



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) 38

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

Date: 21 August 2023

CASE NO: CTFIC0033/2023

KLAAS BOUWMAN

Claimant

v

KOFLER GROUP MIDDLE EAST LLC

Defendant

JUDGMENT

Before:

Justice Fritz Brand

Justice Ali Malek KC

Justice Yongjian Zhang

Order

1. The Defendant is to pay the Claimant forthwith an amount of QAR 4,349, together with interest on the said amount, calculated at the rate of 5% per annum from 22 May 2022 until date of payment.
2. The Defendant is to pay the Claimant forthwith an amount of EUR 3,200, together with interest on the said amount, calculated at the rate of 5% per annum, from 22 May 2022 until date of payment.
3. The Defendant is to pay the costs incurred by the Claimant in pursuing these proceedings, as determined by the Registrar if not agreed between the parties.

Judgment

1. The Claimant in this matter is Mr Klaas Bouwman, a Dutch national resident in the Netherlands.
2. The Defendant, Kofler Group Middle East LLC, is a company established in the Qatar Financial Centre ('**QFC**') where it is licenced to render professional services, including project and events management.
3. Accordingly, this Court has jurisdiction to determine the dispute by virtue of article 9.1.3 of the Court's Regulations and Procedural Rules (the '**Rules**').
4. Because of the sums involved and the nature of the issues arising, the claim was allocated by the Registrar to the Small Claims Track of this Court under Practice Direction No.1 of 2022. In accordance with this Practice Direction, we concluded that it is appropriate to determine the issues in this case on the basis of the written material before us and without an oral hearing. Neither party requested an oral hearing.
5. Both parties are legally represented. After the Claimant's claim together with the supporting documents thereto were sent to the Defendant on 8 June 2023, the Defendant filed its Defence together with supporting documents on 19 July 2023. Thereupon the

Claimant filed a Reply on 23 July 2023, to which the Defendant responded by way of a Rejoinder.

6. In its Reply, the Claimant asserted that the Defence was filed 13 days late and invited us to hold that it was inadmissible. We do not find the Defendant's explanation for its failure to comply with this Court's direction persuasive, but have concluded that it would be wrong to reject the Defence having regard to the Overriding Objective in the Rules and the lack of any prejudice to the Claimant because of the late filing. We should stress that it is important that pleadings are filed on time and, if more time is needed, an application is made for more time before the expiry of the date for service of the pleading in question. Since the Defendant's Rejoinder did not contribute anything new, we decided that no further pleadings were required.
7. The claim arises from an employment contract between the parties entered into on 1 April 2023 (the '**Employment Agreement**') pursuant to which the Claimant was employed by the Defendant as Operations Director for a fixed term from 1 April 2022 until 31 January 2023. By clause 5.1 of the Employment Agreement, the Claimant's basic salary was €12,000 per month.
8. As formulated in the Claim Form, the Claimant's first claim is for €24,000, representing his salary for two months. In support of this claim, the Claimant contends that during the course of his employment he received his full basic salary, except for December 2022 and January 2023.
9. The essential facts relating to the Claimant's claim for unpaid salary are as follows according to his pleadings (which are supported by a statement of truth).
10. On 25 November 2022, the Claimant became ill and informed the Defendant that he would be taking sick leave. On 27 November 2022, he returned to his home in the Netherlands to receive medical treatment.
11. On 29 November 2022, the Legal Manager of the Defendant sent an email to the Claimant informing him, inter alia, as follows:

Please note that you will need to provide a medical certificate from an approved Qatari medical institution registered in Qatar at least once every 7 days during any period of absence due to illness.”

12. On 1 December 2022, Mr Ouakdi of the Defendant indicated in an email of that date that a certificate that had been provided was unsatisfactory and asked him, “*can you please get a certificate from an institution in Holland?*”. He also stated, “*I need a certificate for the week 19-24 Nov and one for this week as well*”.

13. On 7 December 2022, the Claimant provided the Defendant with a medical certificate (the ‘**December Certificate**’) signed and issued by a medical practitioner in the Netherlands, in the Dutch language in which it is certified that he was, “*totally unfit for work for a period of 4 to 6 weeks as from 25 November 2022*”.

14. The Defendant responded by an email dated 9 December 2022 in the following terms

As indicated in my previous correspondence we need a medical certificate stating that you are unable to fulfil your duties, however it must be provided by a Qatari medical institution registered in Qatar at least every 7 days during any period of absence due to illness. To be entitled to sick leave since your first message, we will need three medical certificates, one for week 20-24 Nov, one for week 27 Nov-1 Dec, one for week 4-8 Dec. Can you provide that?”

15. Towards the end of December 2022, the Claimant tried to make arrangements with the Defendant to recommence his duties in January 2023 by way of WhatsApp messages and phone calls, but the Defendant did not respond. It simply refused to pay his salary for December 2022 and January 2023.

16. As the legal basis for its defence against this claim, the Defendant relies on the provisions of article 38 of the QFC Employment Regulations 2020 which are expressly incorporated by reference in terms of clause 7 of the Employment Agreement.

17. Article 38 provides in relevant terms:

(1) An employee is entitled to a total of 60 working days’ sick leave in any 12- month period.

(2) An Employee who is absent due to illness must notify the employer as soon as reasonably practicable, ... that the Employee is unable to fulfil his duties.

(3) If required by the Employer, the employee ...must provide a medical certificate stating that the employee is unable to fulfil his duties, at least once every 7 days during any period of absence due to illness.

(4) An Employee has the right to receive his Usual Salary during sick leave taken in accordance with this Article.

(5) An Employer is entitled to withhold the payment of sick pay if the employee fails to give the notice required under paragraph (2) unless the Employee provides medical certificates as may be required under paragraph (3) of this Article.

...

18. As the factual basis for its Defence, the Defendant relies on the emails in December 2022 and January 2023 in which the request was repeatedly made for a medical certificate for every 7 days to which the Claimant had failed to respond.

19. The Claimant's only response to these allegations in his Reply is that the Claimant provided a valid medical certificate to the Defendant on the 7 December 2022, which complied with the Defendant's specific request for a medical certificate from the Netherlands.

20. In its Rejoinder, the Defendant denies that the December Certificate is valid in that, so it contends, the only languages recognised in the QFC are Arabic and English.

21. We find it unnecessary to decide the soundness of the argument raised in the Rejoinder. Likewise, we find it unnecessary to decide whether the Defendant was entitled to insist on medical certificates issued by medical institutions registered in Qatar.

22. We say that because it is clear to us that the Defendant was entitled to insist, by virtue of article 38 of the Employment Regulations 2020, on a medical certificate at least every 7 days during the Claimant's alleged period of illness. Even if the Defendant had no right to demand medical certificates issued in Qatar, it was entitled to request a medical certificate in respect of every 7-day period, which repeated requests the Claimant

ignored at his peril. It is simply no answer to say that the Dutch doctor expressed the view in advance that the Claimant would be unfit for duty for 4-6 weeks. It is no answer because it clearly fails to comply with the plain terms of article 38 which equally plainly states the penalty for non-compliance.

23. The position could conceivably have been quite different if the Claimant provided a medical certificate from the Netherlands every 7 days or if there was some evidence that the Claimant was for some reason unable to do so. But that is not the case.
24. The position with the salary claim for January 2023 is somewhat more complicated. Since it is not claimed by the Claimant as sick leave, it appears to be governed by article 21 of the QFC Employment Regulations 2020 which provides in relevant part:

21. *Impossibility of work*

... If the employee arrives at his place of work ready to perform his duties but cannot do so due to reasons beyond his control, the employee will be regarded as having worked and shall be entitled to all benefits stipulated in his employment contract.

25. In terms of the Employment Agreement, the Claimant's place of work is the Defendant's office in Doha. The question arising is whether the WhatsApp messages relied upon by the Claimant in his papers would satisfy the requirements of article 21. In our view they do not. The first message is dated 23 December 2022. It only said that, "my recovery is going in the right direction, but I am not there yet". In the second message dated 31 December 2022 the Claimant only sought to arrange a meeting to discuss the way forward on Monday 2 January 2023. In our view these WhatsApp messages cannot be regarded as a substitute for the Claimant reporting for duty at the offices of the Defendant in Doha on 2 January 2023. This means that the Claimant's claim for his salary in January 2023 must also fail.
26. The Claimant's further claim is for reimbursement of transport expenses incurred in the execution of his work in November 2022 in an amount of QAR 4,349.00.
27. It is common ground that the Claimant is entitled to claim transport expenses in terms of clause 5.3 of the Employment Agreement. The only answer by the Defendant appears

to rest on the bald allegation that all the Claimant's transport expenses have been paid. In the light of the detailed motivation of this claim, we are not persuaded by that answer. Hence, we propose to make an award in favour of the Claimant in the amount of this claim.

28. The third claim is for annual leave in an amount of € 4,800 which is calculated on the basis of € 400 per day (€ 12,000 divided by 30 x 12). In support of his claim for 12 days, the Claimant contends that, although clause 6 the Employment Agreement provides for annual leave of 15 days, it is trumped by article 33 of the QFC Employment Regulations 2020 which provides for a minimum period of 20 days annual leave. Accordingly, the Claimant contends he was entitled to 17 days leave for 10 months, of which he only took 5.
29. In light of article 8(1) of the QFC Employment Regulations 2020, the contention that clause 6 of the Employment Agreement is trumped by the minimum standard of 20 days annual leave per year is well founded. The facts on which the claim is based are not denied by the Defendant. But in the light of our finding that the Claimant had in fact worked for 8 months only, his claim must be reduced to 13 days (20 days per year pro rated to 8 months) minus 5 which is 8 days. Accordingly, we find that, under this heading, the Claimant is entitled to an award of € 3,200.
30. The fourth and final claim is for an amount of QAR 16,000 to compensate him for the Defendant's alleged failure to provide him with the accommodation agreed upon. In support of this claim the Claimant alleges that (i) in terms of clause 5.3 of the Employment Agreement, he was entitled to a one-bedroom apartment; (ii) instead he was required to share accommodation with several other individuals; and (iii) he is entitled to compensation for the discomfort that he consequently suffered in amount of QAR 2,000 per month from April to November 2022.
31. The Defendant's answer to this claim is that the Claimant chose to stay in shared accommodation. In his Reply, the Claimant denied that this is so. But in the absence of any evidence of earlier objections by the Claimant about the quality of accommodation provided to him, we have no basis to determine this factual dispute in favour of the

Claimant. In any event, the Claimant had failed to advance any basis for the amount that he claims. Accordingly, we find that this claim must fail.

32. Although the Claimant is only partly successful, we find that he is entitled to the costs he incurred in pursuing these proceedings and to interest on the amount of the judgment.

33. These are the reasons for the orders that we propose to make.

By the Court,



[signed]

Justice Fritz Brand

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

Representation

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

The Defendant was represented by the Al Sulaiti Law Firm (Doha, Qatar).