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) 13

IN THE QATAR INTERNATIONAL COURT

FIRST INSTANCE CIRCUIT

Date: 9 April 2023

CASE NO: CTFIC0004/2023

JOHN FREDY GARCIA HERNANDEZ

Claimant

v

THE LONDON LANGUAGE FACTORY LIMITED QFC BRANCH

Defendant

JUDGMENT

Before:

Justice Fritz Brand

Justice George Arestis

Justice Dr Rashid Al-Anezi

Order

(Following the majority judgment)

1. The Defendant is to pay to the Claimant the sum of QAR 24,370.00 within 14 days of the date of this judgment.

2. The Defendant is to pay to the Claimant interest on the sum noted in (1), above, at the rate of 5% per annum from 12 January 2022 to the date of payment.

3. The Claimant is entitled to its reasonable costs incurred in pursuing this claim, such costs to be determined by the Registrar if not agreed.

Judgment

Justices George Arestis and Fritz Brand (majority judgment)

1. This is a claim for compensation by the Claimant based on the alleged wrongful termination of an employment agreement. The Claimant is a Columbian National. The Defendant is a company registered in the United Kingdom with its branch office in Qatar being established and licensed to conduct business in the Qatar Financial Centre ("**QFC**"). Both parties are legally represented. This Court's jurisdiction to determine the dispute is not in issue. On consideration of the documents filed and the information provided in response to our requests, we concluded that we were in a position to determine the dispute without the hearing of oral evidence or argument. Hence, we will now proceed to do so,

2. By the terms of an employment contract entered into between the parties on 24 November 2021, the Claimant was employed by the Defendant as a Training Specialist for a fixed period at a monthly salary of QAR 11,500.00. In terms of clause 2.1, the Claimant's period of employment commenced on "*his first day of duty at his place of work in the State of Qatar*", and was to endure until 30 June 2023. The Claimant's case is that the Defendant repudiated the contract by dismissing him without proper notice. Hence, he claims compensation in the following amounts:

    i. His salary between 6 December 2021 and 16 January 2022 in an amount of QAR 17,750.00.

ii. One month's salary in lieu of notice, in an amount of QAR 11,500.00.

iii. Damages for breach of contract under various headings in a total amount of QAR 241,697.00.

3. The Defendant's answer to the claim relies on two clauses in the employment contract, pleaded in the alternative, namely clause 3 and clause 11.4. Clause 3 provides:

> *3* ***Probation***
>
> *3.1 The employee will be subject to a probationary period of three (3) months with effect from the first day of duty at his place of work.*
>
> *3.2 The employer may terminate the employment contract within the term of the probation period if it determines the employee is not capable of carrying on the work for which he has been employed. In such a case the employer shall give the employee no less than two (2) weeks 'written notice."*
>
> *11* ***Termination of Employment***
>
> *11.4 The employer may terminate this contract with one (1) months' notice period and the employee shall receive a single allowance in cash of 1000 GBP in addition if any of the following circumstances arise:*
>
> *11.4.1 Due to the employer's merger, restructure, change of business scope, liquidation as a result whereof the employee's position is redundant or not needed;*
>
> *11.4.2 The circumstances and conditions on which the contract is based change and as a result the contract cannot be wholly fulfilled.*

4. Broadly stated, the factual background relied upon by the Defendant for invoking these clauses is as follows:

i. According to the Defendant, it established its Qatar branch for the sole purpose of performing its obligations under a contract with BAE Systems (Operations) Ltd ("**BAE**") and a related contact with BEA Systems Strategic Aerospace Services Ltd ("**BSL**").

ii. In terms of these two contracts, the Defendant undertook to give language training to members of the Qatari Armed Forces at the Al-Udeid Airbase and

the Claimant was specially employed for the purpose of facilitating the Defendant's compliance with its obligations under these two contracts.

iii. On the 6 and the 7 December 2021, BAE and BSL, respectively, cancelled their contracts with the Defendant. The Defendant received no prior notice of the cancellations, which in consequence came as a complete surprise to it.

iv. The Claimant arrived in Qatar on 5 December 2021 and, after Covid-19 testing on the 6 December 2021, he was ready to report for duty at the Al-Udeid Airbase on 7 December 2021. But, because of the termination of the BAE and BSL contracts, the Defendant's employees no longer had access to the airbase and the Claimant had no place of work to go to. It is accepted by the Defendant that, although the Claimant never actually reported for duty at his agreed place of employment in the State of Qatar, as envisaged in clause 2.1, he must in the circumstances be assumed to have done so on 7 December 2021.

v. At a formal meeting on 8 December 2021, the Claimant was verbally informed of the situation that arose from the cancellation of the contracts by the two companies; that the Defendant was no longer able to offer him the position for which he was employed; and that in consequence his contract of employment had to be terminated.

vi. On 11 January 2022, the Claimant sent an email to the Defendant enquiring about the benefits to which he was entitled in consequence of the termination of the contract, and on 12 January 2022 a representative of the Defendant responded in a letter to him, confirming that his contract had been terminated and offering him an amount of QAR 3,402.72 in compensation.

vii. Being dissatisfied with this offer, the Claimant, through his legal representative, wrote a formal letter of demand on 3 March 2022 to which the Defendant responded, through its legal representative, in a letter of 17 March 2022. In terms of this letter, the Defendant offered the Claimant an amount of QAR 20,416.00, representing his salary between 7 December 2021 and 11 January

2022 in the sum of QAR 12,500.00 plus QAR 7,916.00, representing his salary in lieu of a two week notice period.

viii. It is suggested by the Defendant in its pleadings that a settlement agreement had been reached. But, in our view the Defendant had failed to establish that the terms of the employment contract between the parties had been novated by settlement. So, the question remains whether the Defendant was entitled to terminate the employment contract in accordance with the terms of that contract.

5. The Defendant's offer of 17 March 2022 clearly relied on the supposition that the probation clause 3.2 finds application. In support of its contention that this is so, the Defendant argued that, as a result of the cancellation of its contracts with BAE and BSL, the Claimant was "*not capable of carrying out the work for which he had been employed*" as contemplated by this clause. But we are not persuaded by this argument. Clause 3.2 relates to a period of probation, that is a testing period during which the employer is afforded the opportunity to establish whether the employee is sufficiently qualified, skilled and able to do the job he is employed to do. It is clearly not intended to apply in a situation where the employee had not even been tested; where, for reasons outside his control, the employee was never afforded the opportunity to demonstrate that he is qualified and able to do what he is employed to do.

6. In the alternative, the Defendant relied on clause 11.4 where we believe it is on much firmer ground. It is true, as contended by the Claimant, that the employment contract was not conditional upon the existence of the BAE and the BSL contracts. But the defence raised by the Defendant does not rely on the non-fulfilment of a condition precedent. Its defence relies on the wording of clause 11.4. Having regard to the wording of clause 11.4.1, we agree with the argument that the cancellation of the BEA and BSL contracts can be said to constitute a change of the scope of the Defendant's business which resulted in the Claimant's position becoming redundant and that his services were no longer needed. Stated somewhat differently, as we see it, the situation that arose falls squarely within the ambit of the risk against which the Defendant sought to cover itself in terms of clause 11.4.1.

7. In support of its case, the Defendant also relied on clause 11.4.2. Here its argument was that the cancellation of the BAE and BSL contracts constituted a "*change of circumstance which rendered the employment contract [incapable]of being wholly fulfilled*". Although we find some merit in the argument, it is not necessary to come to a firm conclusion in this regard, since we hold that in the circumstances the Defendant was entitled, in principle, to terminate the contract of employment in terms of clause 11.4 1.

8. Perhaps we should add that we have considered article 17B(4)(A) of the QFC Employment Regulations 2020 as a potential answer to the Defendant's reliance on clause 11.4.1. In the terms of this article, a fixed term contract such as this can only be terminated before the expiry date by mutual agreement between the parties embodied in writing. Hence, we considered the potential argument in favour of the Claimant, although not pertinently raised by him, that this fixed contract could only be terminated by written agreement entered into subsequent to his employment contract. But in *Xavier Roig Castello v Match Hospitality Consultants LLC* [2022] QIC (F) 24 at paragraph 23, this Court held that the mutual agreement of termination contemplated in article 17B(4)(A) can be incorporated in the original employment contract and that the article does not require a separate agreement of termination subsequently entered into. On our interpretation of clause 11.4, it meets the requirements of article 17B (4)(A) of the Employment Regulations 2020 as understood in the *Xavier Roig Castello* case. In effect, the clause records an agreement that, in the event of the stipulated circumstances arising, the employer will be entitled to terminate the employment contract by notice.

9. It follows that in terms of the introductory part of clause 11.4 of the employment contract, the Claimant is entitled (a) to a notice period of one month or (by implication) to one month's salary in lieu thereof, and (b) a flight allowance of GBP 1,000.00. The Claimant's argument is that written notice was never properly given to him. The Defendant's counter argument is that the Claimant's email of 11 January 2022 constituted written acknowledgment of termination which rendered notice of termination unnecessary. But as we see it, the counter argument cannot be sustained. Conceptually, proper notice of termination must come from the employer. That notice, we find, came in the form of the Defendant's letter of 12 January 2022 by which the Claimant was unequivocally informed that his contract of employment had been terminated.

10. This means that in our view the Claimant is entitled to his salary between 7 December 2021 and 12 January 2022, which amounts to QAR 12,879.00 plus one month's salary in lieu of notice, which is QAR 11,500.00, that being QAR 24,379.00 in aggregate. The Claimant does not claim the flight allowance of GBP 1,000.00 provided for in clause 11.4, presumably because his air fare home has already been paid by the Defendant. In view of our finding that the Defendant did not breach the employment contract, it follows that the claim for damages must fail.

11. Although the Claimant did not claim interest, we believe it is fair to compensate him to some extent for being deprived of the benefit of receiving payment of money due to him by awarding interest at the rate of 5% per annum from date on which the contract was terminated, that is 12 January 2022, until date of payment. Finally, the Claimant is also entitled to the reasonable costs incurred by him in pursuing his claim.

Justice Dr Rashid Al-Anezi (concurring in part and dissenting in part)

12. The factual background of the case was stated by the majority. My dissent relies on the way these facts were deployed.

13. On 17 March 2022, the lawyer for the Defendant wrote in response to the Claimant's claim letter dated 3 March 2022 (the "**Demand Letter**") that:

> *Clause 3.2 of the Employment Contract states "The Employer may terminate the employment contract within the terms of the probation period if it determines that the Employee is not capable of carrying out the work for which he has been employed. In such a case the Employer shall give the Employee no less than two (2) weeks' written notice." Mr. Garcia was hired to perform our Client's obligations under a contract with Qatar Technical Institute and BAE Systems. It is obvious that, when that contract was terminated, Mr. Garcia was not capable of carrying out the work for which he was employed…*

14. The Defendant's reason for termination was that the "*employee was incapable of carrying his duties*" due to the termination of the BAE and BSL contracts and offered to pay the Claimant QAR 20,416.00. At the outset, the Defendant did not base its termination on clause 11.4. of the contract, but rather on clause 3.2. It was only until the Defendant changed its lawyer that the new defence was advanced. This means that it was never in the contemplation of the Defendant to terminate the contract on the basis of clause 11.4. It seemed that it took the decision to terminate the contract and later looked for justification.

15. Nonetheless, let me assume for the sake of discussion that the Defendant relied on clause 11.4. I do believe that such reliance should not stand as there is no basis for termination under clause 11.4. for the following reasons:

i. The offer given to the Claimant dated 9 November 2022 did not mention - explicitly or implicitly - anything about the BEA and BSL contracts (the "**Two Contracts**"). The offer stated:

> *Following your interview, we are delighted to offer you the position of Training Specialist with Directors Languages (The London Language Factory Ltd QFC Branch) at our branch office in Doha. Please note this offer is subject to indicative terms and conditions and is dependent on a number of conditions including satisfactory references, background checks, security vetting and medical clearance in Qatar and visa approvals via the Qatar Financial Centre.*

ii. Two points may be drawn from this offer:

a. no reference was made to any contract; and

b. the conditions precedent in the offer are: "*satisfactory references, background checks, security vetting and medical clearance in Qatar and visa approvals via the Qatar Financial Centre*". There is no reference to the Two Contracts as conditions precedent to the Claimant's employment.

iii. The contract, too, never mentioned anything about the Two Contracts as conditions precedent.

iv. Since the Two Contracts were not conditions precedent to the Claimant's employment, their termination should not be used as a "*change of the scope of the Defendant's business*". The Employee did not contract with the employer for the sole purpose of working on the implementation of the Two Contracts, but rather his scope of work included other duties outside

those two contracts as clearly stated in the contract. Under clause 4 entitled "JOB TITLE AND DUTIES" the contract stated as follows:

> *The Employee's position is Training Specialist and the direct report line is to the Operations Manager… The Employee may be required to undertake other duties from time to time as the Employer may reasonably require according to its organisational or business needs*" [emphasis added]

v. I see no reference to any contract in the "*Job Title and Duties*" section of the contract, either. But rather the Claimant's position was Training Specialist, and that the duties of the employee were not only confined to the Al-Udeid Airbase, but rather to "*other duties*". This proves wrong the premise that the Claimant's duties were to execute the Two Contracts or work in accordance with the Two Contracts. It also assumes that regardless of the Two Contracts the employee may work outside Al-Udeid Airbase, where the Two Contracts were being implemented. This is clear from the contract. Under the title "*PLACE OF WORK*", the contract stated (this provision of the contract did not make the place of work exclusive to Al-Udeid Airbase):

> *The Employee's principal place(s) of work will be our Branch Office and the Qatar Technical Institute (QTI), Al Udeid Airbase in Abu Nakhlah, Doha, the State of Qatar. However, you may be required to work outside such premises from time to time for business or organizational reasons determined by the Employer".* [emphasis added]

vi. From the above, it is clear that no emphasis in the contract was given to the Two Contracts, and no emphasis should be given to their termination.

16. I now turn to the question of whether the termination of the Two Contracts constituted a "*change of business scope*" of the Defendant as contemplated by clause 11.4.1 which reads: *"Due to the Employer's merger, restructure, change of business scope, liquidation, as a result the Employee's position is redundant or not needed."*

17. My answer is a definite 'no' for the following reasons:

i. On 24 November 2021, the Defendant signed the contract with the Claimant. On 6 December 2021 the Two Contracts were terminated. The period between 24 November and 6 December is less than two weeks. Was the Defendant aware that the Two Contracts would be terminated when it signed the contract with the Claimant?

ii. The Defendant was not wholly truthful when it claimed that, "*there was no prior notice or warning that the BAE Contract and/or the BLS Contract would be terminated*". This statement contradicted the facts that the Defendant tried to hide by redacting the termination letter of the Two Contracts. At the time the Defendant signed the contract with the Claimant on 24 November 2021, there must have been problems known to the Defendant that might have resulted in the Two Contracts being terminated. The Defendant did not provide the full termination letter, but rather it provided a redacted one in which all the reasons for termination were removed. But from paragraph 14 of the termination letter, it can be inferred that there were problems regarding the implementation of the two contracts. Paragraph 14 reads as follows:

> *BAES has suffered and will suffer loss as a result of the facts and matters set out above. We also note the rights of recovery under clause 30.4. BAES reserves all its rights in relation to its losses and the recovery of other amounts due.*

iii. These losses must have been result of the acts of the Defendant, otherwise it did not have to hide them via redactions. Furthermore, such losses did not occur during the Claimant's employment, but long before that as the termination letter was dated 6 December 2021. This leads me to believe that when the Defendant employed the Claimant on 24 November 2021, it was well aware of the problems with the Two Contracts and nevertheless signed the contract with the Claimant. My understanding of this is that it was not the intention of the Defendant to terminate the contract with the Claimant when it signed this contract, because it would be very odd that they had known that the termination of the Two Contracts was imminent, and nevertheless accepted to employ the Claimant. The only explanation is that

their business in Qatar was not only the Two Contracts. This is inferred from the following:

i. it was clearly mentioned in the contract that the scope of the Claimant's work was not limited to the Al-Udeid Airbase but rather other places and duties; and

ii. although the termination of the Two Contracts occurred on 6 and 7 December 2021, the Defendant applied for deregistration in October 2022, which means that it had other work, or at the very least the termination of the Two Contracts did not change the scope of the work of the Defendant, particularly as it is an international language centre teaching English in more than 60 countries. With this experience, it is not logical at all to claim that it opened business in QFC just for the sake of the Two Contracts.

18. The correct conclusion I see is that the termination of the Two Contracts was not sudden and was long expected and therefore the termination of the contract with the Claimant was legally baseless. The Claimant is therefore entitled to compensation for wrongful dismissal.

19. There remains the question of clause 11.4.2. Although the judgment of the majority ruled out the application of this clause because it relied on 11.4.1, it deserves some attention especially when I have demonstrated that clause 11.4.1. is inapplicable. I do not believe that this clause applies to the Claimant for the following reasons:

i. The requirements for the application of the change of circumstance rule or *clausula rebus sic stantibus* are the following:

a. There must be a significant change in the circumstances after the parties enter into the relevant contract.

b. There must be a lack of predictability, i.e. the significant change in circumstances has to be new, unforeseeable and inevitable.

c. There must be a serious disruption of contractual balance, so severe that the obligations of one party become excessive and it would be abusive and against good faith for the Claimant to insist on the performance of the contract.

ii. Accordingly, a party invoking the doctrine of *clausula rebus sic stantibus* bears the burden of submitting clear and persuasive evidence that the above requirements were met. Suffice to say that the Defendant did not present to the Court any evidence that such change of circumstances caused it great financial difficulties. The mere (application) for deregistration in Qatar in October 2022 should not be considered as a "*change of circumstances*" by any means. The Defendant did not present to the Court that the contract was solely based on the Two Contracts. The Defendant did not present to the Court any evidence that the termination of the Two Contracts caused it to be in great financial difficulties, and that those had not been foreseeable at the time of the contract. Such evidence must include their financial statements and books, and all other evidence that is required to justify the application of clause 11.4.2.

20. Since this is a fixed-term employment agreement which was unlawfully terminated by the employer, I believe that the employee is entitled to the rest of the term of the contract. Therefore, the Claimant is entitled to the following:

i. The sum of QAR 17,500.00 as the Claimant's wages for his period of employment from 7 December 2021 to 16 January 2022.

ii. QAR 74,366.00 being compensation for the rest of the fixed-term contract until 30 July 2023.

iii. Costs to be assessed by Registrar if not agreed on.

21. However, as the majority take a different view, the Order they have set out in their judgment is the Order of the Court.

By the Court,

[signed]

Justices Fritz Brand and George Arestis

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

Representation

The Claimant was represented by Rashid Raja Al Marri Law Office (Doha, Qatar).

The Defendant was represented by Al-Ansari and Associates (Doha, Qatar).

DIGITALLY SIGNED AND VERIFIED
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