

**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
FIRST INSTANCE CIRCUIT**

13 May 2018

CASE No: 01/2018

ABDULLA JASIM AL TAMIMI

Claimant

v

QATAR FINANCIAL CENTRE AUTHORITY

and

QATAR FINANCE AND BUSINESS ACADEMY LLC

Defendants

**JUDGMENT
(concerning jurisdiction)**

Members of the Court:

**Justice Robertson
Justice Kirkham
Justice Hamilton**

ORDER

The Defendants' jurisdictional challenge succeeds and the proceedings are accordingly struck out.

JUDGMENT

1. By virtue of a Claim Form, issued by the Registry on behalf of the Court on 21 February 2018, the Claimant commenced proceedings against the Qatar Financial Centre Authority ('QFCA') in respect of a number of grievances he had in relation to his employment with the Qatar Finance and Business Academy LLC ('QFBA'). In addition to a number of specified complaints vis-à-vis his employment, the Claimant further alleged that the QFCA had failed to handle his grievances in accordance with the applicable policies and procedures.
2. On 7 March 2018, the QFCA filed a challenge to the jurisdiction of the Court to determine the Claimant's complaint. The written challenge, which was signed by the CEO of the QFCA, Mr. Yousuf Mohamed Al-Jaida, raised a number of points. First, it alleged that it was inappropriate to have named the CEO, in his personal capacity, as the Defendant in this case. The Court has no doubt that, although the Claim Form was addressed to Mr. Al-Jaida, it is obvious that the Claimant intended to bring the action against the QFCA as opposed to any of its individual officers or employees. Regardless, Mr. Al-Jaida argued that the correct defendant was, in fact, the Claimant's employer- namely the QFBA which, it was asserted, was a subsidiary of the QFCA but a separate legal entity.
3. Secondly, in relation to the jurisdiction point, Mr Al-Jaida argued that the complaints raised by the Claimant in this case have already been considered by the QFCA and the Employment Standards Office ('ESO'). It was noted that determinations of the ESO are susceptible to appeal to the Regulatory Tribunal but that the Claimant had not sought to do so and was now out of time. Mr Al-Jaida maintained that, as a result, the issues raised in the claim are *res judicata*

and cannot now be 're-litigated' before the Court. It was conceded that there was one matter raised in the Claim which had not been determined by the ESO. That related to the Claimant's dissatisfaction with his recent appraisal. It was contented, however, that that issue did not give rise to an identifiable cause of action before the Court.

4. The Claimant filed and served a Reply on the 12 March 2018. He alleged that the matters raised by the QFCA in its challenge to the jurisdiction of the Court were without foundation. He reiterated his complaints against the QFCA and QFBA. In regards to the *res judicata* point, the Claimant said, in effect, that there was no reason why he should have to appeal to the Regulatory Tribunal as opposed to commencing a fresh proceeding before the Court. He stated that the Administration department at the QFCA (in particular the CAO) had failed to deal properly with his complaints, that the powers of the ESO were limited and, in any event, that the ESO was just another department of the QFCA. In relation to his recent appraisal, the Claimant stated that the individual who had undertaken it- a Dr Mohamed Abdulla Al-Emadi, the Acting CEO of the QFBA- had failed to follow the applicable QFCA appraisal process by simply imposing his personal (as opposed to professional) view of the Claimant. Finally, the Claimant stated that, taking all matters into account, he considered that the Court was the only entity within the QFC which could properly adjudicate upon his claim.
5. On the 21 March 2018, the Registrar issued Directions notifying the Parties and the QFBA that (i) the matter had been listed for hearing to determine the jurisdictional point on 25 April 2018 and (ii) that the QFBA, though not a formal party to proceedings, was able to make representations at this hearing in relation to who the appropriate defendant in this action is, should it elect to do so.
6. A day prior to the hearing, the QFCA filed and served 'written submissions' which were settled by Counsel, Mr. Ben Jaffey QC, of Blackstone Chambers, London. Those submissions purported to be on behalf of both the QFCA and the QFBA. They dealt with (i) the issue of who the correct Defendant should be and (ii) the jurisdictional challenge.

7. In regards to point (i) above, Mr. Jaffey stated that the QFBA, while a wholly owned subsidiary of the QFCA, had separate legal personality. He pointed to the fact that the Claimant's contract of employment was with the QFBA, not the QFCA. He recognised, however, that the QFCA provides human resources services to the QFBA as a result of an agreement between the two entities. He asked the Court to substitute the QFBA as the correct defendant pursuant to Article 24.1.2 of the Regulations and Procedural Rules of the Court.
8. In relation to (ii), Mr. Jaffey set out the jurisdictional provisions of the Court pursuant to the QFC Law and noted that the Court has wide powers to determine its own procedures and will, in accordance with the provisions of the QFC Law, take into account fundamental principles of litigation and international best practice. Mr Jaffey then cited a range of legal sources from England, Qatar and India which, he submitted, supported the view that the complaints raised by the Claimant in this case are *res judicata* because the Claimant has already had his complaints determined by the ESO. In the alternative, Mr. Jaffey submitted that none of the complaints raises a dispute which can be characterised as 'civil' or 'commercial' (which he defined as meaning a 'breach of contract') so as to fall within the jurisdictional provisions of the Court as set out in the QFC Law.
9. At the hearing, the first issue was whether the QFBA should be joined as a party. The Court resolved that issue by joining it as an additional defendant rather than in substitution for the QFCA. Mr. Jaffey acted at the hearing on behalf of both these bodies. The Claimant appeared on his own behalf.
10. Logically, the first issue to be determined is the scope of this Court's jurisdiction as provided for in Article 8.3 of the QFC Law- Law No 7 of 2005 (as amended) ('the Law'). The (unofficial) English version of the Law provides by Article 8.3.c that-

The First Instance Circuit of the Court shall have the jurisdiction to hear the following disputes

c/1-Civil and commercial disputes arising from transactions, contracts, arrangements or incidences taking place in or from the QFC between the entities established therein.

c/2-Civil and commercial disputes arising between The QFC authorities or institutions and the entities established therein.

c/3-Civil and commercial disputes arising between entities established in The QFC and contractors therewith and employees thereof, unless the parties agree otherwise.

c/4-Civil and commercial disputes arising from transactions, contracts or arrangements taking place between entities established within The QFC and residents of The State, or entities established in the State but outside The QFC, unless the parties agree otherwise.

This Court's Regulations and Procedural Rules repeat in Article 9.1 essentially the same terms. In the present case, the directly relevant provision is Article 8.3. c/3 of the Law (Procedural Rule 9.1.3). It is not disputed that the QFBA is an "entity established in the QFC" and that the Claimant is an employee of it. Mr. Jaffey contends that the expression "Civil and commercial disputes" within that sub-clause is restricted to contractual disputes. The sub-clause itself imposes no such restriction. As a matter of ordinary language a civil dispute between an employer and an employee could arise otherwise than by reason of an alleged breach of contract or an alleged entitlement under a contract, albeit the contractual relationship might well be the context in which the dispute arose. Further, Article 8.3. c/1 and c/4 provide for civil and commercial disputes, in each case with a restriction on the source of the dispute- in c/1 "arising from transactions, contracts, arrangements or incidences..." and in c/4 "arising from transactions, contracts or arrangements". Each of these restrictions is wider than "contracts"; and in the case of c/3 there are no words of restriction. Although QFC jurisprudence may not, at least as yet, have developed so as clearly to identify what non-contractual disputes between employer and employee might be within the Court's jurisdiction under c/ 3, we are not persuaded that the language of the Law imposes the restriction argued for.

11. At this point something should be said about the principle of *res judicata* relied on. That principle has found wide acceptance internationally. This Court sees no reason why, in an appropriate case, it should not be recognised as within QFC jurisprudence. Paragraph 15 of Schedule 6 to the Law expressly provides that the Court's rulebook and proceedings should be in accordance with "the fundamental litigation principles and international best practice". But, should it be applied in this case?

12. The rationale behind the principle is that it is in the public interest that there is finality to litigation and that no one ought to be vexed twice with respect to one and the same cause. Commonly, the issue arises where the first “litigation” has been in a court of law. An implicit incident of a court of law is that it is structured such that the decision-makers within it are manifestly independent of each of the litigating parties. It may be that the principle could be applied in cases where the first “litigation” was before some body other than a court of law, such as before some tribunal with equivalent characteristics. But, there is a real question as to whether in this case the ESO manifestly has such characteristics. It is a body established by the QFCA under Article 6(1) of the QFC Employment Regulations and, under Article 6(4), it is subject to the supervision of that authority, which has the power to give to the ESO written directions as to the furtherance of any of its objectives or the performance of its functions. The QFCA also has, under Article 6(5), rule-making powers in relation to the ESO. The employer in this case is the QFBA, a wholly-owned subsidiary of the QFCA. There is no suggestion that the QFCA has given any directions or made any rules which might be relevant to the outcome of the disputes between this employer and this employee before the ESO. Nor is there any suggestion that the Employment Standards Officer who adjudicated on those disputes acted otherwise than wholly impartially. However, the structural relationships are such that it cannot be said with confidence that this is a case in which the principle of *res judicata*, the application of which is essentially discretionary, should be applied so as to exclude the Claimant from seeking a remedy in this Court. Accordingly, this contention is rejected.

13. However, matters do not rest there. In order to place the remaining issues in context it is necessary to expand somewhat on the factual background. The Claimant was employed by the QFBA from 20 September 2012 as “Head of Program Delivery”. On 21 September 2017 he was assigned the role of “Project Advisor”. This assignment, which involved a substitution from his former role rather than an addition to it, did not involve any reduction in his salary or in the amount of any other financial benefit, but it did involve a change of role. The Claimant was aggrieved. He was particularly upset at the conduct of his superior, the Acting Chief Executive Officer. He did not find satisfaction when he approached “Human Capital”, the human resources service provided by QFCA to QFBA. Certain procedures followed, including the issuance to

him of a “warning letter”, which proceeded on the basis that he had refused to carry out the duties under his newly assigned role. The ESO became involved. Two separate complaints were submitted to the ESO by the Claimant, one (No. 26) concerning a warning letter and a related sanction (a salary deduction of three days) and the other (No 24) alleging a breach by QFBA of the QFC Employment Regulations by changing the Claimant’s role and job duties without notice or consent. The Respondent in each case was the QFBA. Each of these complaints was adjudicated upon by the same Employment Standards Officer, her written determination in No. 26 being issued on 27 November 2017 and that in No. 24 on 5 December 2017. The latter involved a somewhat more elaborate procedure than the former. Both complaints were rejected by that Officer. Within the written determination of complaint No 24 was a statement that either party had, under Article 62 of the Employment Regulations, the right to appeal to the QFC Regulatory Tribunal, which right had to be exercised within 30 days of the date of the notification of the determination. No such statement was included within the written determination in complaint No. 26. The Claimant did not exercise that right of appeal in either case within the relevant time limit; nor has he attempted to persuade the Regulatory Tribunal to receive any appeal out of time. These determinations are accordingly final.

14. The Claimant accepted before us that he had received the written determinations. He had then, he told us, gone on leave to reflect upon the resultant situation. In the event he decided that the appropriate course for him to adopt was to commence proceedings in this Court. That he did in February 2018. It may be added that the Claimant has also objected to a year-end appraisal made by the Acting Chief Executive Officer. There appears to be an ongoing internal procedure with respect to that matter.
15. Against that background it is necessary to consider the terms of the QFC Employment Regulations, which applied to the Claimant as employee and to the QFBA as employer. These make elaborate provisions with respect to Employees (as defined) (i) of the QFC Authority, the Regulatory Authority, The Civil and Commercial Court and the Regulatory Tribunal, (ii) of the QFC Institutions and (iii) of QFC Entities. As earlier noticed, the Employment Standard Office was established by the QFCA under Article 6 (1) and is under its general supervision and control.

Article 22 provides:

Unless otherwise stated in the employment contract, the Employer may change the Employee's job title, work description or location within the State from time to time, and must provide prompt notice to the Employee of such change or changes. If a condition of employment is substantially altered, the Employee may seek a determination from the Employment Standards Office that his employment has been constructively terminated.

The right conferred in the Employer by that article to change unilaterally the Employee's job title, work description or location is a qualification on the general contract law of the QFC (regulated by the QFC Contract Regulations), which require any variation of contract terms to be made, ordinarily, by mutual agreement. Article 27 of the Employment Regulations prohibits an Employer from making deductions from an Employee's salary except in certain circumstances which include where such deduction is "authorised by law or regulation".

Article 55 provides:

(1) An Employee, former Employee or any other person may make a complaint to the Employment Standards Office that a person has committed a contravention of these Regulations.

(2) An Employee may request that the Employment Standards Office review any penalty imposed on him by his Employer in the manner and time period specified in rules issued pursuant to these Regulations.

Article 57 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;*

(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.

Article 62 provides:

- (1) A person directly affected by a final determination, decision, or fine of the Employment Standards Office may appeal the matter to the Regulatory Tribunal.*

(2) The appeal shall be filed within thirty (30) days of receipt of the determination, decision, or fine appealed.

Article 63 provides:

(3) On an appeal under this Part the Regulatory Tribunal, in addition to any powers it has, may:

(A) consider any relevant evidence, in addition to the record;

(B) decide all questions of fact or law arising in the course of an appeal;

(C) refer the matter back to the Employment Standards Office; or

(D) confirm, vary or cancel the determination, decision or fine under appeal, or make another decision it considers proper.

16. It is plain from the above recital that the QFC Employment Regulations make detailed provision for, among other things, the making and adjudication of complaints made by an Employee and others in relation to any (alleged) contravention of these Regulations. Article 55 (1) provides that any such person, “*may* make a complaint to the Employment Standards Office” (emphasis added) that a person has committed such a contravention. Mr. Jaffey submitted, in effect, that complaint by that route was the sole mechanism by which an aggrieved Employee could challenge his or her Employer on the basis that he, she or it had contravened these Regulations. This Court finds it unnecessary to rule upon that submission in this case.

17. It may be that an aggrieved person could opt to bring proceedings in this Court rather than make a complaint to the ESO but the Claimant did, in fact, exercise his right to make a complaint, indeed two complaints, under Article 55.

18. These complaints were investigated by the ESO and determined adversely to the Claimant. He did not in either case exercise his right of appeal against such determination to the Regulatory Tribunal. In these circumstances the question arises whether, having taken the ESO route and these complaints having been finally determined against him, he can now resort to this Court with essentially the same contentions. The answer to that question is, in our judgment, in the negative. Where there are two available routes by which a person may seek to vindicate his rights and he proceeds to take one of these routes and pursues it to a final determination, the alternative route is no longer available to him. That is particularly so where the route here pursued could have invoked the jurisdiction of the Regulatory Tribunal, a judicially-manned body with wide powers, including investigatory powers, to secure justice in the case. For that reason this Court declines to exercise jurisdiction to entertain the Claimant's claim, which must be dismissed.
19. It should be added that the above discussion proceeds on the basis that the matters complained of to the ESO are in substance the same as those sought to be advanced in the present proceedings. Perusal of the complaints made to the ESO and of the Claim Form in the present proceedings indicates that the factual assertions in each case are in substance the same. Nor is it suggested that they proceed on different legal bases. There is no suggestion in the Claim Form, nor was it suggested orally before this Court, that, for example, the present proceedings are advanced on the basis of some breach or breaches of the contract of employment. Accordingly, both as to fact and as to law, the contentions are essentially the same. Although the Claim Form is expressed in layman's language and does not refer to non-compliance with the Employment Regulations or to any breach of contract, there could, so far as appears, be no other legal basis on which this Court could afford the Claimant relief. The Court recognizes that the Claimant is genuinely aggrieved by his treatment within his employment. But that is insufficient for present purposes.

By the Court,



Justice Arthur Hamilton



Representation:

The Claimant was self-represented.

Both Defendants were represented by Mr. Ben Jaffey QC, Blackstone Chambers, London.