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 (A) 5

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

APPELLATE DIVISION

[On appeal from [2023] QIC (F) 5)]

Date: 13 July 2023

CASE NO: CTFIC0011/2022

KHADIJA AL-MARHOON

Claimant/Respondent

v

OOREDOO GROUP COMPANY

Defendant/Appellant

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Sir William Blair

Justice Dr Rashid Al-Anezi

Order

1. The appeal is allowed but only to the extent of reducing the amount payable by the Appellant to the Respondent to QAR 264,342, together with interest at the rate of 5% per annum from 21 December 2021 until payment.

2. Each party is to make brief written submissions to the Court as to the Order that the Court should make as to the costs of the appeal, and as to paragraph 6 of the Order in respect of costs made by the First Instance Circuit.

Judgment

Introduction

1. The Appellant ('**Ooredoo**') appeals with permission granted on 19 April 2023 against the judgment of the First Instance Circuit ([2023] QIC (F) 5; Justices Fritz Brand, Helen Mountfield KC and Dr Muna Al-Marzouqi) given on 15 February 2023 which awarded the Respondent to the appeal (to whom we shall refer as the '**Claimant**') damages in the sum of QAR 509,679 for breach of her contract of employment with Ooredoo.

2. The appeal raises another important issue before the Appellate Division as to the maintenance and application of high employment standards in the Qatar Financial Centre ('**QFC**') following on from decisions given in respect of whistleblowing (*Prime Financial Solutions LLLC (Formerly International Financial Services (Qatar) LLC) v Qatar Financial Centre Employment Standards Office* [2022] QIC (A) 1), and the right to transfer employment (*Arwa Zakaria Ahmed Abu Hamdieh v Lesha Bank LLC* [2023] QIC (A) 1).

3. The issue in this appeal relates to the circumstances in which an employee can, under an employment agreement that is compliant with the QFC Employment Regulations 2020, be dismissed without notice, and in particular the procedures that must be taken by the employer under such a compliant employment agreement if the employer is not to be in breach of the agreement.

The factual background

4. The background for the purposes of the appeal can be shortly stated. A full account is set out in the judgment of the First Instance Circuit.

5. The Claimant, a Qatari national, became an employee of a company within the same group as Ooredoo, the Qatari multinational telecommunications company, in September 2008. Her employment was transferred to Ooredoo, a QFC entity, in June 2012. The terms of her employment were set out in an employment agreement dated 1 June 2012.

6. She held senior positions in Ooredoo becoming by 2017 "*Assistant Director, Strategic Planning and Performance Management*". As is set out with great clarity in paragraphs 54-92 of the judgment of the First Instance Circuit, the relationship between her and some of her line managers and colleagues deteriorated for various reasons including evaluations of her performance and the lack of further promotion. The Claimant lodged grievances under Ooredoo's policies including claims in April 2021 of unfair and discriminatory treatment and bullying by her then line manager.

7. After further events that are not material to the present appeal, on Wednesday 6 October 2021, the Human Resources Manager telephoned the Claimant and suggested she might consider leaving Ooredoo's employment voluntarily. She was then offered an exit package in writing. Her evidence to the First Instance Circuit was that she felt that Ooredoo wanted to get rid of her and that this affected her health.

8. On Monday 11 October 2021, the Claimant stopped coming to work. Initially, a sicknote was provided with a medical explanation for 11 and 12 October 2021. She gave no further explanation to Ooredoo. She gave two explanations to the First Instance Circuit which the First Instance Circuit did not accept; but it did accept her third explanation that she was upset at the indication from her line manager that the employer wanted her to leave and that she felt overwhelmed. She told the First Instance Circuit that she did not come back to work as she thought that she would be immediately dismissed; she did not know what to do and felt hopeless. But, as the First Instance Circuit pointed out, she did not explain these feelings to Ooredoo, which

obviously she should have tried to do (see paragraph 84 of the judgment of the First Instance Circuit)

9. Although the Human Resources Manager of Ooredoo sent her emails asking her why she did not come into work, Ooredoo subsequently blocked her email account at a date that could not be ascertained; the First Instance Circuit found that she did not receive any of the emails, but that she did receive two WhatsApp messages from the Human Resources Manager on 18 and 27 October 2021; the second of these warned her that absence from work without legitimate cause was subject to disciplinary action and asked her for an urgent response. She made no response.

10. On 8 December 2021, the Group Chief Human Resources Officer of Ooredoo sent the Claimant a letter in the following terms:

> *I regret to inform you that the management has decided to terminate your services due to your absence from work without a legitimate cause for more than seven consecutive days since October 17th 2021.*
>
> *This letter serves the purpose of confirming your separation from Ooredoo services with effective from November 1st 2021.*
>
> *We thank you for the contribution you made during your tenure with us and wishing you all the best in your future assignments.*

11. Ooredoo gave no explanation to the First Instance Circuit nor to us as to why the date of 17 October 2021 was chosen as the start of the absence for the computation of the 7-day period and why the date of 1 November 2021 was given as the termination date. She was paid for 22 days of the period when she was absent. She was informed on 20 January 2022 that she was not entitled to payment for the 3-month notice period to which she would otherwise have been entitled.

Her claim before the First Instance Circuit

12. The Claimant brought her claim before the First Instance Circuit on a number of bases. There were two principal issues: whether she had been subjected to unlawful discrimination, and whether her dismissal had been unlawful.

13. The Court dismissed her claim for unlawful discrimination for the reasons set out at paragraphs 96 to 120 of the judgment of the First Instance Circuit. There is no appeal by the Claimant against that part of the judgment.

14. This appeal by Ooredoo is concerned with the second principal issue: whether her dismissal had been unlawful. Although the Claimant advanced her claim before the First Instance Circuit on several bases set out in paragraph 94 of the judgment of the First Instance Circuit, the issue turns principally upon the terms of her employment agreement, Ooredoo's Human Resources Policy (the '**HR Policy**'), the QFC Employment Regulations 2020, and the Qatari Labour Law as in force at the relevant time. The relevant provisions of the agreement, the HR Policy, the QFC Employment Regulations 2020, and the Qatari Labour Law are set out in full in Annex 1 to this judgment.

The decision of the First Instance Circuit

15. The First Instance Circuit found that Ooredoo had in principle grounds for dismissing an employee who failed to come to work without lawful excuse for more than seven days. At paragraph 123, the First Instance Circuit held:

> *We consider that dismissing someone for a long period of unauthorised absence, without explanation, was a reasonable response. We accept the Defendant's case that failure to come to work without lawful excuse for more than seven days was misconduct which could justify dismissal, whether under its own contract, the Policy or article 24 of the Regulation. We accept that this was a reason capable of justifying a dismissal in principle.*

16. However, the First Instance Circuit held that Ooredoo had unfairly dismissed the Claimant because there was no attempt to offer her a disciplinary hearing as it explained at paragraph 124:

> *However, we do consider that the manner of her dismissal was unfair. There was no attempt to offer the claimant a disciplinary hearing to hear her explanation for her absence before dismissing her for it. This was required in the contract and by an implied contractual duty of fair procedure. There was no explanation in the dismissal letter of why the period of allegedly unauthorised absence was said to start on 17 October 2021, or why – on 8 December 2021 – it was decided that the dismissal would be treated as effective from 1 November 2021. There was no assertion of misconduct in the letter, nor any explanation of why it had been decided to dismiss the claimant without the three months' notice to which she would be entitled unless there was a fair*

finding of misconduct which was sufficiently serious to justify the penalty of dismissal without any notice at all.

17. The First Instance Circuit concluded that such a hearing was required by the terms of her employment agreement, by an implied contractual duty of fair procedure and by articles 8, 14, 17, and 38 of the QFC Employment Regulations 2020 (see paragraphs 125, 126, 131 and 134 of the judgment of the First Instance Circuit). The First Instance Circuit held that the disciplinary hearing should have been before 3 senior employees with at least five days' notice of that hearing being given to the Claimant. She should then have been given the opportunity to state her case and have her explanations taken into account. If the hearing had found that the breach was so serious as to justify dismissal without notice, then her dismissal should have been from the date of the decision at the hearing (see paragraph 129 of the judgment of the First Instance Circuit).

18. The First Instance Circuit found that if the Claimant had contacted Ooredoo she would have been entitled to up to 60 days of paid sick leave (see paragraph 127 of the judgment of the First Instance Circuit). As Ooredoo had complied neither with its contractual disciplinary procedures nor with what the QFC Employment Regulations 2020 required:

    i. There was no reason which justified backdating her dismissal to 17 October 2021 (see paragraphs 131-132 of the judgment of the First Instance Circuit).

    ii. On 8 December 2021, Ooredoo should have given her five days' notice of a disciplinary hearing and held a hearing on 14 December 2021 (see paragraph 134 of the judgment of the First Instance Circuit).

    iii. At the hearing Ooredoo would have dismissed her on three months' notice.

    iv. The Claimant was therefore entitled to

        a. Full pay till 14 December 2021 in the sum of QAR 153,565 and leave pay due of QAR 110,797 (see paragraph 135(i) of the judgment of the First Instance Circuit).

b. An amount equivalent to three months' notice pay from 14 December 2021 in the sum of QAR 230,347 (see paragraph 135(ii) of the judgment of the First Instance Circuit)

v. she was also entitled to moral damages in the sum of QAR 15,000 (see paragraphs 137-138 of the judgment of the First Instance Circuit).

The appeal

19. The appeal was advanced by Dr Reem Al-Ansari, counsel for Ooredoo, on 5 grounds:

i. Paragraphs 123 and 124 of the First Instance Circuit judgment were self-contradictory. There was no requirement in the Employment Agreement or under the applicable legislation for a disciplinary hearing if an employee was absent for more than 7 days.

ii. Ooredoo tried to contact the Claimant; she did not present any explanation for her absence from work.

iii. Articles 8, 14 and 17 of the QFC Employment Regulations 2020 did not require a disciplinary hearing.

iv. A disciplinary hearing was not required if any employee absented themselves for seven days without explanation.

v. She was not entitled to any payment beyond the payment which had been made to her.

20. The Claimant's position on the appeal advanced by Mr Assad Al-Asad was that the decision of the First Instance Circuit was correct; it was not suggested by Mr Al-Asad that any of the claims made by her which the First Instance Circuit had rejected should be reconsidered by us.

The issues and the relevant legal provisions

21. The issues in the appeal that therefore arise can be summarised as follows:

    i. Was Ooredoo entitled to dismiss the Claimant in circumstances in which she had absented herself from employment without legitimate cause for seven days unless either a disciplinary interview or disciplinary hearing was held?

    ii. If so, was the Claimant entitled to three months' pay in lieu of notice from the date at which the interview or hearing should have taken place?

    iii. If no disciplinary interview or hearing was required, was Ooredoo entitled to backdate the dismissal to 1 November 2021 in the way it did?

    iv. Were moral damages payable?

22. These issues are to be determined under the terms of the Claimant's employment as set out in the Employment Agreement. Those terms were subject to three other sets of provisions – the HR Policy, the QFC Employment Regulations 2020, and the national Labour Law of the State of Qatar as in force at the relevant time.

23. Clause 9 of the Employment Agreement entitled Ooredoo to terminate her employment with immediate effect if it had good reason to believe that she had done something that amounted to gross misconduct. On its face this might appear to give a fairly broad entitlement to dismiss an employee, but, although clause 16 of the Employment Agreement was an "entire agreement" clause, it was common ground before us that the Employment Agreement incorporated the terms of Ooredoo's HR policy. There was some evidence before the First Instance Circuit, as set out at paragraph 17 of its judgment, that the HR Policy was not generally made available to the employees except on a need-to-know basis. We find that very surprising, as the HR Policy is an integral part of the contract and should be available of each employee as part of the Employment Agreement. However, the fact that it is was not made available can make no difference in a case such as the present where the material terms of the HR Policy operated to protect the position of an employee.

24. Therefore, in determining what amounted to gross misconduct as set out in the Employment Agreement and the circumstances which would justify dismissal, the material contractual provisions were set out in the general provisions of the HR Policy and in particular section 3.10 which covered discipline, and which among other things defined major misconduct (which can be taken to be the same as gross misconduct) and minor misconduct. Section 10.3.4 includes in the list of examples of acts that may be classified as major misconduct, "*Absence from work without legitimate cause for more than seven consecutive days, or fifteen days in a twelve month period*".

25. It was also common ground that the QFC Employment Regulations 2020 applied to the Claimant as an employee of a QFC entity and that Ooredoo was bound to apply the provisions of those Regulations as minimum standards under article 8 of those Regulations.

26. In addition, clause 15 of the Employment Agreement provided that the national laws of the State of Qatar should apply to her employment in respect of matters not addressed by the QFC laws. We consider the effect of this clause at paragraphs 56-58 below.

27. We therefore turn to consider the issues.

Issue 1: Was Ooredoo entitled to dismiss the Claimant in the circumstances in which she had absented herself from employment without legitimate cause for seven days unless either a disciplinary interview or disciplinary hearing was held?

28. This was the principal issue on the appeal. It is easiest to address this issue by considering a number of questions.

Whose was the obligation to show absence was without legitimate cause?

29. The first question is to determine upon whom the obligation lay to show that the absence from work was without legitimate cause (using the term in the HR Policy) or without a justified reason (the term in article 24(1)(I) of the QFC Employment Regulations 2020). There is no material difference between the terms of the Regulations and those of the HR Policy and we shall therefore use the term in section 3.10.4 of the HR Policy.

30. Under the terms of the Employment Agreement (and in particular section 3.5.2 of the HR Policy and the summary provided to the Claimant which reflected article 38(2) of the QFC Employment Regulations 2020), an employee who was absent due to illness had the obligation to notify the employer either personally or through another that the employee was unable to fulfil his/her duties. As we have set out, the First Instance Circuit found that the Claimant did give an explanation for her absence for the first two days through a sick note, but did not do so thereafter. In summary:

    i. There was no evidence that she notified Ooredoo that after 11-12 October 2021 she was off work because she was sick.

    ii. She was not entitled to be absent on the basis she was (as she claimed) entitled to work remotely.

    iii. The real reason for her absence was that she thought that she was being asked to leave and felt overwhelmed but never explained this to Ooredoo.

    iv. She did not receive the emails sent to her by Ooredoo asking her to contact them, but there was no reason why she would not have received the texts on 18 and 27 October 2021. The first expressed concern about her, enquired about her wellbeing as she had not returned from sick leave, and asked her to let the Human Resources Manager know if she was OK. The second was a further enquiry, but also added that absence from work without legitimate cause was subject to disciplinary action. It concluded, "*Please respond urgently. Thank you*".

31. In our view, there was no justifiable reason or legitimate cause why the Claimant did not respond to those texts and did not explain her absence. There was no medical evidence before the First Instance Circuit which explained that her failure was due to a medical condition. We therefore conclude that the Claimant failed to give an explanation for her absence. Ooredoo was in the circumstances entitled to infer that there was no legitimate cause for her absence and that there were therefore grounds for dismissal for gross misconduct as provided for in the HR Policy at 3.10.4 (which

reflected the provisions of article 24 of the QFC Employment Regulations 2020) – "*absence for work without legitimate cause for more than seven consecutive days*".

32. We therefore agree with the holding of the First Instance Circuit to this effect.

Did the failure by the Claimant to provide an explanation for her absence entitle Ooredoo to dismiss her without further steps being taken?

33. However, the conclusion that there were grounds for dismissal for gross misconduct gives rise to the next question: whether the failure of the Claimant to show she was entitled to be absent for a legitimate cause entitled Ooredoo under the Employment Agreement to dismiss her without further steps and procedures being taken. This question must be determined by reference to the provisions of Ooredoo's HR Policy as it is, for the reasons we have explained, an integral part of the Employment Agreement.

34. It is important to stress that Ooredoo set out in its HR Policy very clear and detailed provisions for procedures and record keeping in accordance with the high standards set by the QFC Employment Regulations 2020. As was made clear by Ooredoo in the introduction to the section of its HR Policy which covered discipline, it was intended to ensure corrective action was taken, was fair, and in accordance with the applicable legislation. The provisions of the HR Policy set out the duty to keep records and the procedures to be followed in disciplinary matters which were at least at the level of minimum standards set out in the QFC Employment Regulations 2020 as required by article 8 of those Regulations. We can therefore determine the question as to any steps Ooredoo were obliged to take before dismissing an employee by the standards it had properly set itself in compliance with the high standards of the QFC Employment Regulations 2020.

35. The introductory words to section 3.10 of the HR Policy made clear that every effort would be made to ensure that the process was properly documented as required by article 14 of the QFC Employment Regulations 2020.

36. Section 10 also set out in some detail the procedural steps that should be taken where a manager believed that an employee had committed gross misconduct:

i. The manager was required by HR Policy, section 3.10.5, in the event that a manager believed that an employee had committed gross misconduct, to consult with Human Resources. Human Resources would determine:

> *whether the employee should be suspended pending further investigation, or move to a disciplinary interview. If it is decided that the manager should hold a disciplinary interview then the manager will determine the penalty based on the outcome of the interview.*

ii. HR Policy, section 3.10.6, required that whilst an investigation was carried out by a disciplinary committee (whose composition was defined in HR Policy at section 3.10.7), an employee who committed major misconduct should be suspended on full pay. Once the disciplinary committee had concluded its investigation, the employee would be invited to a disciplinary interview.

iii. HR Policy, section 3.10.12, required that five days' notice should be given of the disciplinary interview. It set out the procedural safeguards which should be in place during the interview.

iv. If found guilty, disciplinary action would follow.

v. There was a right of appeal under HR Policy section 3.10.15.

37. However, provision was also made by HR Policy, section 3.10.10, for instant dismissal in the event of gross misconduct; it set out situations that warranted immediate dismissal. Included among the situations was absence from work "*without reason*" for more than seven consecutive days. HR Policy, section 3.10.11, also provided that there might be "*circumstances that are so serious that a disciplinary interview is not necessary*", but Human Resources was to determine which situations fell into that category in discussion with the line manager.

38. It is clear from the provisions of the HR Policy that the determination that there had been gross misconduct by an employee was required, in line with the policy of the QFC Employment Regulations 2020, to be undertaken fairly. The procedural safeguards set out in the HR Policy were intended to ensure such fairness. The key requirements were that (i) a record should be kept, and (ii) that the employee should

be given, save in circumstances that rendered it unnecessary, the opportunity of a disciplinary interview where the allegations could be put to the employee and the employee be given the opportunity of responding.

39. The procedures and safeguards for such an interview are set out in Ooredoo's HR Policy in simple and clear terms. These provide for more than the minimum requirements set out in the QFC law (as required by article 8 of the QFC Employment Regulations 2020). As the First Instance Circuit observed at paragraphs 36 and 37 of its judgment, article 17 of those Regulations permits more favourable terms. Therefore, the issue could and should be determined by reference to the HR Policy rather than by reference to the QFC laws (Employment Regulations 2020). The First Instance Circuit made reference to an implied contractual duty of fair procedure, but given that the HR Policy meets the minimum requirements and its provisions are clear and straightforward, it is neither necessary nor desirable for this Court to add further amplification or procedural requirements beyond what is set out as applicable under the terms of the Employment Agreement.

40. The key questions under the terms of the HR Policy which formed part of the Employment Agreement are: whether a record of the disciplinary action against the Claimant was kept and whether a disciplinary interview/hearing was required? If an interview or other steps under section 3.10 were required on the part of Ooredoo under the Employment Agreement, then the conclusion reached in paragraph 124 of the judgment of the First Instance Circuit that the dismissal was in breach of the Employment Agreement was entirely consistent with the conclusion in paragraph 123 that grounds existed for dismissal, as the failure to follow the requirements of the HR Policy was itself a breach of the Employment Agreement.

Was Ooredoo in breach of the Employment Agreement by failing to keep a record?

41. We therefore turn to examine, as the third and fourth questions, the issue as to whether Ooredoo was in breach of the Employment Agreement in failing to keep a record and in failing to follow the procedural steps required. These are separate questions as each could constitute a breach of the Employment Agreement.

42. The First Instance Circuit held at paragraph 130 that there were no records of any disciplinary proceedings that took place after the Claimant's absence in October 2021 unlike on a previous occasion in 2018. It was not suggested that this finding was wrong. The action taken against the Claimant was clearly disciplinary action as she was dismissed for gross misconduct. There was therefore a clear and important breach by Ooredoo of its own policies by failing to keep any record and thus there was a breach of the Employment Agreement.

43. Among the consequences of that breach was the lack of any written explanation of the reason why the date of dismissal of 1 November 2021 had been chosen and the lack of any contemporary record of the decisions made in respect of the disciplinary procedure. Keeping a contemporary record is an important aspect of adhering to the fair procedures that the HR Policy required in accordance with the requirements of the QFC employment laws. Ooredoo's failure must therefore not be seen as simply a technical or minor breach of Ooredoo's obligations; it was a serious breach with consequences that were evident in the proceedings before the First Instance Circuit.

Was Ooredoo in breach by failing to follow the procedures in respect of a disciplinary interview and other steps?

44. We therefore turn to consider the fourth question in respect of this issue: whether Ooredoo was in breach of the Employment Agreement by failing to follow the procedural requirements it had set itself consistent with the requirements of the QFC Employment Regulations 2020.

45. As we have set out, HR Policy, section 3.10.11, also provided that there may be "*some circumstances that are so serious that a disciplinary interview is not necessary*". The First Instance Circuit was of the view that this exception was intended for cases where there was really no argument about whether or not dismissal was the only response (for example, a case where there had been a serious criminal finding of, say, theft or assault) and this was not such a case. However, as noted above, HR Policy, section 3.10.4, gives absence from work without legitimate cause for more than seven consecutive days as an example of major misconduct, and there may be some circumstances which make this particularly serious. Again, it is neither necessary nor desirable for this Court to add further amplification beyond what is set out as applicable under the terms of the

Employment Agreement. The important point in our view is that having stated that there may be some circumstances that are so serious that a disciplinary interview is not necessary, HR Policy, section 3.10.11, goes on to provide that "*HR will determine which situations fall into this category in discussion with the line manager*". This was an important procedural safeguard as it required a person with experience of employment issues to make the determination in discussion with the line manager.

46. It was ably submitted to us by Dr Al-Ansari that as the First Instance Circuit had found the Human Resources Manager had contacted the Claimant (as we have set out at paragraphs 9 and 30 above) and made clear to the Claimant that absence from work without a legitimate reason was a disciplinary matter, and the Claimant's failure to respond justified her dismissal without disciplinary interview or hearing. However, the Employment Agreement required that a determination should have been made that a disciplinary interview or hearing was not necessary; there is no evidence that such a determination was made. The importance of making such a determination was for the employer to consider and formally to determine whether there were grounds for departing from the ordinary requirements of the HR Policy, one of the purposes of which, as so clearly set out in HR Policy section 3.10.13, was to hear what the employee had to say.

47. The failure to make the determination in the manner required by the HR Policy was a breach of the requirement of an important procedural safeguard. In addition, in the present case, the failure to follow the procedure had the consequence that no explanation by Ooredoo could be given to the First Instance Circuit for the dates set out in the letter of dismissal. Experience shows that if there is a proper procedure (as Ooredoo had set out in its HR Policy) and it is followed, then it is less likely that decisions will be taken which cannot be explained.

What were the consequences of failing to observe the procedural safeguards?

48. The consequence of the failure to make the determination required was that under the terms of the HR Policy, the Claimant should have been given 5 days' notice of the interview in accordance with HR Policy, section 3.12, and the interview carried out in accordance with the provisions of HR Policy, section 3.13.

49. We therefore consider that the First Instance Circuit was entirely correct in its conclusion, but we prefer to base that conclusion on Ooredoo's failure to follow the contractual procedure clearly set out in its HR Policy (and which was entirely compliant with the QFC Employment Regulations 2020). We consider that this is the better approach rather than determining the question on the basis of a breach of article 14 of those Regulations, though what Ooredoo did would have amounted to a breach of those Regulations if it had not had the procedures set out in its HR Policy. In short, we are satisfied that, although Ooredoo had grounds for dismissal of the Claimant in accordance with the terms of the Employment Agreement, it was in breach of the requirements of the contract in not keeping the records and following the procedures it had made part of the agreement.

50. It follows, therefore, that Ooredoo was not entitled to dismiss the Claimant with effect from 1 November 2021. It could only have dismissed her on 14 December 2021, which, as the First Instance Circuit found, was the earliest date on which the necessary disciplinary hearing could have taken place. The Claimant was therefore entitled to be paid her salary and other benefits until 14 December 2021 in the amount of QAR 153,565 and QAR 110,767 as set out in the judgment of the First Instance Circuit at paragraph 135(i).

Issue (2): If a disciplinary hearing/interview was necessary, should the Appellant be entitled to three months' pay in lieu of notice from the date at which the hearing should have taken place?

51. Although we agree with the decision of the First Instance Circuit that Ooredoo was not entitled to dismiss the Claimant without following the proper procedures, the question arises as to what would Ooredoo have done if on 14 December 2021 it had complied with the procedures.

52. The First Instance Circuit concluded at paragraph 134:

> *Had [Ooredoo] held such a fair hearing, we cannot be certain what the outcome would have been. Having heard the claimant's case, [Ooredoo]'s panel may or may not have concluded that summary dismissal would have been an appropriate response. It might have decided to give her a final warning and have reinstated her; or it might have decided instead to dismiss her on notice for poor performance. On the balance of probabilities, we consider that the most likely outcome had [Ooredoo] held a fair hearing, is that this would have taken place on 14 December 2021; and had there been such a hearing, the*

> *[Ooredoo] would have dismissed the claimant on three months' notice. In any event, the Defendant should have paid the claimant until the date of dismissal, which we find would have been 14 December 2021*.

We note that the First Instance Circuit had found earlier, at paragraph 127 of its judgment, that if the Claimant had contacted Ooredoo and provided satisfactory sick notes, she would have been entitled to 60 days sick leave.

53. We find it very difficult to see on what evidence the First Instance Circuit reached the conclusion that Ooredoo would have dismissed the Claimant on 3 months' notice rather than immediately. At such an interview, it would have been clear that she had no justifiable reasons for being absent. Furthermore, it is the clear inference from all the evidence that Ooredoo wanted to terminate her employment on the terms of the least cost to it. Her unjustified absence from work had provided it with the opportunity to dismiss without notice and it would have taken the opportunity of her conduct to achieve that result. Once it followed the correct procedure, that was a course Ooredoo was entitled to take, and we have no doubt it would have done so.

54. We therefore conclude that the First Instance Circuit was wrong in holding that the Claimant would have been given three months' notice. We are sure she would have been dismissed without notice on that date.

Other issues relating to the payment Ooredoo would have been obliged to make

55. The Claimant put forward other claims made on the other bases as listed at paragraph 94 of the judgment of the First Instance Circuit, including claims for allowances in lieu of notice and an entitlement to an end of service gratuity. As we have recorded, no appeal was brought by her that the First Instance Circuit was wrong in dismissing those other claims

56. It is therefore not necessary for us to consider whether there was any basis for an end of service gratuity under the terms of the HR Policy or under the national labour law. The First Instance Circuit concluded at paragraph 94(vi) of its judgment that the national labour laws were inapplicable, despite the provisions of clause 15 of the Employment Agreement, because those laws were excluded by article 4 of the QFC Employment Regulations 2020.

57. The issues that arise in relation to the Claimant's entitlement to an end of service gratuity are complex, involving as they do the question as to whether the First Instance Circuit was correct in its conclusion that entitlements under the national labour law were excluded by the provisions of the QFC Employment Regulations 2020, even in circumstances where the employment agreement makes provision for recourse to national labour law and where the provisions of national labour law may be more favourable than the entitlements under the QFC Employment Regulations 2020. As is clear from the decision in *Arwa Zakaria Ahmed Abu Hamdieh v Lesha Bank LLC,* the interrelationship is complex. As the issue was not raised and argued before us, it is undesirable that we comment further and wish to leave open for the future the point decided by the First Instance Circuit at paragraph 94(vi).

Issue 3: If no disciplinary interview or hearing was required, was Ooredoo entitled to backdate the dismissal to 1 November 2021 in the way it did?

58. In the light of the conclusion we have reached, this does not arise.

Issue 4: Was the Claimant entitled to moral damages?

59. The First Instance Circuit held at paragraph 94(ix) (page 34 of the judgment) that, as the First Instance Circuit decided in *Arwa Zakaria Ahmed Abu Hamdieh v Qatar First Bank (later known as Lesha Bank LLC)* [2022] QIC (F) 7 at paragraphs 38-39, the court had jurisdiction, in common with courts in other jurisdictions and in conformity with article 202 of the Qatar Civil Code, to award damages for moral damage in an appropriate case where the feelings of a Claimant were injured. The First Instance Circuit decided in the present case at paragraph 94(ix) that the Qatar Financial Centre Civil and Commercial Court had jurisdiction to award a proportionate sum for moral damages for injury that went beyond the merely financial and material in circumstances where individuals had suffered stress and distress as a result of their unlawful treatment.

60. In the appeal in *Arwa Zakaria Ahmed Abu Hamdieh v Lesha Bank LLC*, this Court did not doubt that jurisdiction, but in the light of the outcome of the appeal on other issues, it did not have to consider the circumstances in which such damages should be awarded (see paragraph 103 of the judgment at [2023] QIC (A) 1)

61. In the present case, the First Instance Circuit held at paragraphs 137-138 that Ooredoo's failures to give proper consideration to the Claimant's grievances relating to discrimination and its failure to comply with the terms of the Employment Agreement were a serious matter. Dismissal without proper procedure and explanation caused the Claimant to suffer injury to feelings which justified the payment of moral damages. The First Instance Circuit quantified the amount at QAR 15,000.

62. We agree that there are cases where moral damages should be awarded for injury to the feelings of a Claimant which goes beyond compensatory loss. In this Court, the issue will arise primarily in cases arising out of a breach of contract as the greatest number of disputes relate to contractual claims. We agree that in such cases moral damages for injury to the feelings of a Claimant can be awarded. However, considering the experience of other jurisdictions and in the absence of principles set out in law or regulation, it will be necessary for the Court in accordance with paragraphs 8 and 9 of Schedule 6 to the QFC Law (No. 7 of 2005) and article 11 of the QFC Civil and Commercial Court Regulations and Procedural Rules to delineate the applicable principles on a case-by-case basis. We consider that this should be done by having regard to conditions in Qatar and the position of the QFC and other bodies in Qatar as important international markets which set standards by seeking to give effect to international standards, as this Court explained at paragraphs 28-30 of its judgment in *Prime Financial Solutions LLLC (Formerly International Financial Services (Qatar) LLC) v Qatar Financial Centre Employment Standards Office*.

63. In our view, in determining whether an award of moral damages is to be made in a proportionate amount, regard must be had to the type of contract in issue and the conduct of the defendant. In an employment contract the standards set by the QFC Employment Regulations 2020 and the QFC Employment Standards Office require employers to treat employees in accordance with the employment agreement and the applicable regulations when an issue relating to dismissal arises, as Ooredoo's HR Policy makes clear; in principle, an award of moral damages can therefore be made in respect of an employment contract. However, as not every breach of an employment contract in dismissing an employee entails injured feelings which should be compensated by an award of moral damages; there must be something in the conduct of the defendant and in the degree of injury suffered by the claimant which merits such

an award. In the present case, we do not consider that the nature of the conduct of Ooredoo was such that it should have been marked by an award of moral damages. As we have found, it acted in breach of the Employment Agreement by not following the procedure it had set and did not keep any record, but it did attempt to reach out to the Claimant who did not respond as her employment contract required. We do not therefore consider the circumstances were such that an award of moral damages for injured feelings was appropriate.

Costs

64. Although Ooredoo has succeeded in the appeal to the extent of reducing the sum it has to pay to the Claimant, it failed on the issues on whether it was entitled to dismiss the Claimant without notice with effect from 1 November 2021. Those issues occupied the greater part of the written submissions and of the time at the hearing. We therefore invite short written submissions on the Order we should make as to (i) the costs of the appeal, and (ii) the Order made by the First Instance Circuit as to the costs before it as set out in paragraph 6 of its Order.

By the Court,

[signed]

Lord Thomas of Cwmgiedd, President

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

Representation:

The Appellant was represented by Dr Reem Al Ansari of the Dr Reem Al Ansari Law Firm (Doha, Qatar).

The Respondent was represented by Mr Assad Al Asad of Asma Muftah Al-Ghanem Law Firm (Doha, Qatar).

Annex 1

(1) THE EMPLOYMENT AGREEMENT

The terms are set out in detail in the judgment of the First Instance Circuit. It is only necessary to refer to:

i. *9. TERMINATION OF EMPLOYMENT*
9.2 At the end of this appointment, the employee shall receive an end of service gratuity in accordance with the then HR Policy.

9.4 The Company may terminate the Appointment in writing with immediate effect if the Company has good reason to believe that the Employee has been grossly negligent or has done something illegal or that amounts to gross misconduct. In such a case, the Company remains free to exercise any of its other legal rights and remedies against the Employee.

ii. *15. GOVERNING LAW AND JURISDICTION*
This Agreement shall be governed and construed in accordance with the laws of the Qatar Financial Centre. Any matter arising out of or in connection with this Agreement which is not addressed by reference to the laws of the Qatar Financial Centre shall be settled by reference to the laws of the State of Qatar.

iii *16. ENTIRE AGREEMENT*
This Agreement sets out the entire agreement between the parties regarding the Appointment and supersedes all prior discussions and correspondence between them.

(2) OOREDOO'S HUMAN RESOURCES POLICY

The relevant provisions were as follows:

i. *Interpretation (p2)*
The provisions of the Qatar Financial Centre (QFC) Employment Regulations will prevail in the event of any conflict which may arise between the provisions of the HR Policy Manual and that of the QFC Employment Regulations.

ii. *Section 3.4 General Terms & Conditions of Employment*

Contract of Employment (p22)
HRM-PL 3.4.3 All employment contracts are subject to HR policy and procedures and any exceptions to this have to be approved by the GCEO and the Remuneration Committee of the Board.

HRM-PL 3.4.32 The Company or the employee may terminate the contract of employment provided the other party is notified in writing. The notice. For each of the Staff Categories are:

Three (3) months

iii. *Section 5 Leave & Absence policies*

HRM-PL 3.5.1
All employees except those on temporary employment contract will be entitled to annual paid leave…

HRM-PL 3.5
1.An Employee is entitled to a total of 60 working days split sick leave in any 12 month period and is entitled to receive the usual salary during this period.

2. An Employee who is absent due to illness must notify the line manager as soon as reasonably practicable that he/ she is unable to fill the duties.

3. The Employee or a person on his behalf must provide a medical certificate stating that the employees is unable to fulfil his duties at least once every seven days during any period of absence due to illness.

4. The payment of sick pay may get withheld in if an Employee fails to give the notice required under paragraph (2) unless the Employee provides medical certificates as required under paragraph (3) of this Article

iv. *Section 3.7 Benefits*

HRM-PL 3.7.14
Pension and Gratuity
5. The employee is entitled to the following end of service gratuity upon termination by notice of the contract of employment.

6. For Qatari employees, the following table applies:

Gratuity in accordance to Law No 33. 2004

v. *Section 3.10: Discipline*

The company's disciplinary policy is designed to allow us to address conduct and behaviour that we deem to be unsatisfactory. It is a progressive policy designed to ensure corrective action is taken, it's fair and in accordance with any applicable legislation.

We will make every effort to ensure any disciplinary action is taken as quickly as possible and that the process is properly documented and the employee is clearly informed.

1. *HRM-PL 3.10.1*

There are two categories of offence leading to disciplinary action:

- *Minor Misconduct*
- *Major or Gross Misconduct*

2. *Minor misconduct (p64-5)*

HRM-PL 3.10.3 Minor misconduct is a violation of a minor nature e.g. habitual lateness of leaving early for work. Committing minor misconduct more than three times a year may be deemed as major misconduct.

3. *Major Misconduct (p65)*

HRM-PL 3.10.4: Major or gross misconduct as a serious offence or wilful act to cause damage, harm, destruction to property or reputation or grievous hurt to others. A list below gives some examples of acts that may be classified as major misconduct.

…

- *Absence from work without legitimate cause for more than seven consecutive days, or fifteen days in a twelve month period.*

…

4. *Discussion with HR (p65)*

HRM-PL 3.10.5 When a manager believes an employee has acted in a way which could be defined as major or gross misconduct he/she should immediately discuss the situation with HR to agree a course of action. HR will determine, based on the evidence presented, whether the employee should be suspended pending further investigation, or move to a disciplinary interview. If it is decided that the manager should hold a disciplinary interview then the manager will determine the penalty based on the outcome of the interview.

5. *Investigation during suspension (p65)*

HRM-PL 3.10.6 An employee who commits a major misconduct will be suspended with pay while a full investigation takes place. Once the investigation is complete the employee will be invited to a disciplinary interview. If he/she is found guilty, disciplinary action will follow. …

HRM-PL 3.10.7 The investigation will be carried out by a disciplinary committee. This committee will comprise a chairperson and two employees (of which one will be a representative from Legal) who are at least equal in grade to the employee who committed the offence. …

6. Disciplinary penalties (p66)

HRM-PL 3.10.9 The disciplinary penalties that apply are listed below and will depend on the severity of the case.

…

7. Instant dismissal (p66)

HRM-PL 3.10.10 Situations which warrant immediate dismissal are:

…

- *The employee is absent from work without reason for seven consecutive days or fifteen days in a calendar year.*

HRM-PL 3.10.11 There may be some circumstances that are so serious that a disciplinary interview is not necessary. HR will determine which situations fall into this category in discussion with the line manager.

8. Disciplinary Interview (p67-68)

HRM-PL 3.10.12 When a disciplinary interview is necessary the line manager should give the employee 5 days' notice and inform him/her of the reason for the meeting and that he/she is entitled to have a fellow employee present at the meeting. It is also advisable for the manager to have a colleague present who can take notes at the interview on the participant's behalf.

HRM-PL 3.10.13. In holding the meeting the manager should observe the following steps:

- *allow plenty of time to conduct the interview, allowing enough time to explore the facts and hear the employee's side of the story.*
- *Book a room to hold the meeting. In opening the meeting state clearly the purpose of the meeting and the incident to be investigated.*
- *Give the employee the opportunity to explain what happened and the employee's reflections.*
- *Listen to the employee's explanation and ask questions to understand the situation, clarify the situation and obtain all the facts.*
- *If necessary check his/her understanding of company policies and procedures.*
- *Take a short break to either check information, or if things get heated or emotional provide space for both parties to calm down.*
- *Once all the facts have been gathered called an adjournment to the meeting. This allows both parties to reflect on the contents of the meeting and for the manager to make an objective decision. If the manager is unsure of the course of*

action to take it also gives him/her the opportunity to consult HR.

- *Following the adjournment the employee should be informed of the decision and agreement made on any action the employee needs to make moving forward.*
- *Support the employee and provide positive feedback to identify and agree what action or behaviour the employee will take to ensure the same thing does not happen again.*
- *Follow up afterwards to ensure the agreed action is being implemented*

HRM-PL 3.10.14. During the disciplinary interview, notes should be taken and it is recommended that the manager, Employee relations representative and the employee should sign the interview meeting notes. In the event any party refuses to sign, issue is then escalated to the Grievances Committee.

9. Appeal (p68)

HRM-PL 3.10.15 An employee has the right to appeal against any disciplinary decision. …

(3) THE QFC EMPLOYMENT REGULATIONS

(as then in force: (No 10 of 2006 as amended version 7, 7 June 2020)

i. Article 2 Application:

…
(4) Subject to Article 25A [Retirement and Pension], no laws, rules and regulations of the State relating to employment shall apply to Employees whose employment is governed by these Regulations.

ii. Article 8- No waiver of minimum standards

(1) The requirements set out in these Regulations are minimum requirements and a provision in an agreement to waive any of these requirements, except where expressly permitted under these Regulations, has no effect.
(2) Nothing in these Regulations precludes an Employer from providing in any contract of employment, terms and conditions of employment that are more favourable to the Employee than those required by these Regulations.
(3) A contravention of these Regulations constitutes a contravention of a relevant requirement under the QFCA Rules.

iii. Article 14 – Records

(A) The Employer shall maintain the following records:

In respect of each employee… any disciplinary action taken against him

iv. *Article 17 Employment contract*

(1) The Employer shall give each Employee a written employment contract which shall include at a minimum:
….

(I) Reference to any disciplinary rules and/or grievance procedures applicable to the Employee;

…

v. *Article 24 – Termination of employment without notice*

(1) An Employer may terminate an Employee's employment without notice in the circumstances set out below
(A) there has been a material breach by the Employee of his employment contract or these Regulations;
…
(I) the Employee has been absent without a justified reason for more than seven (7) consecutive days or for more than fifteen (15) days in the aggregate in a twelve (12) month period;
…
(K) the Employee has otherwise engaged in gross misconduct.

Article 38 – Sick Leave (B/101)
(1) An Employee is entitled to a total of 60 working days sick leave in any 12month period.

(2) An employee who is absent due to illness must notify the Employer as soon as reasonably practicable, either himself or through another person, that the Employee is unable to fulfil his duties.

(4) THE LAWS OF QATAR

Qatar Labour Law No. 14 of 2004 Promulgating the Labour Law As Amended:

Article 4: *The rights prescribed in this law represent the minimum rights of workers, and any condition contrary to the provisions of this law, even if it precedes the date of its entry into force, shall be null and void, unless it is more beneficial to the worker. Any discharge, reconciliation or waiver of the rights arising for the worker under this Law shall be null and void.*

Article 54: *In addition to any amounts due to the worker upon termination of service, the employer shall pay an end-of-service gratuity to a worker who has been at work for a full year or more. This remuneration shall be determined by agreement between the parties, provided that it shall not be less than three weeks' wage for each year of service, and the worker shall be entitled to the remuneration for fractions of the year in proportion to the period spent in service. The worker's service shall be deemed continuous if it is terminated in cases other than those provided for in Article (61) of this Law and is reinstated within two months from the date of its termination.*

.

Article 61: *An employer may dismiss a worker without notice and without granting him end-of-service gratuity in the following cases: ...*

9. If the worker is absent from work without a legitimate reason for more than seven consecutive days or fifteen intermittent days during the year.

Article 62: *In imposing sanctions on violating workers, the following shall be taken into account: ...*

3. The penalty may not be imposed on the worker except after informing him of what has been attributed to him and interrogating him in writing, and the investigation may be oral in minor violations for which the penalty prescribed in the sanctions list does not exceed the warning or deduction not exceeding one day's wage, provided that all of this is recorded in a record to be deposited in his own file…

Qatar Law No. 22 of 2004 regarding promulgating the Civil Code

Article 202: *1. Indemnity against the unlawful act shall cover damages even where such damages are moral.*
2. However, indemnity against moral damages arising from death may not be granted other than to the spouse and relatives up to the second of kin for physical, mental or psychological suffering they sustained due to such death.

DIGITALLY SIGNED AND VERIFIED
موقّع رقمياً ومعتمد