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) 42

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 26 September 2023

CASE NO: CTFIC0016/2022

AARNOUT HENRI NICOLAES WENNEKERS

Claimant

v

QATAR FREE ZONES AUTHORITY

Defendant

JUDGMENT

Before:

Justice Lord Hamilton

Justice Ali Malek KC

Justice Dr Muna Al-Marzouqi

Order

1. The Defendant is to pay to the Claimant the sum of **QAR 1,128,919** within 14 days of the date of this judgment, comprising:

    i. QAR 854,250: unpaid salary.

    ii. QAR 44,625: end of term gratuity.

    iii. QAR 180,900: workplace injuries.

    iv. QAR 35,700: accrued annual leave.

    v. QAR 13,444: furniture allowance.

2. The Defendant is to pay interest on the above sums at the rate of 5% from 1 February 2022 until judgment, amounting to **QAR 93,097.16** as at the date of this judgment, and continuing until payment at a daily rate of QAR 154.65.

3. The Claimant's other claims are dismissed.

4. The Defendant is to pay the Claimant's costs incurred in these proceedings, to be assessed by the Registrar if not agreed.

Judgment

1.In these proceedings the Claimant ('**Mr Wennekers**') brings claims against his former employer the Qatar Free Zones Authority ('**QFZA**' or the **'Authority**') seeking, inter alia, damages for wrongful dismissal, compensation for workplace injury, and sums to be owed for underpayment of salary and bonuses.

2.The structure of this judgment is as follows:

i. Procedural Background.

ii. Factual Background.

iii. The Issues.

iv. Governing law.

v. Jurisdiction.

vi. Admissibility.

vii. Termination.

viii. The “Final Settlement”.

ix. The wrongful dismissal claim.

x. The workplace accidents.

xi. Mr Wennekers’ other claims.

xii. Aggravated damages.

xiii. The Counterclaim against Mr Wennekers.

xiv. Interest and costs.

Procedural Background

3.This section of the judgment outlines the procedural background to Mr Wennekers’ claims.

4.Mr Wennekers issued a Claim Form on 3 April 2022.

5.In section 2 of the Claim Form, Mr Wennekers claimed as follows:

> *1. The QFZA terminated our relationship without providing access to due process, failing to establish just cause, and providing multiple conflicting justifications – none*

of which have were proven using due process as per the "Law No. (15) of 2016 - Promulgating the Civil Human Resources Law" – for my termination:

a. By management decision;

b. By management decision as a result of an investigation and disciplinary action;

c. Because I had not signed an Employment Contract; and,

d. Because my performance was sub-par.

2. The QFZA terminated our relationship the day I returned from four months of medical leave required after two work place accidents that required emergency surgery to repair. The QFZA does not have a proper work-place accident reporting system and post-accident support protocols. They did not ensure that I fully recovered from my injuries and that I could support myself and my family financially. This contravenes specific articles "Law No. (15) of 2016 - Promulgating the Civil Human Resources Law" that will be specifically identified below.

3. The QFZA negotiated the terms and conditions of my relationship to be concluded in an Employment Contract in bad faith;

4. The QFZA allowed me to work without an Employment Contract (or Job Description) since joining on 02 July 2019; it failed to take appropriate action to resolve employment terms and conditions in a timely manner; it allowed issues to linger un-resolved in contravention of the "Law No. (15) of 2016 - Promulgating the Civil Human Resources Law".

The Offer of Employment signed by me and QFZA representatives formed the relationship to provide services for 48 months with no proviso for termination. At no time did the QFZA provide written notice that the concerns regarding the contract were without basis or with merit; by continuing to discuss the issue with me, they made it appear that it remained unresolved.

5. The QFZA continued to allow me to be underpaid in contravention of the "Law No. (15) of 2016 - Promulgating the Civil Human Resources Law" despite repeated requests for assistance from Senior Management to resolve the matter of monthly compensation in general and specifically with respect to (related to Grievance 4 above):

a. Salary

b. Benefits

c. Bonus

d. Other Payments;

The QFZA negotiated the Final Settlement in bad faith by wilfully ignoring various attempts to communicate with the Chairman of the Board/Managing Director (MD), CEO, Chief Corporate Services Officer (CCSO), Chief Legal Officer (Acting) from February 01, 2022 to March 02, 2022 to resolve these grievances amicably and discretely as per "Law No. (15) of 2016 - Promulgating the Civil Human Resources Law".

7. The QFZA did not take any interest in, or responsibility for ensuring, my full recovery from two work place accidents that has left it difficult for me to work. They left me without means to support myself - I have difficulty walking and sitting for prolonged periods at an office desk which is the way that I perform my job duties. I request the QFZA pay me a Disability Pension until I reach the age of 60 (the official age of retirement in Qatar).

6. On 26 May 2022, QFZA issued an application notice (the **'Application**') contesting the Court's jurisdiction further to articles 19.1 and 19.2 of the Regulations and Procedural Rules of the Court (the **'Rules**'), and seeking an order that the Court decline jurisdiction pursuant to article 9.4 of the Rules.

7. On 5 December 2022, following a hearing on 12 October 2022, the Court dismissed QFZA's Application and held that it had jurisdiction to determine Mr Wennekers' claims ([2022] QIC (F) 25; the '**Jurisdiction Judgment**'). The Court will summarise those findings below.

8. By notice dated 28 December 2022, QFZA sought permission to appeal the Jurisdiction Judgment and to stay the current proceedings until the conclusion of the appeal process.

9. The Appellate Division has adjourned QFZA's application for permission to appeal. It refused to stay the proceedings in the meantime. QFZA, in its submissions before us, repeated its argument that this Court lacks jurisdiction. However, as we explain below, we cannot revisit our decision. Any issue relating to our jurisdiction is a matter for the Appellate Division.

10. On 12 December 2022, the Court issued directions which included a requirement on the part of the Authority to serve a Defence. The Defence was served on 31 January 2023.

11. On 23 February 2023, the Court issued directions that granted Mr Wennekers' application for permission to revise his damages claim in an Amended Statement of Claim.

12. An Amended Defence was served on 5 March 2023. Mr Wennekers served a Statement of Reply dated 19 March 2023, and the QFZA served a Rejoinder on 3 April 2023.

13. The parties served witnesses statements pursuant to the Court's directions dated 23 February 2023. Mr Wennekers' witness statement is dated 28 April 2023. The QFZA relied on witness statements from:

    i. Mr Abdulla Mohammed Al-Rashad (Human Resources Business Partner in the Human Resources Department, dated 30 April 2023).

    ii. Ms Sara Al-Asmakh (Chief Audit Executive at the QFZA responsible for the Governance Department and Internal Audit Department, dated 30 April 2023).

    iii. Ms Winnie Rajeev (Human Resources Generalist with a role that includes onboarding, payroll management and the exit processes, dated 1 May 2023).

14. Each of the witnesses gave evidence at trial. The Court considers that all the witnesses sought to assist the Court.

15. Mr Wennekers was unable to travel to Doha for health reasons and lack of financial resources. With the permission of the Court, his evidence was taken remotely from Canada. Mr Wennekers was represented throughout the trial by an advocate. The Court does not consider that he was under any disadvantage by virtue of his virtual attendance.

16. We should say something about the written statements. The Court had given a direction for the service of witness statements and how they should be prepared. The purpose of a written statement is to set out the evidence that the witness is able to give on the issues in dispute, and which would otherwise be given as evidence-in-chief. The direction requiring the service of witness statements indicated that the statement should, "*set out the witness's direct knowledge of the matters relevant to the issues in the case*", and should, "*refer to*

all relevant documents, although the text of the relevant documents should not be included unless this is appropriate". A witness is usually allowed to supplement his evidence in a short examination-in-chief.

17. QFZA's witness statements were short and did not comply with the Court's direction. Exceptionally, the Court gave QFZA the opportunity during examination-in-chief of each witness to expand on the matters covered in their witness statements.

18. Outline submissions were served in advance of the hearing. In an Order dated 23 February 2023, the Court had given directions as to the contents of these submissions. They are an important part of the trial process. They are intended to set out the parties' position on the key issues in dispute by reference to the evidence. They help to crystallise the issues and provide for a focus that benefits the parties and the Court.

19. Shortly before the trial, the QFZA informed the Registrar that it had nothing to add to its pleadings and therefore would not be providing an outline submission. The QFZA was then directed by the Court to serve its outline submissions and this was done on 29 May 2023.

20. On 31 May 2023 and 1 June 2023, the trial took place in person, and at the end of the hearing the Court gave a direction for the exchange of written closing submissions as there was insufficient time for oral submissions. The Court also gave an indication of the issues that should be covered in the closing submissions, and stressed that the purpose of the closing submissions was to give the parties the opportunity to summarise their respective cases, and to state the relief that they were seeking. Closing submissions are not a vehicle to introduce additional evidence or new arguments, and this was stressed by the Court when directing the service of these submissions.

21. With that short description of the procedural background, the Court turns to the factual background that gives rise to the disputes before the Court.

Factual Background

22.The QFZA is an independent government agency. It was established in 2018 to develop and oversee Qatar's new free zones. The QFZA was established by Law No. 34 of 2005 on Investment Free Zones, as amended by Decree No. 21 of 2017 and Law No. 15 of 2021.

23.Mr Wennekers came to be employed by the QFZA in the following circumstances. From 2010 to 2018, Mr Wennekers worked with Qatar Petroleum (now Qatar Energy) in the position of Advisor Internal Audit and Governance.

24.Mr Wennekers expressed interest in joining QFZA and in early January 2019 took part in interviews with the Chief Strategy Officer ('**CSO**') and Deputy CEO at the Council of Ministers ('**CoM**') for a position in the area of Governance (policies, charters, committees, delegation of authority), Audits and Risks Management.

25.Mr Andrew Gold of the QFZA handled Mr Wennekers' recruitment. An Interview Assessment Form referred to an interview on 20 January 2019. It stated that Mr Wennekers' current salary package was around QAR 70,000. The Form indicated approval to hire, but no details were given of the financial terms of the proposed employment.

26.By a letter dated 16 May 2019 (the '**Offer Letter**'), QFZA made an offer of employment to Mr Wennekers. This was sent by Mr Gold to Mr Wennekers under cover of an email dated 19 May 2019.

27.The Offer Letter had 2 annexes. Annex 1 contained the employment offer and made provision for Mr Wennekers' signature. Annex 2 set out various terms and conditions.

28.Mr Wennekers' position was described in the Offer Letter as "*Manager - Corporate Planning*".

29.The Offer Letter stated that the, "*Offer of Employment is conditional upon the full satisfaction of the following requirements within three (3) months from the date of this letter*". Requirement 4 was that Mr Wennekers signed an employment agreement, "*in the*

form of Annex 2". It is common ground that this document was never signed and the legal consequences of this is a matter in dispute between the parties.

30. The Offer Letter in Annex 1 stated that it was anticipated that Mr Wennekers would join the QFZA on 16 June 2019. It stated that his basic salary was QAR 31,500 per calendar month with a provision for its review, "*within six months to achieve parity with senior advisers transferred from the MEI*". Various allowances, benefits, and entitlements were set out in Annex 2. His total salary was QAR 50,000 per month made up of a basic salary of QAR 31,500, monthly housing allowance of QAR 16,000, monthly utility allowance of QAR 500, and a monthly transportation allowance of QAR 2,000.

31. Mr Wennekers' witness statement states at paragraph 6 that, *"the salary and compensation package offered by the QFZA did not match what was discussed during my interview and negotiations with the QFZA*". He also contends that, "*between 21-31 May 2019, I received verbal confirmation from the QFZA that the salary discussed in January 2019 would eventually be paid to me*". There is no contemporaneous record of this verbal confirmation.

32. The Court considers that there was no concluded agreement between the parties on an increased salary and that the Offer Letter accurately set out the terms agreed as to remuneration. The Court finds that Mr Wennekers must have appreciated that what mattered was the terms of the Offer Letter and that any figures that might have been discussed during the interview were not of contractual force and formed part of negotiations.

33. Accordingly, the Court rejects any suggestion that any terms as to compensation were agreed during the interview referred to above. The Court notes that in paragraph 149 of Mr Wennekers' closing submissions, he now accepts that the initial verbal discussions with Mr Gold did not give rise to a binding agreement.

34. One of the important issues in the case relates to termination of Mr Wennekers' contract of employment. There was no provision in the Offer Letter for termination on notice. The employment was on the basis of a fixed term. Under "*Employment Contract Type*" it was stated that, "*Four Year Fixed Term (with the possibility for extension to indefinite)*".

35. On 23 May 2019, Mr Wennekers sent an email to QFZA indicating that he accepted the Offer Letter, "*in principle*". He attached a document entitled, "*Offer of Employment-Request for Clarification*", which sought clarification as a condition of signing the Offer Letter. Mr Wennekers sought information regarding allowances and entitlements, terms of probation, and the termination notice period.

36. Once the clarification was provided, Mr Wennekers signed the Offer Letter on 28 May 2019. The Offer Letter stated that:

> *I [Mr Wennekers], the undersigned, have read and understood this Offer of Employment, and hereby accept all the terms and conditions contained herein as updated by Mr Andrew Gold via email on 19 May 2019 and via telephone conversation on 27 May 2019. I also accept that no employment agreement will be signed between [QZFA] and myself unless all the conditions of your letter of 16th May 2019 have been fully satisfied*.

37. Mr Wennekers commenced his employment with the QFZA on 2 July 2019.

38. On 3 July 2019, the QFZA wrote to Mr Wennekers' bank (HSBC Middle East) stating that Mr Wennekers was an employee of the Authority and that his present salary was QAR 50,000. The Court considers that this letter is accurate, and that this letter recorded Mr Wennekers' understanding of the position.

39. The 3-month period for signing the employment agreement passed without a draft being given to Mr Wennekers. Mr Wennekers says in his witness statement that on 2 October 2019, "*…during my employment confirmation meeting with the CEO. I brought my concern regarding the unresolved compensation to his attention, but no action was taken to resolve the issues*".

40. Between 21-28 October 2019, Mr Wennekers contends in his witness statement at paragraph 10 that the QFZA's CEO verbally informed him, "*that he had conferred with the Chief Corporate Services Officer and that my job and other details associated with my employment would be addressed in early 2020"*.

41. In early December 2019, QFZA provided two copies of a draft employment agreement (the **'Draft Employment Agreement'**). This was signed by QZFA, but it was never signed by Mr Wennekers.

42. The Draft Employment Agreement contained the following provisions:

    i. Clause 1.1: "[*QFZA] hereby agrees to employ the Employee for a period of (4) years with effect from the date on which the Employee commences his/ her job with [QFZA]. The Employee's commencement, date, position, grade, and marital status are as stated in the Appendix attached to this Contract. This Contract may be renewed for further term upon the written consent from both parties*".

    ii. Clause 3.3: "*Both Parties have the right to terminate the Contract in accordance with the provisions of the Employees Regulation and the applicable decisions, policies and procedures of [QFZA], by written notification to the other Party in compliance with the prescribed notice period set forth in the Employees Regulation".*

    iii. Clause 10.4: "This Contract shall be interpreted, construed and enforced in accordance with the laws of the State of Qatar and the Qatari Courts shall have the exclusive jurisdiction to settle any disputes between the Parties arising from or in connection with this Contract".

43. In his witness statement, Mr Wennekers says the following about the Draft Employment Agreement, namely that he:

> *... complained to a QFZA lawyer (who was later appointed Acting Chief Legal Officer (CLO) of the QFZA, that the draft Employment did not match the Offer of Employment, the Interview Assessment Sheet nor the issues I raised in my request for clarification. I requested guidance on what I should do and was advised not to sign the Draft Employment Agreement particularly as I had never been given or made aware of official documents referred to therein, such as QFZA's Employee Regulations*.

44. On 13 February 2020, Mr Wennekers sent an email raising concerns about the Draft Employment Agreement. He wrote:

> *I am unable to sign the contract as it does not reflect the outcome of discussions that I had with HR during the hiring process, the letter of offer I signed, nor does it reflect the title change that was communicated to me by management in October 2019*.

45. Mr Wennekers also sent an email to the QFZA on 14 February 2020 as follows:

> *For the record, I purposefully did not sign the [Draft Employment Agreement] with the [QZFA] because it did not include the terms and conditions negotiated with Mr Andrew Gold (such as basic salary, annual bonus and other terms) and May 2019. I, however, did bring this matter to management's attention (my direct supervisors, HR, Mr Gold, and Legal) numerous times in 2019, 2020, and 2021*.

46. Mr Wennekers' evidence was that on numerous occasions in 2020 he attempted to resolve the issues surrounding the Draft Employment Agreement that he considered did not reflect what had been agreed with the QFZA.

47. What is clear on the evidence is that the parties considered that Mr Wennekers was an employee of the QFZA, that he worked as an employee of the QFZA, and that he was paid the salary referred to in the Offer Letter.

48. In 2021, attempts to resolve matters about the terms of Mr Wennekers' employment continued. As far as the Court can see, none of this was documented but was done verbally as this was, according to Mr Wennekers, the customary practice of the QFZA. In January 2021, Mr Wennekers was promoted to Chief Internal Auditor by the Chairman of the Board of Directors of the QFZA. On 13 January 2021, he was transferred to the Internal Audit Department and redesignated to *"Governance Manager"* with effect from that date.

49. In September 2021, a number of incidents took place. On 2 September 2021, Mr Wennekers suffered a workplace accident at the CoM building. On 19 September 2021, another workplace accident took place at the Business Innovation Park. These workplace accidents are considered in more detail below.

50. On 22 September 2021, Mr Wennekers collapsed at the CoM building and he went on sick leave. In his written evidence, Mr Wennekers stated that he informed Mr Yousef Al-Hammadi, the Chairman of the Human Resources Committee, of the incident. Mr Wennekers says that Mr Al-Hammadi, on being told that he was going to see the doctor that day, did not suggest any course of conduct that should be followed.

51.Mr Wennekers' witness statement (paragraph 19) states that he enquired of Ms Al-Asmakh, the Acting Director of Internal Audit, of the workplace accident at the CoM building as to whether he had to record the accident, but states that he did not get a response. Ms Al-Asmakh in her oral evidence denied that she was asked this. Mr Wennekers claims that he consulted the Health, Safety, and Environment Department ('**HSE**') if there was a process to register workplace accidents but was told there was no system in place for such matters and that this was not a requirement. He did not identify any documentation supporting this. Nor did the QFZA adduce any evidence of particular procedures then in place for the recording of such events.

52.On 29 September 2021, Mr Wennekers was admitted to Hamad Hospital for emergency spinal surgery. From 1 October 2021 to 31 January 2022, Mr Wennekers was on doctor-ordered sick leave. Whilst in hospital, Mr Wennekers completed numerous physiotherapy sessions.

53.After his release from hospital in December 2022, Mr Wennekers completed physiotherapy sessions at the hospital and at home. Mr Wennekers asserts in his witness statement that during this period of sick leave, he received no moral support from the QFZA, and that it showed no interest in his condition or status of his recovery. This is disputed by the QFZA.

54.On 1 February 2022, Mr Wennekers returned to work, and following a request from QFZA, signed a Resuming Duty Form. It was countersigned by Ms Al-Asmakh as Mr Wennekers' departmental head. This Form recorded the return date from sick leave as 1 February 2022. On the same day a meeting took place that was attended by Mr Wennekers and representatives of QFZA: Mr Al-Rashad, Ms Al-Asmakh, Ms Rajeev, and Ms Reem Al-Mannai.

55.Mr Wennekers' written evidence about the meeting was that he was told that his employment was terminated as a result of an investigation into undisclosed charges. He did not know what the investigation was about or what procedure the QFZA had followed. No documents were provided to him. During the meeting, he contends that he asked for proof of the investigation and a copy of the final report/decision, and for evidence of sub-par performance or performance evaluation reports, since prior to this meeting no issue had been raised. He says that none of the requested documents were provided.

56.Mr Wennekers also says in this written evidence that, "*the Acting HR Director threatened me and stated that if I do not "go quietly" my exit from QFZA and/or Qatar would not go smoothly and there would be serious consequences*".

57.The QFZA gave evidence about the meeting and relies on internal minutes of the meeting which purport to summarise the matters discussed. Mr Wennekers in his evidence disputed the accuracy of these minutes, and at paragraphs 34-39 of his closing submissions identifies various inaccuracies in the minutes. These include the point that, contrary to the minutes, no *"supporting documents"* were provided to him; and that Mr Al-Rashad and Ms Rajeev accepted that they did not witness any misconduct on the part of Mr Wennekers.

58.At the meeting Mr Wennekers was handed a termination letter dated 1 February 2022 by Mr Al-Rashad. The letter purported to terminate Mr Wennekers' employment with QFZA on 1 February 2022 and to give notice until 28 February 2022. Mr Wennekers signed the letter acknowledging its receipt.

59.One of the important issues in the case is whether QFZA was entitled to terminate Mr Wennekers' employment. This is a matter considered in detail below. The QFZA has advanced a number of grounds in support of its case that there was a lawful termination. Mr Wennekers says he was wrongly dismissed.

60.On 14 February 2022, Mr Wennekers sent an email to QFZA stating that, "*it was suggested that my termination may have been due to the fact that I had not signed an employment contract with the QFZA*". Mr Wennekers asserted that he did not sign the document because, *"it did not include the terms and conditions negotiated with Mr Andrew Gold as the terms and conditions we discussed and agreed to were not updated*". This was a reference to discussions in January 2019 and May 2019. He also stated that he, "*did bring this matter to management's attention (my direct supervisors, HR, Mr Gold and Legal) on numerous times in 2019, 2020, and 2021*". He continued that, *"at no time was I provided with the assistance necessary to resolve this matter (I was told by HR to talk to the Chairman but I was told by his office that HR matters were handled by HR*)".

61. On 17 February 2022, Mr Wennekers wrote to His Excellency Ahmed Al-Sayeed, the Chairman of the Board of Directors/Managing Director of QFZA, complaining of the termination of his employment and setting out a settlement proposal seeking QAR 2,633,140. The same letter was sent on 22 February 2022 to Mr Yousef Al-Hammadi, the Chairman of the Human Resources Committee.

62. Mr Wennekers relies on a WhatsApp message from the Chairman of the Human Resources Committee dated 27 February 2022 to indicate that he (Mr Wennekers) was told by him that QFZA accepted his financial settlement. In his witness statement Mr Wennekers says that he did not receive the salary payment for February 2022 from QFZA, and was told that his salary would not be paid until he signed a final settlement.

63. On 28 February 2022, QFZA presented its *"final settlement*". Mr Wennekers contends that on 1 March 2022, he received a phone call from the Chairman of the Human Resources Committee who said that he would follow up on the status of Mr Wennekers' settlement proposal with the CEO and the Human Resources Department.

64. On 2 March 2022, Mr Wennekers sent a letter to the QFZA in which he protested employment contract issues and the termination of his employment.

65. On 16 March 2022, Mr Wennekers signed QFZA's final settlement (the '**Final Settlement**'). He describes in his witness statement why he did this. He said he was:

> *… under duress as my financial condition was worsening and the QFZA ignored all my communications and attempts to amicably settle. The QFZA did not provide any information to support the calculation in the Final Settlement and I could not confirm any calculations, but I was under immense stress and had no option but to sign the agreement. I feared that I would be in more trouble as the QFZA threatened me previously, and I feared the risk of not being paid or being able to return to Canada at all.*

66. The Final Settlement was prepared by Ms Rajeev and was reviewed by Mr Al-Rashad. It was approved by Ms Al-Mannai. The total figure to be paid was QAR 132,006. It included a total salary of QAR 50,250; this included "*notice pay*" for February 2022.

67. On 4 April 2022 Mr Wennekers left Qatar.

The Issues

68.The Court considers that the issues that it must resolve are as follows:

i. The governing law of Mr Wennekers' employment claim against the QFZA ('**Issue 1**').

ii. Whether it is open to the QFZA to challenge the Court's jurisdiction ('**Issue 2**').

iii. Whether Mr Wennekers' employment claim against the QFZA is admissible ('**Issue 3**').

iv. Whether the QFZA was entitled to terminate Mr Wennekers' employment on 1 February 2022 ('**Issue 4**').

v. Whether the Final Settlement is binding on the parties ('**Issue 5**').

vi. If Mr Wennekers was wrongly dismissed, what financial relief is Mr Wennekers entitled to ('**Issue 6**').

vii. Whether Mr Wennekers has any claim in respect of the workplace accidents and, if so, what financial relief he is entitled to in that respect ('**Issue 7**')**.**

viii. Mr Wennekers' other claims against the QFZA ('**Issue 8**').

ix. Whether the QFZA is liable for aggravated damages ('**Issue 9**').

x. Whether the QFZA is able to bring a Counterclaim against Mr Wennekers ('**Issue 10**').

xi. The claims for interest and costs ('**Issue 11**')**.**

Issue 1: Governing law

69. It is convenient to deal at this stage with two matters. First, the question of the governing law of Mr Wennekers' contract of employment with the QFZA. Second, to identify Mr Wennekers' contract of employment.

70. Qatari non-QFZ law is applicable in the present case. This is by virtue of articles 27 and 29 of the Civil Code Law (Law No. 22 of 2004).

71. Article 40 of Law No. 34 of 2005 on Free Zones as amended by Decree No. 21 of 2017 and Law No. 15 of 2021 (the '**QFZ Law**') provides:

> *Save for what is inconsistent with the provisions of this Law and the Regulations, all the laws, Regulations, and civil rules applicable in the State will be applied to the Free Zones.*

72. Article 43 of the QFZ Law provides:

> *The laws and rules regulating the civil service in the State will not be applicable to the Authority or any of its employees. The Authority will have the power to establish its own internal regulations relating to the rules, conditions and statuses to be applied to its employees.*

73. The issue was discussed in the proceedings of whether Law No. 15 of 2016 (as amended by Law No. 23 of 2020 - Promulgating the Civil Human Resources Law) is applicable. As mentioned above, this law was relied upon by Mr Wennekers in his Claim Form.

74. The Court considers that this law does not apply directly. But this law may be relevant by virtue of article 185 of the QFZA's Employment Regulations which provide:

> *Matters that are not addressed under the provisions of the Regulations of the Free Zones Authority and its amendments shall be dealt with in accordance with the state's Civil Human Resources Law and its Executive Regulations.*

75. There is no dispute that Mr Wennekers was employed by the QFZA, but there is a dispute about the terms of this employment. What happened is that Mr Wennekers was paid the salary referred to in the Offer Letter. He also worked as an employee of the QFZA and was promoted. The fact that Mr Wennekers did not sign the Draft Employment Agreement did not mean that he ceased to be employed by the QFZA, but that Mr Wennekers continued to be employed on the terms of the Offer Letter, as read with the QFZA

Employment Regulations which the QFZA made in furtherance of the power conferred on it by article 43 of the QFZ Law to establish its own internal regulations.

76. As the QFZA states in its closing submissions at paragraph 9:

> *The plaintiff was appointed to the Authority in the position of (Director of Institutional Planning) at the rank (Professional Category) and on January 13, 2021 he was appointed Director of Governance, and he continued on top of his work until the date of termination of his service on 28/2/2022*.

77. The existence of a contract on the terms of the Offer Letter is not in dispute. As the QFZA states in its closing submissions at paragraph 15:

> *…the job offer presented to the plaintiff, his acceptance of it and his continuation of work accordingly, and the payment of salary and financial dues stipulated in the offer is considered an employment contract, and the principle is that consensual contracts do not require a specific form, but rather they are concluded with valid offer and acceptance by fully qualified persons*.

78. This has the consequence that Mr Wennekers was subject to a four-year fixed term contract as the Offer Letter provided. This is consistent with article 12 of the QFZA Employment Regulations which provides (as far as is material):

> *If the candidate is a non-Qatari, their appointment shall be by means of a fixed-term contract, issued in accordance with the employment contract forms approved by the Authority, drawn up from two original copies in Arabic and English, and signed by both the Director of the Human Resources Department (or their representative) and the employee*.

Issue 2: Jurisdiction

79. As to jurisdiction, in its outline submissions the QFZA asked the Court to rule that it lacked jurisdiction to, "*adjudicate the dispute in question and the jurisdiction of the Administrative Judiciary*".

80. The QFZA repeated its submissions before the Court that it lacked jurisdiction. It maintains that any claim by Mr Wennekers can only be brought in the Administrative Circuit of the Qatari Court of First Instance.

81. At paragraph 8 of the Jurisdiction Judgment the Court stated:

This is a jurisdictional hearing which requires the Court to make factual findings. In the event that the Court accepts it has jurisdiction it may be necessary to revisit these findings in the light of all the evidence including oral evidence.

82.In the Jurisdiction Judgment, the Court made a number of findings:

i. The Qatari Court of First Instance did not have exclusive jurisdiction under article 3(1) of the Administrative Disputes Law because that statute had been disapplied by article 43 of the QFZ Law: see paragraph 65 of the Jurisdiction Judgment.

ii. Mr Wennekers was able to sue the QFZA in this Court further to article 44 of the QFZ Law, because he was an, *"individual"* within the meaning of that provision: see paragraph 49 of the Jurisdiction Judgment.

iii. The Draft Employment Agreement was not a binding contract between the parties such that they had not contracted out of the Court's jurisdiction under article 44 of the QFZ Law by way of the jurisdiction agreement contained in clause 10.4 of the Draft Employment Agreement: see paragraph 59 of the Judgment.

83.The Court considers that the findings at paragraphs 49 and 65 of the Jurisdiction Judgment are matters which cannot be revisited by this Court and therefore declines to make a finding that it lacks jurisdiction. This is a matter that can only be pursued before the Appellate Division.

84.It may be that the finding that the Draft Employment Agreement is not binding could have been displaced by evidence at trial as the type of fact that the Court had in mind in paragraph 8 of the Jurisdiction Judgment, but the Court remains of the view that it never became binding for the reasons given in the Jurisdiction Judgment at paragraphs 59-60:

59. The Court finds that Mr Wennekers never agreed to the Draft Employment Agreement and that it is not binding on him. Mr Wennekers is not bound by clause 10.4 of that agreement. It follows that Article 44 of the QFZ Law is not disapplied. The Court reaches this conclusion for the following reasons:

a. The first time that QFZA sought to rely on a jurisdiction clause was in December 2019 when it sent the Draft Employment Agreement to Mr Wennekers.

b. The most obvious way for Mr Wennekers to convey his consent to clause 10.4 was to sign the Draft Employment Agreement in the place designated for signature. Mr Wennekers never did this. The fact that he did not sign was a clear indication to QFZA that Mr Wennekers did not agree to it.

c. The Court rejects QFZA's argument that there was conduct on the part of Mr Wennekers which assumed that the Draft Employment Agreement was valid and enforceable. As early as 13 February 2020, Mr Wennekers sent an email to QFZA indicated that he had not agreed to the Draft Employment Agreement. The fact that Mr Wennekers did not sign the document is an indication that it was not agreed and QFZA was explicitly told of this. Although Mr Wennekers worked as an employee and received salary this is not conduct indicating that he had agreed to the Draft Employment Agreement and in particular clause 10.4. At most it shows that QFZA and Mr Wennekers were content to proceed with an employment relationship without agreeing the Draft Employment Agreement. What occurred is consistent with Mr Wennekers continuing to work on the basis (whatever that was) which existed prior to the Draft Employment Agreement being sent to him.

d. Mr Wennekers alleges there were other occasions where the matter of the unsigned Draft Employment Agreement was discussed. The Court has no reason to reject what Mr Wennekers says in the Claim Form which is supported by a statement of truth. The fact that there is an apparent lack of contemporary documents is not decisive. QFZA elected not to challenge what was alleged by serving a witness statement.

e. The provisions of the Civil Code relied upon by QFZA are not in point. There was no acceptance by Mr Wennekers within Article 64. There is nothing on the facts suggesting any acceptance by silence within Article 73 particularly where Mr Wennekers indicated that he had not agreed to the Draft Employment Agreement. The particular examples given in Article 73.2 of when silence may be considered acceptance are of an exceptional nature. Article 93 is not engaged as Mr Wennekers and QFZA never agreed a "particular form" within the meaning of that provision.

60. Finally, there is nothing to indicate that Mr Wennekers thought that he had agreed to the Draft Employment Agreement. On this point QFZA relied on manuscript annotations made by Mr Wennekers on the Draft Employment Agreement. QFZA's argument is that because there were no written annotations against clause 10.4 of the Draft Employment Agreement, this is a strong indication that he had agreed to this provision. The Court does not see how anything can be read into the annotations made by Mr Wennekers particularly where the annotation against clause 10 relating to previous agreements is "not signed".

Issue 3: Admissibility

85.In its outline submissions, QFZA invited the Court to rule the following:

> *... inadmissibility of the lawsuit due to the expiry for challenging [the QFZA's] decision pursuant to the provision of Article 6 of Law No 7 of 2007 on the Settlement of Administrative Dispute*s.

86. The Court considers this time bar or limitation defence is not open to the QFZA in view of the Jurisdiction Judgment. It rests on the argument that QFZA (as a governmental entity) and its employees (public employees) are within the exclusive jurisdiction of the Administrative Circuit of the Qatari Court of First Instance, and the Administrative Disputes Law has not been repealed expressly or impliedly by the QFZ Law. The Court rejected this argument, and it cannot revisit its findings.

87. The Court therefore rejects a time bar or limitation defence on the basis that there is no article regulating limitation in this case, neither in the QFZA Employment Regulations nor in Law No. 15 of 2016 - Promulgating the Civil Human Resources Law, as amended by Law No. 23 of 2020.

Issue 4: Termination

88. There is no dispute that Mr Wennekers' employment with QFZA was terminated on 1 February 2022 on his return to work. The Court notes its surprise that, having required Mr Wennekers to sign the Resuming Duty Form, his employment was terminated by QFZA on the same day with one month's notice.

89. The central issue is whether the termination was lawful. This turns on whether the QFZA was entitled to terminate his employment.

90. The Court considers that in approaching this issue, it is necessary to isolate a number of matters.

i. First, whether the parties had agreed the terms of Mr Wennekers' employment.

ii. Second, whether QFZA had the contractual right to give notice to terminate Mr Wennekers' employment without reasons.

iii. Third, whether the QFZA was entitled to terminate Mr Wennekers' employment due to a breach of contract on his part for not signing the Draft Employment Agreement or for unsatisfactory performance.

91. On the first matter, the starting point in the analysis is that Mr Wennekers was employed by QFZA on a fixed-term of four years by virtue of the Offer Letter. There was no provision in the Offer Letter dealing with termination. This means that Mr Wennekers contract of employment could not be terminated by notice taking effect prior to the expiry of the fixed-term. As he was an employee of the QFZA, the QFZA Employment Regulations applied to his relationship with it. There is nothing in the QFZA Employment Regulations that allows the QFZA to terminate before the expiry of the fixed-term.

92. On the second matter, the Court considers that the parties did not agree that notice to terminate could be given. The Offer Letter did not so provide, and Mr Wennekers never agreed to the Draft Employment Agreement.

93. In its closing submissions at page 15, the QFZA relied on article 160 of the QFZA Employment Regulations:

> *An employee whose service has been terminated may be kept for a period not exceeding one month based on the decision of the CEO, in order to hand over what they have been entrusted with. This period may be extended for another month if the interest of the work so requires.*

94. The Court considers that this provision is dealing with the position of an employee whose employment has lawfully been terminated. It provides for limited extension of the period of employment to allow for the orderly transfer of the employee's work. It does not give the QFZA a right to terminate, and it is of no assistance to the QFZA in this case.

95. Article 156 of the QFZA Employment Regulations sets out the circumstances when the services of an employee may be terminated. It provides:

> *The service of employees shall be terminated whenever any of the following cases apply:*
>
> 1. *The employee's contract has reached the end of its term and has not been renewed.*
> 2. *The employee has reached the age of 60.*

3. *The employee became physically unfit to perform their duties.*
4. *The employee has resigned.*
5. *The employee was dismissed from service by virtue of disciplinary action.*
6. *The employee was convicted of a crime that infringes upon the values of honor and honesty.*
7. *The employee has passes away.*

The service termination decision shall be issued by Appointing Authorities.

96.But none of the instances in article 156 above are applicable in the present case.

97.The QFZA also relied on article 19 of the QFZA Employment Regulations:

> *The Free Zones Authority shall retain the right to terminate the employee's service during the probation period should they prove to be unfit to carry out their duties, demonstrate a poor level of performance in three consecutive evaluation reports, or behave in a way that is inconsistent with the requirements of their position. The employee may also request to terminate their services during that period.*

98.This provision is dealing with an employee in a probationary period. It has no application to Mr Wennekers who completed his probation to the satisfaction of the QFZA.

99.The third matter is whether the QFZA has shown good cause to terminate Mr Wennekers' employment before its contractual expiry date.

100.It is clear on the evidence that the decision had been taken to dismiss Mr Wennekers before the meeting on 1 February 2022. This is clear from the fact that the termination letter had been prepared before the meeting. In addition, on 3 February 2022, Ms Al-Asmakh wrote an email to Ms Al-Mannai recording the instruction to make minutes of the meetings with Mr Wennekers. The meeting took place in 3 parts, with an employee of the QFZA taking the lead. The notes of the meeting stated that Mr Wennekers, "*asked me if it was a decision already made and I told him that the decision was already taken*".

101.The reason why Mr Wennekers was dismissed by the QFZA is not clear. This is the kind of important decision that ought to have been documented. The documentation produced by QFZA in these proceedings is thin. For example, Ms Al-Asmakh's email of 3 February 2022 indicated that she would prepare a minute of the meeting that she had with Mr Wennekers. No note has been produced to the Court.

102. The Court considers that the QFZA has shown no good cause for the termination of Mr Wennekers' employment with the QFZA. Various causes have been identified in written argument and during the hearing and it is necessary to consider each of them.

Low-Level Performance

103. The QFZA contends that it was entitled to dismiss Mr Wennekers because of what it describes as low-level performance on his part. The performance evaluation process is covered in detail in the QFZA Employment Regulations: see articles 61, 64 and 65. It is a process that is written and involves the employee. It is also covered in the QFZA's Human Resources policies.

104. Articles 139-162 of the QFZA Employment Regulations set out a detailed framework for investigating failings by employees as well as setting out where dismissal is warranted.

105. As Mr Wennekers correctly submitted in his closing submissions at paragraph 72 dealing with the QFZA Employment Regulations:

> *These regulations emphasise the importance of conducting thorough investigations, notifying the employee of the allegations, providing supporting documents, and allowing the employee an opportunity to be heard, respond, and file a grievance if necessary. Adherence to these procedures is important to ensure fairness* and due process.

106. Article 39 of the QFZA Employment Regulations states:

> *It is not permissible to impose a disciplinary penalty on the employee until after conducting the necessary investigations in writing, hearing their statements, and examining the claims and defenses they have presented to the authority concerned with the investigation. Should a decision be issued to impose a disciplinary penalty on an employee, it must be adequately justified.*

107. The Court finds that the QFZA failed to show that Mr Wennekers' performance justified the termination of his employment. None of the QFZA's witnesses covered this in their witness statements beyond what Ms Al-Asmakh says at paragraph 4 that Mr Wennekers, "*did not perform well during his tenure in QFZ and this was discussed with him during the termination*".

108. The only document that seriously called into question Mr Wennekers' work was the performance evaluation report dated 6 June 2022. This was produced many months after Mr Wennekers' dismissal and after these proceedings had been initiated, and it does not provide any support to the QFZA's case. No documentation in relation to an earlier evaluation in 2020 was provided to Mr Wennekers or disclosed in these proceedings.

109. In short, there is no material to suggest that the QFZA followed its procedures when dealing with an employee whose performance was unsatisfactory. The Court concludes that the QFZA has failed to show that Mr Wennekers performed his contractual duties in an unsatisfactory manner or in breach of his obligations to the QFZA.

Disciplinary Investigation

110. During the termination meeting on 1 February 2022, the QFZA cited an ongoing disciplinary investigation as a reason for dismissal.

111. There is also a reference in the papers to breaches of confidence by Mr Wennekers. At page 16 of the QFZA's closing submissions, reference is made to the Audit Sector's Code of Conduct for the year 2021 which Mr Wennekers had signed.

112. The Court rejects any suggestion that an investigation justified Mr Wennekers' dismissal. The QFZA did not identify an investigation in its witness evidence, and it failed to produce any supporting documents. Mr Wennekers stated that as far as he was aware, there was no investigation of any nature regarding alleged breaches of QFZA regulations and policies.

113. In its closing submissions at page 16, the QFZA said, "*documents exist evidence [sic] of that if the court wishes to see it*".

114. There was no basis for the Court to receive documents at this stage of the trial and the Court refused an application by the QFZA to adduce more evidence. This is because the evidence had closed, and it is not possible to adduce additional documents at this stage of the case save in exceptional circumstances that do not exist in the present case. The QFZA had ample opportunity to rely upon whatever material it wished when it pleaded its Defence. The admission of new evidence at this stage of the proceedings would have been seriously prejudicial to Mr Wennekers.

115. There has to be finality and no good reason was given by the QFZA for the late introduction of evidence. Had evidence been admitted, it is likely that witness evidence would be necessary. The Court must have regard to the Overriding Objective, and this points to the rejection of additional evidence that could and therefore should have been adduced earlier.

Non-Signature of the Draft Employment Agreement

116. In its closing submissions at paragraph 8, the QFZA states:

> *... since the plaintiff refused to sign the draft contract submitted to him, he is not entitled to claim the remainder of the remaining period that he claims, because he did not sign that contract and therefore is not considered a legal document that has the right to claim the rights and obligations stipulated in it.*

117. The fact that Mr Wennekers did not sign the Draft Employment Agreement is not a good reason for this summary dismissal. As explained above, the Draft Employment Agreement was not signed by Mr Wennekers because he disagreed with its terms, and he made this known to the QFZA.

118. The Offer Letter referred to Mr Wennekers, "*signing an employment agreement in the form set out in Annex 2 hereto*". Annex 2 indicated that the form of employment agreement was to be signed, *"within three (3) months from the date of this letter".* The QFZA did not provide the agreement for signature within that period. The Court considers that the failure of the requirement for the employee to sign the Annex 2 form of agreement meant that it ceased to be enforceable. Moreover, it is clear that the parties proceeded on the basis that Mr Wennekers continued to be employed by the QFZA, notwithstanding no Annex 2 form of agreement was signed.

119. The Court agrees with paragraph 82 of Mr Wennekers' closing submissions:

> *... the Defendant's own Employee Regulations and policies do not state that the absence of an "employment contract" – even with the implementation of an existing, signed and fixed-term Offer Letter – entitles it to terminate an employee with only a 28-day notice. Therefore, the Defendant's reliance on the absence of a signed employment contract as a justification for termination is completely unsubstantiated.*

120. It may be that the QFZA proceeded in February 2022 on the basis that the Draft Employment Agreement, which included a provision under which either party might

terminate the contract with notice, governed the legal relationship between the parties or on the basis that it could terminate it summarily, with a month for *"hand over".* Neither of these bases was in the circumstances sound in law.

Issue 5: The Final Settlement

121. As explained above, a Final Settlement was prepared by the QFZA and signed by Mr Wennekers as, *"Accepted".* Mr Wennekers alleges that he signed the document under duress.

122. In paragraph 34 of his witness statement, Mr Wennekers stated:

> *On 20 March 2021, I signed the QFZA's final settlement under duress as my financial situation was worsening and the QFZA ignored all my communications and attempts to amicably settle. The QFZA did not provide any information to support the calculations in the Final Settlement and I could not confirm any calculations, but I was under immense stress and had no option but to sign the agreement. I feared that I would be in more trouble as the QFZA threatened me previously, and I feared the risk of not being paid or being able to return to Canada at all.*

123. The Court considers that the Final Settlement does not preclude Mr Wennekers' claims in these proceedings. It is not expressed to be in full and final settlement of all of Mr Wennekers' claims. Had the intention of the parties been to make the document binding, this could and should have been expressed. As the Court reads the QFZA closing submissions, it does not argue to the contrary. The only items dealt with in the Final Settlement which are now in dispute are (i) the calculation of accrued annual leave, and (ii) a deduction in respect of furniture allowance. The QFZA contends that these items were dealt with in the Final Settlement in accordance with law. If that contention is unsound, Mr Wennekers is not precluded, by his signature to the Final Settlement, from claiming his true entitlement. These items are further discussed under Issue 8, below.

124. It follows from the above that the Court does not have to deal with Mr Wennekers' duress argument. Had it been necessary, the Court would have rejected this defence. It appears to be based on alleged threats made at the meeting on 1 February 2022. The Final Settlement was signed long after 1 February 2022. The nature of the threat was vague. Mr Wennekers may have been concerned that, if he did not sign the Final Settlement, he might not receive any payment from QFZA and been unable to return to Canada. However, the stress so arising does not amount to duress in law.

Issue 6: Damages/wrongful dismissal

125. It is necessary to quantify Mr Wennekers' claim for wrongful dismissal. The Court considers that the measure of damages is the amount that Mr Wennekers would have earned had his employment continued according to his contract of employment. This sum would be subject to a deduction to take account of any amount accruing from any other employment which Mr Wennekers in minimising damages either had obtained or should reasonably have obtained. However, there is no suggestion that Mr Wennekers did in fact obtain another employment, and it was not suggested during his cross-examination that he could have reasonably obtained employment from another person.

126. Since this is a fixed-term contract of employment which has been unlawfully terminated, Mr Wennekers is entitled to the amount he would have received during the rest of the contract.

127. In his closing submissions at paragraph 125, Mr Wennekers sought QAR 1,071,000 as damages. There are 3 elements to this sum:

i. "*17 (remaining months) x QAR50,250 (Claimant's monthly salary) = QAR854,250*".

ii. "*Claimant's end-of-service gratuity from 27 February 2022 until July 2023 equals to QAR44,625 (Claimant's basic salary of QAR31,500 ÷ 12 months (per year) × 17 months (remaining months))*".

iii. "*Annual bonus for year of 2022 and 2023 (between 2.5 to 3x Claimant's basic salary based on previously awarded bonuses): estimated at QAR172,125*".

Salary

128. The first claim for the 17 remaining months of salary that Mr Wennekers would have received had he remain employed is recoverable. The QFZA advanced no defence to the amount of the claim if the Court found (as it does) that Mr Wennekers was employed on a fixed-term contract.

End of service gratuity

129. As to the end of service gratuity, this was included in the Final Settlement for the period between 2 July 2019 and 27 February 2022 in the sum of QAR 83,650. This is a figure

calculated in accordance with article 165 of the QFZA Employment Regulations which provides:

> *Non-Qatari employees who have spent over a year in service of the Authority shall be entitled to an end-of-service gratuity in accordance with the provisions of these regulations. The gratuity will be calculated based on the employee's last basic salary, at the rate of one month for each year of service, and in proportion to whatever time they have spent in service during any year that was not fully completed.*

130. Although the Offer Letter makes no reference to end of service gratuity, the QFZA Employment Regulations have to be read into the employment contract which was then constituted. The Court considers that the figure claimed is recoverable on the basis that it is a figure to which Mr Wennekers is entitled to under article 165. It reflects the amount that he would have received if the fixed-term employment contract had not been wrongly terminated. It amounts to QAR 44,625. This covers the period 27 February 2020 to July 2023. His last basic pay was QAR 31,500. This figure is to be divided by 12 and the remaining months are 17. In other words: basic salary of QAR 31,500 divided by 12 months (per year) x 17 months (remaining months).

Bonus

131. This leaves the question of whether the bonus is recoverable. It is incumbent on Mr Wennekers to identify the legal basis on which a bonus is payable. In his closing submissions (at footnote 50) there is a reference to the statement by Mr Gold in an email dated 19 May 2019 that, "*bonus up to three times basic salary (but this policy is under revision to be higher*".

132. The Court considers that no agreement was reached to pay a bonus. The Offer Letter refers to *"Bonus Scheme"*, but eligibility thereunder was conditional on the appointment being *"for an indefinite term";* Mr Wennekers' appointment was for a definite term. It appears that one of the reasons why Mr Wennekers did not sign the Draft Employment Agreement was that there was no provision for a bonus. The Court finds that there was no agreement for a bonus.

Issue 7: Workplace Accidents

133. As stated above, Mr Wennekers allegedly suffered injuries that resulted in sick leave for four months. The issue is whether Mr Wennekers is entitled to compensation for the

alleged work-related injuries. Mr Wennekers in his closing submissions at paragraph 135 seeks, "*The sum of QAR 1,200,000 as compensation to the Claimant for the workplace injuries sustained*".

134. The legal basis of Mr Wennekers' claim is under article 168 of the QFZA Employment Regulations (which, as stated above, were made by the QFZA under the power conferred on it by article 43 of the QFZA Law).

135. Article 168 provides:

> *If an employee passes away or becomes completely or partially disabled either while performing their job or because of it, they or their inheritors, depending on which event occurs, shall be entitled to a compensation for death or work injury which will be determined according to the following guidelines:*
>
> 1. *In the event of death or total disability, the compensation shall either be equal to the salary due to the employee for a period of two years [or to the Shari'a equivalent whichever is the higher].*
>
> 2. *In cases of partial disability, the compensation due to the employee will be estimated based on a percentage from the amount due for total disability which will be contrastively gauged in proportion to the severity of the partial disability by the competent medical authority.*

136. The QFZA denies the claim. It contended in its Defence (at paragraph 30):

> *The Applicant is not entitled to compensation for the alleged occupational injury, as the alleged injuries, if established, are considered accidental injuries which have nothing to do with the Authority and were not caused by, or in connection with, the nature of the work. Additionally, the Applicant has not presented by documents that prove he sustained an occupational injury due to a mistake on the part of the Authority….*

137. The key issue raised by the QFZA is the contention that liability on the part of the employer for work related injuries or accidents is fault based. It points out (correctly) that there is nothing before the Court to suggest any fault on its part in relation to the matters complained of.

138. The Court rejects this argument. There is nothing in the language of article 168 that supports it. There is no mention in article 168 of fault or mistake. The provision, in effect,

confers a contractual benefit on the employee (and, in the case of death, on his inheritors) where the factual circumstances described in the article are met.

139. The QFZA relied on a judicial decision to support its argument. This decision (the corrected citation for which is Court of Cassation - Civil and Commercial Circuit, 72/2006) gives no support for the contention that, to qualify for compensation under article 168, the employee has to prove, *"personal error"* (otherwise fault) by the employer.

140. The case cited concerned an individual who had worked for Qatar Petroleum (a public institution wholly-owned by the state) as a nurse. In the course of his work he had contracted hepatitis. The employer terminated his employment and compensated him for the disability due to that disease in an amount assessed at 15%. Dissatisfied with that disposal on the ground that the damage done to him exceeded the amount so paid, the individual brought a claim in the Court for *"QAR 2m"*. The reference by the Court to *"error"* on the part of the employer was in the context of that larger claim, which necessarily proceeded on the basis of civil liability under the general law. There is no suggestion in the judgment that, in order to qualify for the 15% disability compensation, the employee had to prove *"error"* by his employer.

141. It is unsurprising that entitlement to compensation under article 168 should not require proof of error/fault on the part of the employer. It is, in effect, a form of social insurance provided as a benefit to employees to whom it applies rather than an application of Qatari civil law for wrongs. By way of further analogy, in the United Kingdom, prior to the state assuming responsibility, by way of a national insurance scheme, for compensating those who suffered work-related disability, the Workmen's Compensation Acts 1923 provided that certain employers were liable to compensate their employees for such disability. To qualify for such compensation, the employee did not require to prove fault on the part of his employer.

142. Apart from putting Mr Wennekers to proof of his injuries, it is unclear on what basis his claim is disputed by QFZA. It is necessary therefore to consider the evidence and whether Mr Wennekers has suffered an injury within the meaning of article 168.

143. The Amended Statement of Claim states as follows:

> *When I arrived in Doha on 02 July 2019, I could walk, bicycle, dance, and enjoy all sports, otherwise I would not have been hired.*
>
> *In September 2021 I fell twice at the Business Innovation Park and at the QFZA office at the Council of Ministers building (I collapsed after a 10-hour session with an external consultant).*
>
> *These combined accidents resulted in an injury that required emergency surgery on 3 October 2021 to remedy and four months of doctor approved sick leave to partially recover from the injury. These accidents were never properly recorded; nor was I advised by my supervisor or management to record the incidents. However, I have evidence that emergency surgery was required.*

144. More detail of the accidents appears in Statement of Reply to the Amended Defence. Paragraph 66 reads:

> *In short, in September 2021, the Claimant fell during his course of work on a wet floor in a washroom at the Council of Minister's building. Several days following the accident, at the Business Innovation Park, the Claimant fell and sustained a further serious injury to his back. Shortly thereafter, the Defendant collapsed after ten hours at the Council of Ministers building while working with the directors of PWC (who witnessed the incident) to complete a Delegation of Authority assignment. These accidents contributed to a serious back injury requiring emergency surgery for the Claimant on 30 September 2022.*

145. In his witness statement at paragraph 18, Mr Wennekers states:

> *In September [2021] I had two workplace accidents and eventually collapsed in a meeting room….at the Council of Ministers Building. As a result, I was admitted to the hospital for emergency spine reconstructive surgery*.

146. At the hearing Mr Wennekers was cross-examined. He testified that there had been two incidents in which he had suffered back pain and numbness. The first occurred when he slipped in the bathroom of the Business Innovation Park, and the second when he got out of a chair in the CoM building and collapsed. He had not previously collapsed.

147. There is no doubt that, by September 2021, serious degenerative changes had taken place in Mr Wennekers' back. These changes, as noted in a report involved, *"cervical, dorsal and lumbar spine with severe spinal canal stenosis at L3-L4 and L4-L5".*

148. Until at least earlier in 2021, these changes had been symptom-free. Mr Wennekers had been able to indulge without difficulty in challenging physical activity in the form of cycling. There is some dispute in the evidence as to whether, from about May 2021, he began to show certain symptoms. For example, Ms Al-Asmakh (Mr Wennekers' manager) gave evidence that Mr Wennekers wore sneakers and sticks; that he asked someone to bring tea and coffee for him; that he suffered back pain that required a special chair; and that Mr Wennekers admitted that he had previous injuries in his back. The Court finds it unnecessary to resolve disputes as to the precise symptoms and Mr Wennekers was not challenged in cross-examination about his evidence. Moreover, it is clear that major symptoms did not emerge until September 2021.

149. It was not suggested to Mr Wennekers that the Business Innovation Park building or the CoM building were other than places where Mr Wennekers worked for the QFZA in the course of his employment, and was so working when each of these incidents occurred. The circumstance that, on the first occasion, he was making use of the bathroom facilities does not mean that he was not then performing his job. The notion advanced by the QFZA that, because the incidents did not occur in a factory or similar building, the claim cannot succeed, is misconceived; article 168 imposes no such limitation. Article 168 operates in favour of those doing physical work in the discharge of their duties as well as employees with desk functions.

150. Mr Wennekers' evidence about his injuries was not challenged in cross-examination and the Court accepts his evidence.

151. The QFZA refers to, *"the official medical report*" issued by Hamad Medical Corporation apparently dated 1 December 2021; but, as this report, or at least the part of it sought to rely on, was not filed prior to the hearing and no application with supporting justification has been made for it be received now, the Court cannot have regard to any alleged statement in it.

152. Article 168, in defining the circumstances which give rise to the right to compensation, is expressed in the alternative: *"If an employee…becomes…. disabled either while performing their job or because of it…".* Each of these alternatives must be given effect. The second of them requires a causal link between the disablement and the performance

of the job; the first, as expressed, requires no such link. It suffices that it occurs, *"while performing"* it.

153. There is no medical evidence before the Court as to the precise mechanism which gave rise to the symptoms experienced in the two incidents. However, it seems plain that the slipping in the bathroom or the getting out of the chair, or a combination of the two, resulted in the emergence of major symptoms which amounted to partial disability. These incidents occurred while Mr Wennekers was performing his job as an employee of QFZA, giving rise to an entitlement to compensation under article 168.

154. It may, at first sight, seem curious that there is such entitlement in the events which occurred whereas, if they had occurred while Mr Wennekers was, say, at his home or on leave, there would have been no such entitlement. However, provisions of a quasi-insurance character can on occasion give rise to surprising distinctions, some events falling within the range of cover, others outside it. Here, the connection with the employment by reason of the disability arising while the employee was performing his job is, on the face of article 168, sufficient to bring the claim within that cover.

155. One can think of examples where the application of article 168 gives rise to difficulties. What if the employee chokes on a sandwich while eating in the office canteen? What if the employee suffers a stroke at the office as a result of family issues causing severe stress? The Court does not have to resolve issues like this and expresses no view on the precise limits of article 168. An injury caused by slipping at the workplace is clearly covered. The fact that it happened while the employee was going to the bathroom is irrelevant.

156. The QFZA relied on article 115 of the QFZA's Employment Regulations as a defence to Mr Wennekers' claim on the basis that timely notice was not given. The QFZA's reliance on the fourth and fifth paragraphs of article 115 is misconceived. That article (which is in Chapter IX of the Regulations) is concerned with an employee's right in certain circumstances to be granted fully-paid sick leave, not with the distinct right under article 168 (in Chapter XIII) to compensation for work-related death or disability. In any event, these paragraphs are, on a fair interpretation, directory only; compliance with them is not

an absolute pre-condition of entitlement to benefit; there is no evidence that the QFZA sustained any actual prejudice by any failure within 15 days formally to notify the work incidents in September 2021. Further, the QFZA, by paying as it did, a full salary to Mr Wennekers during his absence from work following these incidents, implicitly acknowledged that notification of work-related injury had duly been made, full salary being payable only where the sickness or injury was work-related.

157. It remains to consider the quantum of this claim. There is a potential problem about the quantification of his entitlement. Mr Wennekers became disabled, but only partially so. In such a case the compensation due is proportionate to the severity of the employee's disability relative to that of total disability. The proportion, in terms of article 168, is to be gauged, *"by the competent medical authority".* That expression is defined in article 1 as: *"The Medical Authority selected by the Competent Authority in charge of the state's public health affairs".* No such medical authority was engaged to examine the degree of Mr Wennekers' disability.

158. However, QFZA does not contend that compensation for that disability should be denied because of the absence of such an assessment. In any event, it would be unjust that it be denied for that reason. According to Mr Wennekers, he reported the second incident (when he collapsed at work) orally to Ms Al-Asmakh, his immediate superior, on 20 September 2022, and also contacted the HSE Department about it; further, on 22 September 2022, he verbally informed the Chairman of the Human Resources Committee of that incident. His evidence to that effect was not contradicted by any evidence led by QFZA and the Court accepts it. Ms Al-Asmakh confirmed that, the day after it occurred, Mr Wennekers informed her by WhatsApp message that he had had an accident while at work. It was the responsibility of QFZA, through its officers, to record what Mr Wennekers had told them, to investigate the circumstances, and to secure that, before he left Qatar, an estimate of any disability was made by the competent medical authority.

159. In these circumstances it falls to the Court to make, on the evidence before it, the best estimate it can of the degree of severity of the disability. That degree is to be proportionate to that on *"total disability",* which carries the same compensation as on death.

160. *"Total disability"* is not defined but, in context, must be taken as disability reducing the surviving individual to a persistent vegetative state. Mr Wennekers' disability is well short of that. He has significant disability in terms of his lower limbs. However, his upper limbs are unaffected, as is the rest of his body. He retains all his senses. There is no intellectual impairment. A medical practitioner in Canada reported in February 2023 that Mr Wennekers was, *"only about 20% as active and able bodied as he was before";* but that must be read, in context, as referring to his remaining capacity in the functioning of his lower limbs, not the proportionate estimate required for article 168.

161. Doing the best it can, the Court assesses the degree of Mr Wennekers' disability for the purposes of that article (being restrictions in mobility and sitting for prolonged periods) at 15%.

162. Accordingly, Mr Wennekers is entitled to compensation under article 168 in a sum which represents 15% of his salary for two years. The Court takes as that salary his basic salary and other benefits in terms of the Offer Letter. That amounts to QAR 1,206,000 (50,250 x 24). 15% of that is QAR 180,900. This sum is awarded to Mr Wennekers as compensation under article 168 with interest (as calculated below).

Issue 8: Other claims

163. In addition to seeking damages for wrongful dismissal, Mr Wennekers brings claims for what he calls unauthorised deductions from his entitlements (in his closing submissions at paragraphs 127 -135).

164. As to accrued annual leave, the Final Settlement credited Mr Wennekers with QAR 11,500 in respect of, *"Leave Entitlement",* on the basis that the number of days to be taken into account was 11.

165. Mr Wennekers, in his closing submissions, calculates his entitlement at QAR 35,700 on the basis of 34 days. He gives a detailed analysis for those figures; the QFZA provides no detailed analysis. In the circumstances, the Court is prepared to accept Mr Wennekers' figures.

166. As to the furniture allowance, the QFZA in the Final Settlement deducted QAR 13,444 on the basis that Mr Wennekers had earlier been paid a furniture allowance for the whole of his term of appointment but, in the event, remained in employment for only part of that term. As the QFZA's termination of Mr Wennekers' employment was unlawful, that deduction was not justified.

Issue 9: Aggravated Damages

167. Mr Wennekers seeks aggravated damages. In his closing submissions at paragraph 147 he states:

> *As a result of the circumstances surrounding the Claimant's wrongful dismissal, including his long-term disability due to his workplace accidents and the duress and unfair treatment experienced in the termination and settlement process, the Claimant has continued to suffer from emotional distress and mental anguish. The Claimant has had to seek professional assistance to assist him in overcoming these challenges.68 The Claimant seeks aggravated damages for the extreme harm caused by the Defendant's wrongful actions in the amount of* ***QAR10,260,000****, which have had far-reaching consequences on the Claimant's life.*

168. Mr Wennekers provided a breakdown of this claim in the number of anticipated years of lost income resulting from wrongful dismissal (12 years at QAR 50,000, amounting to QAR 7.2m), and what he describes as, "*emotional distress and mental anguish resulting from lost source on income due to long-term disability*" (amounting to QAR 3m).

169. Although Mr Wennekers succeeded in his claim for wrongful dismissal, the Court finds that the conduct of the QFZA does not involve the kind of conduct to justify a claim under Qatari law for damages of the nature advanced. Nor is there any proper basis for exemplary damages. The same conclusion is reached in relation to the claim for the workplace accidents. The Court has concluded that liability under section 168 is not fault-based and sees nothing in article 168 and the facts of the present case to justify a claim for emotional distress and mental anguish.

Issue 10: Counterclaim

170. In its opening submissions the QFZA stated:

> [*The QFZA] reserve the right to submit any Counter-Claim against [Mr Wennekers] including the amount of 232,000 QAR, that was unlawfully paid to*

[Mr Wennekers] based on incorrect information provided by him during his employment.

171. No Counterclaim is made in these proceedings by the QFZA. There is therefore nothing for the Court to rule on.

Issue 11: Interest/costs

172. Mr Wennekers claimed interest on the total amount claimed relying on the Court's Practice Direction No. 3 of 2021. The Court considers that it is fair to compensate Mr Wennekers for being deprived of the benefit of receiving payment of money due to him by awarding interest at the rate of 5% per annum (not 7% as claimed) on the sums claimed from the date that his employment was terminated (1 February 2022) until the date of payment.

173. Although Mr Wennekers did not get all the relief he sought, the Court considers that Mr Wennekers is the overall winner of this case and is entitled to his reasonable costs which will be assessed by the Registrar if not agreed.

By the Court,

[signed]

Justice Ali Malek KC

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

Representation

The Claimant was represented pro bono by Ms Danah Mohamed of the Rashid Raja Al-Marri Law Office (Doha, Qatar).

The Defendant was represented by Ms Hanan Al-Hammadi and Mr Mahmoud Al-Marzouqi of the State Cases Department, Ministry of Justice of the State of Qatar (Doha, Qatar).

DIGITALLY SIGNED AND VERIFIED
موقّع رقمياً ومعتمد