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: [2024] QIC (A) 7

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

APPELLATE DIVISION

[On appeal from [2022] QIC (F) 22 and [2023] QIC (F) 42]

Date: 30 April 2024

CASE NO: CTFIC0016/2022

AARNOUT HENRI NICOLAES WENNEKERS

Claimant/Respondent

v

QATAR FREE ZONES AUTHORITY

Defendant/Appellant

JUDGMENT

Before:

Lord Thomas of Cwmgiedd, President

Justice Sir William Blair

Justice Dr Georges Affaki

Order

1. Permission to appeal is granted and the appeal is allowed on the issue relating to jurisdiction.

2. No order as to costs.

Judgment

1. The Appellant ('**QFZA**') seeks permission by an application dated 24 November 2023 to appeal from two judgments of the First Instance Circuit (Justices Lord Hamilton, Ali Malek KC and Dr Muna Al-Marzouqi). The first was given on 5 December 2022 holding that the Court had jurisdiction to hear the dispute between the QFZA and the Respondent, a former employee. The second was given on 26 September 2023 ordering that the QFZA pay to Mr Wennekers the sum of QAR 1,128,919 together with interest in respect of damages for wrongful dismissal and other entitlements. The QFZA was ordered to pay the costs of Mr Wennekers, to be assessed by the Registrar in default of agreement.

2. After considering the application and the written submissions, we ordered on 30 November 2023 that the application should be considered at a rolled-up hearing with the appeal to follow if permission was granted and gave directions for the hearing.

Background

Factual Background

The parties

3. The QFZA was established by Law No. 34 of 2005 as amended by Decree No. 21 of 2017 and Law No. 15 of 2021 (to which, as amended, we will refer as the '**QFZ Law**').

4. Mr Wennekers, a Canadian citizen, worked for Qatar Energy from 2010 to 2018 as Advisor, Internal Audit and Governance. He expressed an interest in joining QFZA and

was interviewed on 20 January 2019 by Mr Andrew Gold who had responsibility for recruitment at the QFZA.

5. On 16 May 2019, the Chief Corporate Services Officer sent a letter by email to Mr Wennekers offering him employment as "Manager – Corporate Planning". The letter stated that:

    i. 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 sign:

        > *… an employment agreement in the form set out in Annex 2 hereto. The employment agreement will, amongst other things, confirm your agreed joining date at the FZA and the terms and conditions applicable to your employment…*

    ii. Annex 1 set out the details of his offer of employment on "*a Four Year Fixed Term (with a possibility for extension to indefinite)*" with an anticipated start date of 16 June 2019 at a basic salary of QAR 31,500 per calendar month with the benefits set out in Annex 2.

    iii. The terms were updated in an email from Mr Gold on 19 May 2019.

6. On 23 May 2019, Mr Wennekers emailed Mr Gold accepting the offer in principle, but sought clarification of the remuneration package and other matters as set out in an attachment to the email.

7. After at least one further conversation between Mr Gold and Mr Wennekers, Mr Wennekers added his signature to wording on Annex 1. He dated the wording 28 May 2019 which was in the following terms:

    > *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 dated 16th May 2019 have been fully satisfied.*

8. Mr Wennekers began his employment on 2 July 2019. The three-month period stipulated in the offer for signing the employment agreement passed without any

agreement being provided to him for signature. Although he was subsequently asked to sign an employment agreement, he never signed one. He contended that the terms of the letter of 16 May 2019 did not reflect the remuneration offered and agreed in the interview. There were discussions, but there was no further agreement on the remuneration. Mr Wennekers conceded at the conclusion of the trial before the First Instance Circuit that there had been no agreement on the remuneration at the interview.

9. On 3 July 2019, the QFZA wrote to HSBC, Mr Wennekers' bank, confirming that he was an employee of the QFZA and worked as "*Manager Corporate Planning*" at a monthly salary of QAR 50,000.

10. Over the ensuing months there were discussions about the terms of Mr Wennekers' employment. In early December 2019, the QFZA provided him with a draft employment contract in the standard form required by the QFZA Personnel Rules and Regulations (the '**QFZA Personnel Regulations**') which had been made on 25 November 2018 under article 43 of the QFZ Law. The standard form contained the following terms:

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.*

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.*

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.*

11. After further discussions, Mr Wennekers was asked to sign the contract by 13 February 2020 (TB/466). He replied by email to the QFZA on 13 February 2020:

> *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.*

12. He was then asked what his concerns were. On 17 February 2020 he agreed to set them out by email the following day, but no email could be found setting out those concerns.

The course of Mr Wennekers' employment

13. There were discussions about the terms of his employment during 2020. Nothing further was agreed and no employment agreement was signed.

14. In January 2021, Mr Wennekers was promoted to the position of 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.

The accidents suffered by Mr Wennekers

15. No further material events occurred until 2 September 2021 when Mr Wennekers suffered a workplace accident at QFZA's Council of Ministers ('**CoM**') building. On 19 September 2021, another workplace accident took place at the Business Innovation Park. On 22 September 2021, Mr Wennekers collapsed at the CoM building and he went on sick leave under the orders of a doctor until 31 January 2022. He returned to work on 1 February 2022 as evidenced by a Resuming Duty Form.

The dismissal of Mr Wennekers

16. On the same day of his return, there was a meeting between Mr Wennekers and Mr Al-Rashad, Ms Al-Asmakh, Ms Rajeev, and Ms Reem Al-Mannai (Acting Director of Human Resources). There was a dispute as to what was discussed and said at that meeting. Mr Wennekers was handed a termination letter which stated that the management had decided to end his employment with the QFZA "*as on 1st February 2022 and the period till 28th February 2022 shall serve as the notice*".

17. There was some correspondence in which Mr Wennekers explained his refusal to sign the employment agreement on the basis that it did not include the terms negotiated with Mr Gold, despite bringing this to the attention of management.

A settlement proposal

18. On 17 February 2022 Mr Wennekers sent a letter to Mr Ahmed Al-Sayeed, Minister of State and Chair of the Board of the QFZA setting out his position and stating that under what he claimed was the applicable law, the Civil Human Resources Law (No. 15 of 2016), his employment had been terminated without due process. He asked for a settlement of QAR 2,633,140.

19. On 28 February 2022, a document entitled "*Final Settlement*" which set out the calculations for a payment of QAR 132,006 (TB/439) was given to Mr Wennekers. He did not sign his acceptance until 16 March 2022. He stated in an email of 21 March 2022 that he had had no response to his proposals and, as his funds were depleting, he had to leave Qatar to find employment in Canada.

20. In the meantime, he made a complaint on the Government portal. This was rejected. His evidence was that he tried to ascertain from ministries in Qatar which Court in Qatar would hear his claim that he had been wrongly dismissed. His evidence is that he was advised to bring the claim before this Court, and he did so on 3 April 2022 in accordance with that advice.

21. He left Qatar for Canada on 4 April 2022.

The course of the proceedings and the decisions of the First Instance Circuit

22. In the proceedings issued in this Court on 3 April 2022, Mr Wennekers claimed that his dismissal had been unlawful as there had not been due process or justification; and the QFZA had acted in bad faith by failing to agree the terms of his employment and in negotiating the alleged settlement after termination.

23. The QFZA challenged the jurisdiction of this Court contending that Mr Wennekers' claim should have been submitted to the Administrative Circuit of the Court of First Instance (the '**Administrative Circuit**') under Law No. 7 of 2007 (the '**Administrative**

Disputes Law'). As explained below, the principal issue was as to the correct interpretation of article 44 of the QFZA Law. The First Instance Circuit dismissed the application on 5 December 2022 holding that it had jurisdiction. The QFZA sought permission to appeal this decision but (as noted further below), this Court determined that the balance of convenience lay in it hearing the application after the trial of the merits.

24. The First Instance Circuit duly gave directions, and the trial took place on 31 May and 1 June 2023. It was followed by written closing submissions.

25. In its judgment given on 26 September 2023, the First Instance Circuit held that Mr Wennekers had been wrongly dismissed. The settlement document he had signed with the QFZA in March 2022 did not bar his claim. He was therefore entitled to damages for wrongful dismissal based on the loss of the balance of his fixed term four-year contract, unpaid bonuses and statutory compensation for the injuries he had suffered in September 2021, together with compensation for the delay in paying the amounts due to him.

Jurisdiction

26. We will first consider the application for permission to appeal from the first judgment of the First Instance Circuit on the issue of jurisdiction. If the QFZA is correct in its submissions on this issue, then an appeal succeeds, and it would be inappropriate for us to consider whether there were any grounds for granting permission to appeal against the second judgment of the First Instance Circuit on the merits of the claim for wrongful dismissal.

<u>The decision of the First Instance Circuit</u>

27. It was the contention of the QFZA before the First Instance Circuit that the provision in article 44 of the QFZ Law did not cover disputes between the QFZA and Mr Wennekers as the provision only includes "*Registered individuals*"; that article 44 did not apply where there had been agreement to resolve disputes by alternative means and clause 10.4 of the employment agreement provided for such alternative means by providing for the jurisdiction of the Qatari Courts; and that under the provisions of the

Administrative Disputes Law, the dispute with Mr Wennekers was within the exclusive jurisdiction of the Administrative Circuit.

28. The First Instance Circuit rejected each of these submissions holding that:

    i. On a proper interpretation of article 44 of the QFZ Law the term "*individual*" was to be given its ordinary meaning and not limited to "*a Registered individual*"; Mr Wennekers was an individual.

    ii. There was no agreement to settle the dispute by alternative means as Mr Wennekers was not bound by the terms set out in the draft employment agreement as, applying the provisions of the Qatari Civil Code (Law No. 22 of 2004), he had never agreed to it.

    iii. It was not necessary to consider the extent of the jurisdiction of the Administrative Circuit under the terms of article 43 of the QFZ Law; the provisions of the Administrative Disputes Law No. 7 of 2007 were not applicable to employees of the QFZA.

    iv. That conclusion was in line with the evidence of Mr Wennekers as to the advice he had been given by Government departments in Qatar.

    v. No order as to costs was made as Mr Wennekers did not seek such an Order.

29. After the First Instance Circuit had given its judgment on jurisdiction on 5 December 2022, the QFZA made an application to the First Instance Circuit for an extension of time for serving the defence until the QFZA had made an application for permission to appeal and that application had been determined. That application was refused on 13 December 2022 and directions were made as to the trial of the proceedings.

<u>The application for permission to appeal in December 2022</u>

30. On 28 December 2022, the QFZA filed an application for permission to appeal and a stay. This Court (the President, and Justices Sir William Blair and the late Dr Rashid

Al-Anezi) declined to grant permission given the submissions then made and the balance of convenience. We issued an Order on 3 January 2023 in the following terms:

i. The application for a stay is refused. The balance of convenience plainly lies in the proceedings before the First Instance Circuit continuing to trial.

ii. The application for permission to appeal is adjourned until after judgment is given by the First Instance Circuit following the trial.

iii. The Appellate Division will give its reasons for its decisions when it determines the permission application or the appeal.

The renewed application for permission in November 2023

31. In the fresh application made for permission to appeal on 23 November 2023, the QFZA contended that this Court had no jurisdiction on the following grounds:

i. The dispute should have been heard by the Administrative Circuit under the Administrative Disputes Law.

ii. The First Instance Circuit should have recognised that the QFZA was a Governmental authority and should have held that those employed by it were public employees.

iii. Such employees were not within the scope of article 44 of the QFZ Law.

iv. The Qatari Court of First Instance was the court for the determination of the dispute under the employment agreement mandated by article 12 of the QFZA Personnel Regulations.

v. Any proceeding should have been lodged by Mr Wennekers within the time limit specified in the Administrative Disputes Law.

32. We grant permission to appeal and determine the appeal as follows.

The issues before the First Instance Circuit

33. The jurisdiction of this Court was invoked on the basis that this Court had jurisdiction under article 44 of the QFZ Law.

The submissions of the QFZA before the First Instance Circuit

34. As we have set out, the principal issue before the First Instance Circuit was the contention by the QFZA that the reference to "*an individual*" in article 44 of the QFZ Law meant a registered individual, that is to say, a person who had registered with the QFZA to do business in the Qatar Free Zones. The contention in large part turned on the meaning of "*individual*".

35. The Arabic text of article 44 (which prevails) reads as follows:

تختص المحكمة المدنية والتجارية، المنشأة بمركز قطر للمال بموجب قانون مركز قطر للمال المشار إليه بالفصل في جميع المنازعات والدعاوى المدنية والتجارية فيما بين الشركات المسجلة في المناطق الحرة، وبين الهيئة والأفراد والشركات المسجلة في المناطق الحرة، أو بين الشركات المسجلة في المناطق الحرة من جهة وبين الأفراد المقيمين في الدولة أو الشركات أو الكيانات ة المنشأ خارج المناطق الحرة من جهة أخرى، أيا كانت طبيعة العالقة القانونية موضوع النزاع وذلك ما لم يتفق الأطراف على تسوية النزاع بالطرق البديلة.

36. Two English translations of article 44 of the QFZ Law were before the First Instance Circuit:

[Lexis Nexis version]

> *The Civil and Commercial Court established at the Qatar Financial Centre, by virtue of the aforementioned Law of Qatar Financial Centre, shall settle all the civil and commercial disputes and lawsuits filed between the companies registered at the Free Zones, and* ***between the Authority and the individuals and companies registered at the Free Zones,*** *or between the companies registered at the Free Zone and the individuals residing in the State or the companies or entities established outside the Free Zone, regardless of the nature of the legal relationship subject-matter of the dispute, unless the parties agree on settling the dispute in alternative means*. (**emphasis** added)

[Version used by QFZA]

> *The Civil and Commercial Court established in the Qatar Financial Centre pursuant to the Law of the Qatar Financial Centre, as referred to herein, shall have jurisdiction to adjudicate all disputes and civil and commercial suits between Registered Companies in the Free Zones,* ***and between the Authority and individuals and Registered Companies in the Free Zones,*** *or between Registered Companies in the Free Zones as one party and between individuals residing in the*

> *State or companies or entities established outside the Free Zones as the other party, whatever the nature of the legal relationship which is the subject matter of the dispute, unless the parties agree to settle the dispute by alternative means.* (**emphasis** added)

37. The distinction made by the First Instance Circuit at paragraph 44 of its judgment on the jurisdiction of this Court was between "*individuals and Registered companies*" and "*individuals and companies Registered in the Free Zones*". It considered that the authoritative original Arabic text of the QFZ Law was clear – it referred to all individuals and not only individuals registered in the Free Zones; the second of the translations was therefore correct. Although Mr Wennekers was not an individual registered in the Free Zones, he was within the scope of the second (and correct) translation and not the first.

The meaning of individual

38. We agree with the judgment of the First Instance Circuit on this point; the term "*individual*" is not restricted to registered individuals. There is nothing in the text of article 44 that supports that restrictive approach. The word "*individual*" is in our view a word that bears its ordinary meaning whether in the original Arabic or the English translation of article 44. It includes in general terms all individuals. The jurisdiction clause in article 44 therefore covers, for example, disputes between individual employees and the firms registered in the QFZ that employ them.

Agreement to settle the dispute by an alternative means?

39. The First Instance Circuit also rejected the second contention made by the QFZA in relation to article 44 – that there was an agreement between the QFZA and Mr Wennekers to settle the dispute by alternative means. It was the QFZA's contention that the employment agreement included clause 10.4 which provided for the exclusive jurisdiction of the Qatari Courts. The First Instance Circuit held that Mr Wennekers had not accepted the written employment agreement under the provisions of article 64 of the Civil Code and his conduct could not be considered silence within article 73. Clause 10.4 of the standard form was therefore inapplicable, and it was not necessary to determine the meaning of "*the Qatari Courts*" within clause 10.4 and whether that included this Court or only the other national courts of Qatar.

40. On the appeal, the QFZA contended that under the provisions of the QFZA Personnel Regulations the relationship between Mr Wennekers and the QFZA was governed by the form of contract mandated by article 12 of those Regulations and that therefore article 10.4 which provided for the exclusive jurisdiction of the Qatari Courts was applicable (i.e. the other national courts of the State of Qatar).

41. It is not necessary for us to determine whether the terms of the employment of Mr Wennekers were made on the standard form of the QFZA mandated by the QFZA Personnel Regulations, as reliance on this provision does not answer the jurisdiction issue. The question which arises is whether the dispute should be heard by this Court which is a court established by the State of Qatar to determine specified disputes or by a different court likewise established by the State of Qatar; each of the courts established by the State of Qatar is a Qatari Court.

The issue before this Court: Mr Wennekers was a public employee and therefore not within the scope of article 44 of the QFZ Law

The admission of a new issue

42. The issue argued on the appeal was quite different from that argued before the First Instance Circuit. It was not one that was advanced before the First Instance Circuit. As the question before us is one of the jurisdiction of this Court, we must consider this new issue; the position in relation to jurisdiction is different to other questions where this Court will not ordinarily consider arguments that have not been raised before the First Instance Circuit. The failure to raise the point before the First Instance Circuit on the issue of jurisdiction is, however, a matter relevant to costs.

43. The argument advanced by the QFZA on the new issue is that Mr Wennekers was a public employee. Disputes involving public employees are assigned to the Administrative Circuit under the Administrative Disputes Law. There is nothing in the QFZA that affects the status of employees of the QFZA as public employees or gives this Court jurisdiction over a public employee.

44. On behalf of Mr Wennekers, it was argued by Ms Danah Mohamed that the judgment of the First Instance Circuit was correct and it should be affirmed. The First Instance

Circuit had been referred to the Administrative Disputes Law, but considered that article 43 of the QFZ Law made it clear that the laws of the civil service in Qatar were not applicable to the employees of the QFZA. This exemption meant that the claim by Mr Wennekers was not within the jurisdiction of the Administrative Circuit.

The rejection of fresh evidence

45. The QFZA also sought to put before us the evidence of Mr Jamal Abu Ghaida, a partner in a translation agency, and Ms Sara Al-Asmakh, the Chief Audit Executive of the QFZA. This Court has made clear on many occasions that it does not admit fresh evidence unless there are special circumstances (see paragraph 5 of *Daruna for Real Estate Brokerage and another v Lesha Bank* [2023] QIC (A) 4 which was such a case).

46. The First Instance Circuit of this Court is the court before which all relevant evidence must be called. In the present case nothing was put forward which would begin to justify this Court's considering whether the further evidence which the QFZA sought to adduce before us was evidence that the First Instance Circuit should have admitted, or we should admit. In any event as regards the evidence of a translator, this Court is rarely, if ever, assisted by the evidence of a translator when considering the meaning of legislation where an Arabic text is in issue. Where there is such an issue, as both Arabic and English are languages of the court, the Court follows the international practice of courts which work in two languages in ensuring that the constitution of the court includes a judge whose first languages include Arabic.

47. We therefore turn to consider the new issue.

Mr Wennekers as a public employee

48. It was not in dispute that Mr Wennekers was an employee of the QFZA which is a public authority, and therefore a public employee and not a private sector employee.

The court with jurisdiction on disputes involving public employees

49. It was common ground that the Administrative Disputes Law established the Administrative Circuit with a specific jurisdiction for specified claims by public employees:

[Article 2]

> *The Court of First Instance shall establish one or more administrative circuits, each consisting of three judges, to consider exclusively the administrative disputes specified in this Law.*

تنشأ بالمحكمة الابتدائية دائرة إدارية أو أكثر، تشكل كل منها من ثلاثة قضاة، تختص دون غيرها، بنظر المنازعات الإدارية المحددة بهذا القانون.

[Article 3]

> *Subject to the provisions of Article 13 of the Judicial Authority Law referred to, the Administrative Circuit shall exclusively consider the following administrative disputes:*
>
> *1. Disputes over salaries and pensions, bonuses and allowances payable to employees or their heirs, irrespective of their job grades.*

مع مع مراعاة حكم المادة (13) من قانون السلطة القضائية المشار إليه، تختص الدائرة الإدارية، دون غيرها، بنظر المنازعات الإدارية التالية:
1- المنازعات الخاصة بالمرتبات والمعاشات والمكافآت والعلاوات المستحقة للموظفين أو لورثتهم، أياً كانت درجاتهم الوظيفية.

50. Mr Wennekers was a public employee under this law and therefore his claims were in principle for decision by the Administrative Circuit.

51. It was clear from a number of decisions of the Court of Cassation cited to us that disputes within the scope of article 3 of the Administrative Disputes Law were outside the jurisdiction of the other committees and circuits of the Court of First Instance in Qatar and within the exclusive and comprehensive jurisdiction of the Administrative Circuit as it dealt with the settlement of all administrative disputes. However, these decisions only considered conflicts of jurisdiction as between the Administrative Circuit and the other circuits of the Qatari Court of First Instance; they did not deal in any way with the respective jurisdictions of the Administrative Circuit and this Court, but simply made it clear that disputes involving public employees in relation to salary and benefits went to the Administrative Circuit rather than to the other courts in the State of Qatar.

Article 44 was not an earlier law than the Administrative Disputes Law

52. It was next contended by the QFZA on the appeal that even if article 44 had the meaning given to it by the First Instance Circuit, then article 3 of the Administrative Disputes

Law conflicted with it. Article 3 prevailed as it was the more recent law by reason of the provisions of article 2 of the Qatar Civil Code (Law No. 22 of 2004).

53. We reject the argument. Although article 44 of the QFZ Law was enacted in 2005, as originally enacted it provided as follows:

> *The Council of Ministers, upon a proposition of the Minister, will issue a decision in the rules for settling disputes, including the establishment of a body to resolve conflicts related to the activities carried out in each Zone. The decision will specify the body's composition, its functions and the procedures followed in front of it.*

54. The present article 44, the translations of which are set out above, was substituted by laws made in 2017 and 2021. It was therefore not an earlier provision and therefore the argument that article 3 of the Administrative Disputes Law prevails because it was made later must fail.

The application of article 44 to public employees

55. Thus, the issue turns on the question whether, viewed in the context of the whole of the QFZ Law, article 44 conferred jurisdiction on this Court in the event of a dispute between the QFZA as a public authority and one of its employees as a public employee by reason of the use of the term "*individual*" with its very wide and unrestricted meaning.

56. The QFZA was established as a public authority under articles 17 and 18 of the QFZ Law with a direct responsibility to report to the CoM.

    i. The QFZA under article 19 of the QFZ Law is to manage and develop the Free Zones "*in accordance with the best international standards, as well as encouraging and attracting the investments in the sectors of scientific research, technology, production, exports, and others*." It is given extensive powers to do so, including the power to appoint "*employees*".

ii. Under article 21, the Board of Directors is appointed, and its remuneration is fixed by Amiri Decree; under article 23 it is given full authority to manage the affairs of the QFZA and the Free Zones.

iii. Under article 25 the Board is to select a Managing Director from amongst its members.

iv. The CEO of the QFZA is to be appointed by the Board under article 30 which sets out the CEO's extensive duties.

v. Article 39 provides for the criminal laws applicable in the State of Qatar to apply in the QFZ.

vi. Article 40 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.*

vii. Article 42 provides that the regulation of resident permits for "*employees*" in the Free Zones and their family members are for the Minister of the Interior.

viii. By article 46 the Chairman, Board and "*employees*" are exempted from civil liability for acts done in good faith when performing their duties under the QFZ law.

ix. By article 47 all its "*employees*" are deemed public servants with regard to the application of the criminal law.

57. It is in the context of these provisions and also of article 43 (on which the First Instance Circuit placed reliance) that we must consider whether the wide term "*individual*" in article 44 was intended to give this Court jurisdiction over the employees of the QFZA as public employees whose disputes with their employer over salaries and other matters would otherwise go to the Administrative Circuit.

58. Article 43 provides:

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

لا تسري القوانين والقواعد المنظمة للخدمة المدنية في الدولة،على الهيئة أو أي من موظفيها. وللهيئة صلاحية وضع أنظمتها الداخلية المتعلقة بالقواعد والشروط والأوضاع التي تطبق على العاملين لديها .

59. As the First Instance Circuit held, article 43 provides that those who work for the QFZA are not subject to the laws regulating the civil service. However, the article gives the QFZA power to make regulations which it did by making the QFZA Personnel Regulations. Although the First Instance Circuit was referred to and relied on article 43, it does not appear that it was referred to these Regulations at the hearing which determined jurisdiction, though it was referred to the Regulations at the hearing on the merits of the dispute as they were relevant to the termination of Mr Wennekers' employment allowances claimed by him and the accidents sustained by him.

60. The QFZA Personnel Regulations are very detailed and comprehensive. Apart from dealing with matters such as benefits, training, assessment and promotion and compensation for accidents), there are provisions for disciplinary accountability (Chapter XI, Articles 139-156), termination of service (Chapter XII, Articles 156-163), and end of service gratuities and indemnities (Articles 164-168). Article 168 is the article on which Mr Wennekers relied for his claim for compensation for partial disabilities.

61. Article 185 provides for the default application of the Civil Human Resources Law (Law No. 15 of 2016):

> *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.*

فيما لم يرد فيه نص في لائحة هيئة المناطق الحرة وتعديلاتها، يطبق قانون الموارد البشرية المدنية للدولة ولائحتها التنفيذية.

62. The Civil Human Resources Law is the law that applies to all public employees in Qatar, with the exceptions specified in article 2 – the QFZA was not included in the exceptions. Article 4 specifies that where the employees of a government entity are

governed by special employment regulations, the regulations must be provided to the Ministry specified in article 3 to ensure that the regulations comply with the general policy of the state in the field of human resources. The Civil Human Resources Law is comprehensive and covers many of the same issues as the QFZA Personnel Regulations. For example, Chapter 10 sets out duties, banned activities and disciplinary procedures; Chapter 11 makes provision in relation to termination of services; and Chapter 12 provides for end of service gratuities. In the General Provisions in Chapter 13, article 125 makes provision for total or partial disability in the course of or by reason of an employee's office. This last provision is very similar to the corresponding provision in the QFZA Personnel Regulations, including the provision for assessment by a competent medical authority, a provision which the First Instance Circuit considered at paragraphs 157-8 of its second judgment.

63. In our judgement it is clear that the purpose of article 43 of the QFZ Law was simply to make clear that the employees of the QFZA would not be governed by the general law relating to the civil service on all matters, but by regulations specifically applicable to the QFZA as issued pursuant to article 43. This did not mean that the employees of the QFZA were to be treated differently to or separately from other public employees. This is evident from the similarity between the provisions of the QFZA Personnel Regulations and the Civil Human Resources Law. The reference to the Civil Human Resources Law in the default provision in article 185, by providing that where there is no specific provision in the QFZA Personnel Regulations the Civil Human Resources Law is to apply, confirms that position. Moreover, the terms of article 4 of the Civil Human Resources Law make clear there was to be a general policy for all public employees in Qatar.

64. Taking into account the public employee status of those employed by the QFZA, we find that the clear intention of article 43 was that such employees should not be treated differently to or separately from other public employees save in the specific respects where the QFZA Personnel Regulations specified actual differences. Given that intention and the reference in the QFZ Law to employees, the question must be asked whether in that context by the use of the word "*individual*" in article 44, it was intended that this Court was to have jurisdiction over disputes between employees of the QFZA and the QFZA as the employer. If it was so intended, then there would be no reason to

limit the application of article 44; it would for example cover disputes between members of the Board and the QFZA.

65. We consider it is clear there was no such intention. The employees of the QFZA were to be treated no differently to or separately from other public employees; employment disputes between employees and the QFZA were not to be within the jurisdiction of this Court simply through the use of the term "*individual*". It would make no sense for very similar provisions relating to public employees to be considered and applied by this Court for employees of the QFZA and by courts such as the Administrative Circuit for other public employees.

66. It is, in our view, clear that the intention of article 44 was to ensure that those who invested in the QFZ would, unless they specified an alternative means of dispute resolution, be provided with both an international court and a legal regime with which outside investors would be more familiar than the regime available before other national courts in Qatar. Furthermore, if disputes were to arise between a company registered in the QFZ and an individual employed by that company and no provision had been made for jurisdiction, then this Court would be an appropriate court. In contrast, is difficult to see why the QFZA or the Government of Qatar would have wanted to provide that public employees of the State would need that jurisdiction when provision was already made such as those under the Administrative Disputes Law. This was the contention strongly made by the advocates from the State Cases Department of the Ministry of Justice of the State of Qatar representing the QFZA on the appeal and we accept it. We should say that these advocates did not represent the QFZA at the hearing of the jurisdiction issue before the First Instance Circuit. As stated above, the case advanced on appeal, which we have accepted, was not that advanced before the First Instance Circuit.

Other issues

67. It was contended by the QFZA that article 6 of the Administrative Disputes Law imposed a time limit which had not been complied with. If the claim fell for determination in the Administrative Circuit established by this law, as we have concluded, that is a matter for the Administrative Circuit and not one upon which we can comment.

Conclusion

68. We therefore allow the appeal on the issue of jurisdiction. As we have explained, it is not appropriate for us to consider whether we should grant permission to appeal on the grounds argued in respect of the second judgment of the First Instance Circuit on the merits or make any observations about its decision. That decision goes because there was no jurisdiction to make it.

69. Although we have reached the conclusion that the appeal must be allowed, we make no Order as to costs as the grounds on which we have allowed the appeal were not argued before the First Instance Circuit and, for the reasons we have explained, we have only considered those grounds because the grounds went to the jurisdiction of this Court, for as stated earlier this Court will not ordinarily consider issues that have not been raised before the First Instance Circuit.

70. We would wish to thank all the advocates for both parties who appeared before us for the very helpful way in which the appeal was conducted and for the cogency and concision of their arguments.

71. It is important to note that this is a case where the QICDRC *Pro Bono Scheme* has been of importance. Ms Danah Mohamed of Rashid Raja Al-Marri Law Office appeared before the First Instance Circuit in the trial on the merits and before us on the appeal *pro bono* under the scheme, though she did not represent Mr Wennekers in the jurisdiction hearing before the First Instance Circuit. The advocates, counsel and firms who provide the *Pro Bono Service* do so freely and provide their time and expertise without cost to a person who would not otherwise have the means to seek legal representation. They therefore provide full access to justice in the State of Qatar before this Court and thus give practical effect to the rule of law. In this case, it is evident from the second judgment of the First Instance Circuit that the work carried out by Ms Danah Mohamed was undertaken with huge energy and skill which required her to devote considerable time to the case pro bono. Before us her written and oral advocacy was of a standard which we wish to commend as an excellent example of pro bono advocacy. We are also immensely grateful to her and Rashid Raja Al-Marri Law Office for the very considerable time devoted pro bono.

By the Court,

[signed]

Lord Thomas of Cwmgiedd, President

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

Representation

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

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

DIGITALLY SIGNED AND VERIFIED
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