadership, he has played a key role in the company's organisational transformation programme, optimizing and aligning Ooredoo's local procurement and sourcing strategies, and centralizing spend of global categories. Key achievements were the major saving initiatives for Capex Restart 1.0 until 3.0, implementing the first cloud-based platform across all Op Cos and building sustainable procurement functions in the Op Cos as well as a strong OGSS team in OG. Christian was also externally recognized by Procurement Leaders as one of top 3 CPOs in APAC and for several years chosen as a global judge for the World Procurement Awards in London. Upon Christian's departure, Saim Yaksan will be overseeing the further procurement transformation as Acting GCPO, in addition to his current duties as Group Chief Transformation Officer. Saim has extensive experience in Procurement and Supply Chain Management, having held previously several CPO roles for major Telecom Companies.

7. As envisaged in the Managing Director's email, the Claimant formally handed over his functions to Mr Yaksan in August 2023. Thereafter, the Claimant no longer went to his office on a regular basis. Yet he was always available, so he testified, to assist and attended meetings with customers, suppliers and members of the Defendant's staff when required to do so. Until 13 December 2023, he retained his parking space, his access card, his email address, and was invariably referred to by the Defendant as its Group Chief Procurement Officer.
8. Towards the end of September 2023, the Claimant was requested by the Defendant's HR Department to tender his formal resignation by no later than 15 October 2023,

failing which his services would be terminated by Defendant upon 90 days' notice as contemplated by his Employment Contract. The Claimant thereupon sought information from the Human Resources Department as to what the practical difference in effect would be between “*resignation*” by him, on the one hand, and “*termination*” of his services by the Defendant, on the other. To this enquiry Ms Sukhi Ghataore, the Senior Director of HR, responded by email dated 10 October 2023 in the following way:

Thank you for your email and the queries below.

In terms of the LTI, Bonus and end of service there will be no difference in what you receive whether you are terminated, or you resign. There usually is a difference (you wouldn't get pro-rated LTI for example if you resign), but in your case, it's been agreed and approved internally that it will be the same.

We can issue the termination letter if you prefer. However, we wanted to give you the option to resign. Some people prefer this option as it gives them control over the narrative and how they explain their departure – they feel it's better for their career and their mental wellbeing going forward. This option is not given to most people, but given your contribution to the organisation, you have the option to resign with no impact on your end of service benefits.

Please let us know your preference as if you do not want to issue your resignation, we will go ahead and issue the termination letter at the end of this week/early next week ...

9. With regard to specific questions by the Claimant regarding the effect of his resignation, the Defendant's HR Department confirmed, inter alia, that his Long-Term Initiative ('LTI') for 2023 would be “*prorated 12,5 out of 36*” until 15 January 2024 and that his bonus and other benefits for 2023 “*would be based on [his] year end scorecard (calculated by OG Strategy)*”. Relying on these assurances, the Claimant then submitted his formal letter of resignation on 15 October 2023 with effect from 15 January 2024. Eventually, the Claimant received an email from the Defendant's HR Department on 16 January 2024 thanking him for his long years of service and confirming that his last day of service was on 15 January 2024.
10. In the meantime, the Claimant received several payments. The first was in terms of a document signed by the Claimant on 11 November 2023 in which he ostensibly acknowledged “*this as full and final settlement*” and that “*I will not have any further claims in regard to my employment with the Co*”. We say “*ostensibly*” because it is

common ground that the Claimant received several subsequent payments. On 19 December 2023, he received QAR 3,762,459.47 comprising, inter alia, his monthly salary, the balance of his leave benefits, the price of the off-boarding air tickets for him and his family, and his LTI for 2021 and 2022; and on 26 January 2024 he received QAR 349,261.39. Yet, it was understood at the time that his annual performance bonus was still to come in that it would be based on his performance assessment or scorecard to be finalised by the Group Strategy Officer, Mr Rene Werner, and his department in 2024.

11. In terms of the Defendant's comprehensive Employee Policies Statement document (the '**HR Policy Document**'), it is explained that since "*the company believes in rewarding all employees for the contribution they make in delivering business objectives*", performance bonuses are regarded as part of an employee's compensation. The HR Policy Document proceeds to explain that performance ratings are divided in 5 categories. The highest category, category 5, requires outstanding performance, which consistently far exceeds outcome of objective; category 4 is for performance consistently exceeding expectations; category 3 requires that the employee delivers agreed and expected results and is considered a solid contributor; category 2 is for employees whose performance is marginally below target; and employees in category 1 demonstrate a need for development.
12. The HR Policy Document further provides in express terms that the performance assessment is not an arbitrary determination but one based on evidence and after regular discussions with the employee concerned, which discussions are to take place at least twice a year: one at mid-year during July, and the other at the end of the assessment year in January/February. During the end-of-the year discussion, so the HR Policy Document explicitly provides, an attempt must be made to agree the overall rating with the employee. Hence the employee also has an input in the determination of his or her performance rating. In fact, the document expressly provides that "*ratings will be decided for each performance objective (KPI/DKR) in the annual review by joint agreement between managers and their employees*". What is also underscored in the HR Policy Document is that performance assessment is not to be applied capriciously or at random. By contrast, it is to be based on fact and applied consistently across the board in the whole company.

13. According to the Claimant, he expected a performance rating of 4 or 5 for 2023, inter alia, on the basis that (i) during his tenure of more than 8 years in the employment of the Defendant, he never received a rating of less than 4; (ii) his rating for 2021 and 2022 was 5; and (iii) to his knowledge, the procurement team for which he was responsible performed well in 2023. It is common ground that for the year 2023 and for employment grades 1-4, which applied to the Claimant who was in employment grade 2, annual bonuses were calculated on the basis that a score of 3 would entitle the employee to a bonus equivalent to 8 months' salary; a score of 4 would entitle the employee to a bonus equivalent to 11 months' salary; while a score of 5 would entitle the employee to a bonus equivalent to 16 months' salary.
14. During February 2024, so the Claimant testified, he was told by his erstwhile deputy, Mr Saad Al-Kuwari, that the Group Chief Procurement Officer position occupied by the Claimant was awarded a score of between 4.5 and 4.8, which in accordance with company policy, would be rounded off to 5. But, on 3 March 2024, and before the Claimant had heard anything from his direct line manager, Sheikh Mohammed Al-Thani, the Claimant received a telephone call from Ms Sukhi Ghataore who informed him that his performance assessment for 2023 was that of a "*solid performer*", which is a 3. The reason why his score was downgraded from a 5 to a 3, she explained, was that he was regarded by the company as having been on "*garden leave*" since August 2023. The Claimant immediately asked for his written scorecard but was told that he had to ask the Group Human Resources Officer, Ms Fatima Al-Kuwari.
15. On 7 March 2024, the Claimant received his bonus payout totalling QAR 1,015,376, which was the equivalent of 8 months' salary and was accordingly based on a score of 3. He immediately emailed Ms Al-Kuwari to ask for his scorecard and was promised that he would receive it within two days. When this did not happen, he asked again, but without success. Eventually he was told that, due to another individual assuming the role of Group Chief Procurement Officer in the meantime, the year-end scorecard was regarded as confidential, and he was not entitled to see it. Eventually the Claimant was compelled to seek a disclosure order from this Court to obtain insight from the relevant documents.

16. The documents thus disclosed drives one to the conclusion that there never was a scorecard pertaining to the Claimant which reflected a score of 3. What happened, so it transpires from the documents that the Defendant was compelled to disclose, is that the score of 3 resulted from an email by the Managing Director and Group Chief Executive Officer, Mr Aziz Fakhroo, dated 22 February 2024, to the Remuneration & Nomination Committee of the Defendant in the following terms:

Ref: MD-02-2024-030-GCHR/RNC

Date: 22-02-2024

Memorandum to the Ooredoo Q.P.S.C. Remuneration & Nomination Committee

Subject: 2023 Performance Rating of Christian Linhart- former Group Chief Procurement Officer

Christian Linhart, former GCPO's last working date was 15 January 2024. As per policy, he is entitled for a performance rating and bonus for 2023. As per RNC resolution no. No. (97)(1/2024) dated 18 February 2024, the GCPO 2023 scorecard rating was approved at 4.82.

*However, as Christian was on paid garden leave from August 2023 to January 2024, and effectively has worked 6 to 7 months only in 2023 (as Saim Yaksan was acting GCPO), we recommend Christian's personal performance rating to be **Solid Performer, i.e. 3**. This would be a fair evaluation of his contribution to the company and the GCPO scorecard in 2023. I request your approval on the recommended performance rating and payment of Christian's performance bonus as per the recommended performance rating of "3".*

17. The direct causal link between this email and the reduction of the Claimant's score to 3 appears from the Resolution issued by the Remuneration and Nomination Committee at its meeting of 26 March 2024 in the following terms:

In accordance with the Group Management Memo No (MD/02/2024/030/GCHR/RNC) dated 22 February 2024 regarding the Performance Rating of Mr Christian Linhart (former Group Chief Procurement Officer) for the year 2023.

The Remuneration and Nomination Committee resolved the following:

1 To approve the performance rating and payment of MR Christian Linhart (former Group Chief Procurement Officer) for the year 2023 performance bonus as per the recommendation performance rating of 3.

2 ...

3. This decision is effective and retroactively as of 27 February 2024.

18. The evidence of Mr Rene Werner, the Group Chief Strategy Officer, was that (i) his department was responsible for the finalisation of performance assessments; (ii) for the year of 2023 the scorecard rating for the individual occupying the position of Group Chief Procurement Officer was determined by his department at 4.82 which, in terms of company policy, would be rounded up to 5; and that (iii) he and his department had nothing to do with the reduction of the Claimant's individual score to 3.
19. The Claimant's own evidence was that: (i) he was never told by his direct line manager or anyone representing the Defendant that he was placed on "*garden leave*"; (ii) in fact, he had never heard of any individual employed by the Defendant being placed on "*garden leave*" before he heard that term from Ms Sukhi Ghataore on 3 March 2024; (iii) although he formally handed over his responsibilities to Mr Yaksan in August 2023, he was not told by anyone that he was no longer the Group Chief Procurement Officer and that, as far as he was concerned he, retained that position and title until the effective termination of his employment on 15 January 2024; and (iv) although he did not regularly go to his office after August 2024, he was always available to render assistance and attended meetings of key customers and suppliers of the Defendant and remained in regular contact with members of its staff.
20. Against this background, we can now turn to consider the Claimant's individual claims, first amongst which is his claim for damages based on constructive and/or unfair dismissal. Regarding this claim, our finding is in short that the Claimant has failed to establish any factual substratum or legal basis for this claim. We say this because, in terms of clause 9 of Claimant's Employment Contract, either party was entitled to terminate the appointment upon 90 days' written notice. Instead of exercising that right, the Defendant offered the Claimant the option to resign because he might find it preferable to termination by his employer. As stated by Ms Ghataore in her explanatory email to the Claimant, this option was not usually offered to employees generally by the Defendant, but that an exception was made in favour of the Claimant out of appreciation for his exceptional service to the company. The Claimant thereupon voluntarily and quite understandably exercised the option to resign which he clearly regarded as preferable to a formal notice of termination of his employment by the

Defendant. In these circumstances his proposition that this constituted constructive dismissal by the Defendant is in our view untenable.

21. Equally unsustainable, in our view, is the proposition that in these circumstances the termination of the Claimant's employment was in any way unfair. Since the Defendant was entitled to terminate the contract on notice, its motivation for doing so was irrelevant. But even if it were relevant, the Defendant's stated reason for the termination was the policy decision to nationalise this position, against which there cannot be any conceivable objection on the basis of being unfair. According to the evidence of Ms Ghataore, the Defendant bore the Claimant no ill will. On the contrary, the attitude of all the Defendant's representatives, including the Managing Director, towards the Claimant, as borne out by their conduct towards him, was one of respect for his very senior position and of appreciation for his outstanding service to the company. So, for example, he would usually not be entitled to a prorated LTI, but an exception was made in his favour. Although he and his family did not return to Germany, the price of their air tickets was paid out to him as if they did. The Defendant agreed to retain the sponsorship for the Claimant and his family until the end of 2024 or even longer if needed.
22. With regard to the Claimant's claim for an additional amount as part his performance bonus, it must be accepted that the award of a performance bonus and the amount thereof is at the discretion of the employer. Yet, as was held by this Court in *Mark Krombas v Epicure Investments Management LLC* [2023] QIC (F) 15 at paragraph 18 et seq., that discretion is not to be exercised capriciously, but on rational grounds and having regard to the guidelines of the HR Policy Document. In the same way as the employee, the employer is bound by the provisions of that document. This is so, because it must be accepted in principle that the Employment Contract was impliedly entered into on the basis of that declared policy.
23. Having regard to the provisions of the HR Policy Document and the dictates of rationality in general, the determination of the Claimant's performance assessment at level 3 is, on the face of it, wrong at so many levels that, absent any explanation by the Defendant as to how this happened, it simply cannot stand. To begin with, the score for the individual in the position of Group Chief Procurement Officer was determined by

the OG Strategy Team of Mr Rene Werner, effectively at the level of 5. We accept that, as Mr Werner explained, a distinction can notionally be drawn, for purposes of the performance assessment, between the individual and the position. But it impliedly follows from the provisions of the HR Policy Document that such distinction must be drawn on good grounds by the proper assessment authority; that is, by Mr Werner's department and after proper procedure had been followed and not by some unknown individual on the basis of what appears to be no more than guesswork. The fact that that unknown individual might have been the Managing Director does not detract from this principle.

24. This must particularly be so where, until the end of the 2023 assessment year, the individual who was described by the Defendant itself as its Group Chief Procurement Officer and who received the score of 4.8 or 5 by Mr Werner's team, was the Claimant. The proposition that he was somehow no longer in that position because he was on so-called "*garden leave*" raises more questions than answers. These questions include: who decided that the Claimant was on garden leave? Where does the notion of garden leave come from since, on the evidence, it is not a term that was used in the company before? Absent any accepted meaning within the company, what does garden leave entail? What is expected of an employee placed on garden leave? How can an employee be placed on gardening leave, with a concomitant reduction in his benefits, without even telling him? These questions could only be answered by the person or persons who decided to downgrade the Claimant's score to 3. But, as we know, that person was never called as a witness on behalf of the Defendant in this case and, in consequence, these answers were never forthcoming. Instead, the obvious questions raised were met by a deafening silence on the part of the Defendant. The only answer we received from the Defendant's legal representative in argument is that this type of leave is not mentioned in the Defendant's employee policies and that it means that the person is not actively engaged in the company's affairs.

25. Further questions arising, which were equally met with silence by the Defendant, included the following:

- i. How can the downgrading of the Claimant's score to 3 be reconciled with the express assurance given to him in an email of 10 October 2023, on the basis of

which he resigned, that he would receive his “full bonus/benefits based on year end 2023 scorecard (calculated by OG Strategy)” when the year end 2023 scorecard pertaining to the position of GCPO which he occupied was determined by the OG Strategy at 4.82?

- ii. How can the downgrading of the Claimant’s score from 5 to 3, without even telling him, be reconciled with the express dictates of the HR Policy Document, that the employee’s performance assessment needs to be discussed with him or her? If the prospect of the downgrading because of his absence was discussed with the Claimant, he could give the explanation he gave in evidence: namely, that his absence did not have a material effect on his contribution to the performance of his team.
- iii. How can it be fair to an employee to reduce his performance assessment solely on the basis that he refrained from coming to office as he was instructed to do while still performing all the functions he is asked to perform and contributing to the advancements of the company’s interest as best he can?
- iv. In the light of the Defendant’s detailed prescriptions with regard to performance assessments, on what basis was the Claimant’s score simply downgraded to 3? Why not 1, 2 or 4? Stated somewhat differently, on what basis can the assessment of an employee’s performance be said to have been reduced from outstanding to solid? Absent any reference to his actual performance, a score of 3 appears to be arbitrarily plucked out of the air. The HR Policy Document does not expressly deal with the evaluation of a departing employee. According to Mr Werner’s evidence, he or she is to receive the score awarded to the employee upon departure. It follows that, since the Claimant’s score was 4.82 at the time, he should have received that score.

26. Absent any answers to these questions by the Defendant, the conclusion is in our view inevitable that the reduction of the score of 5 awarded by the Defendant’s proper assessment authority to the Group Chief Procurement Officer, which was the position occupied by the Claimant during the whole of the 2023 assessment year, was not in accordance with the Defendant’s HR Policy Document. Nor can it be said to be motivated by rational grounds. In the result the Claimant is in our view entitled to insist,

as he does, that his performance bonus for 2023 be calculated on the basis of a performance assessment of 5. It is common ground that during 2023 a score of 5 attracted a bonus equal to 16 times the employee's monthly salary as opposed to a score of 3 which attracted a bonus of only half that sum. Likewise, it is common ground that the bonus actually received by the Claimant was in the amount of QAR 1,015,376. This means, in our view, that he is entitled to a further payment in the same amount.

27. In both Claimant's evidence and in argument on his behalf, it was contended that a score of 5 would render him entitled to a further additional payment through the reviewed calculation of his LTI for 2023. While admitting that he did receive an LTI payment for 2023 calculated on the basis of a score of 3, the Claimant's case is that he would receive QAR 366,485 more if the calculation was based on a score of 5. While admitting that an increase in the Claimant's performance assessment from 3 to 5 would in principle add to his LTI, the Defendant's argument was in short that there is no evidence to substantiate the calculation of the amount contended for by the Claimant. We find ourselves compelled to agree with this argument. The proper calculation of the Claimant's LTI would clearly involve a rather intricate calculation based on information we simply do not have. The Employment Contract makes no mention of the LTI. Although the Claimant explained at the hearing how in his view the LTI was to be calculated and albeit that this explanation was not gainsaid by the Defendant in argument, we are not persuaded that the Claimant's calculation is supported by concrete evidence.

28. The Claimant's answer to this difficulty is that the required information would have been available if the Defendant had made proper disclosure. But we do not think this answer to the Defendant's argument can be sustained. Despite the detailed disclosure sought on behalf of the Claimant on two occasions, the documents substantiating this claim and the calculation method of the LTI were not requested as part of these disclosure applications. In any event, since the onus rests on the Claimant to establish all the elements of his claim, lack of disclosure cannot serve as a substitute for proof. Conversely stated, the penalty for non-disclosure by the Defendant is not to grant judgment against it based on unestablished grounds. It follows that the claim based on an additional LTI for 2023 stands to be dismissed.

29. What remains is the question of interest and costs. As to the matter of interest, it follows from our findings that the Claimant was deprived of the use of money owed to him since 7 March 2024, when his performance bonus was paid in part. Although no specific claim for interest was made, fairness demands that he be compensated for such deprivation and, in accordance with the practice of this Court, we propose to make an award of interest, calculated on the outstanding amount at the rate of 5% per annum from 7 March 2024 to date of actual payment.
30. As to the matter of costs, it is clear that the Claimant succeeded with the major portion of his claims. Yet he was unsuccessful in part. Hence, we considered depriving him of a percentage of his costs. But on balance this consideration is outweighed by the Defendant's lack of cooperation during these proceedings which compelled the Claimant, for instance, to seek disclosure – by way of two formal applications – of documents which the Defendant was clearly obliged to discover. In all the circumstances our conclusion is that the Claimant is entitled to the costs he incurred in pursuing his claim.

By the Court,



[signed]

Justice Fritz Brand

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

Representation

The Claimant was represented by Oksana Rozhdestvenskaia and Assad Abdelati Al-Assad of Asma Muftah Al-Ghanem Advocates and Legal Consultants (Doha, Qatar).

The Defendant was represented by Alanoud Al-Khaja and Sylvana Matar of the Al-Sulaiti Law Firm (Doha, Qatar).