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: [2025] QIC (F) 72

IN THE QATAR FINANCIAL CENTRE

CIVIL AND COMMERCIAL COURT

FIRST INSTANCE CIRCUIT

Date: 27 December 2025

CASE NO: CTFIC0032/2025

GIULIO MENDES MARCUCCI

Claimant

v

SHEFFIELD ENERGY LLC

1st Defendant

~~**AND**~~

~~**BRYAN KEE**~~

~~**2nd Defendant**~~

~~**AND**~~

~~**RICHARD KEE**~~

~~**3rd Defendant**~~

JUDGMENT

Before:

Justice Helen Mountfield KC

Order

1. The claims against the Second and Third Defendants are not pursued and are dismissed under article 33.1 of the Rules and Procedures of this Court (the '**Rules**').

2. The claims for constructive dismissal and for breaches of articles 8, 18 and 23 of the QFC Employment Regulations (as amended; the '**Employment Regulations**') are dismissed.

3. The claim for underpayment of accrued holiday pay succeeds.

4. Within 14 days either of this Order or receipt of the Claimant's bank details (whichever is later), the Defendant must pay the Claimant a sum corresponding to 13.5 days of accrued holiday pay, to be calculated in accordance with the requirements of clause 10.5 of his contract of employment (and therefore to include a pro-rata daily rate for salary and all other contractual allowances including accommodation allowance over that period), minus the payment already made in relation to accrued leave balance. Any dispute about the calculation of this sum is to be determined by the Registrar if not agreed.

5. No order for costs.

Judgment

Introduction

1. This is a claim brought under articles 8, 18 and 23 of the Employment Regulations and on the basis of ordinary contractual principles for constructive dismissal.

2. The claim was originally brought against the First Defendant, as the Claimant's former employer, and two named employees of the First Defendant. But in his skeleton argument, the Claimant indicated that he was proceeding only against the First Defendant, and the claim against the Second and Third Defendants (Mr Richard Kee and Mr Bryan Kee) is accordingly dismissed under article 33.1 of the Rules. In the remainder of this judgment, the First Defendant is referred to as the '**Defendant**'.

3. The claim was listed for remote trial on 13 December 2025 before me as a single judge, on the Small Claims Track (allocated by the Registrar under Practice Direction No.1 of 2022). I heard evidence from the Claimant and Mr Richard Kee, Executive Director of the Defendant. The Claimant represented himself, and the Defendant was represented by Mr Thomas Ogg of Counsel, instructed by Al Tamimi and Company. I thank them both for their written and oral submissions which were of assistance to the Court.

4. The Claimant was originally employed by the Defendant as a Business Development Manager under the terms of a contract of employment dated 19 February 2024 (the '**Employment Contract**'). He had, however, worked for various other members of the group of companies of which the Defendant was a part, in France and Singapore, before taking up employment with the Defendant. Mr Kee gave evidence that, although the Claimant did not get along with another employee in the Paris office of an associated company, he had showed promise, and so had been sent for a year's training in Singapore and thereafter employed in the Qatar office of the Defendant, which had been established in 2023.

5. It is evident that the Claimant's performance in this role was satisfactory, because he was offered promotion on a trial basis. The Claimant's original contract was amended by an Addendum dated 2 May 2025 (the '**Addendum**'), by which he was promoted to "*Regional Manager – Middle East and France*" (the '**Regional Manager'** role).

6. Much in this case turns on the precise wording of the Addendum. The Addendum changed the Claimant's duties and pay and conditions in a number of respects, but it was not an entirely new contract. It was described as a document "*to modify and supplement*" the current Employment Contract, so – save as modified – its terms and conditions remained in place.

7. The Employment Contract, as amended by the Addendum, contained a re-designation clause, clause 5, which provided:

> *The Employee shall undergo a six (6) month trial period commencing from 1 May 2025. During or at the end of this period, if the Company determines that the Employee is not suitable for the [new] role, the Company reserves the right to:*
>
> - *Redesignate the Employee to another suitable role within the organization;*
> - *Adjust the salary accordingly to reflect the responsibilities of the new role.*

8. The Claimant says that he questioned the need for this clause allowing for a trial period in the new, more senior, role, as he was not a new employee, but was told it was common practice. In any event, it is common ground that he signed the contract containing this clause.

9. The Claimant considered that he performed the Regional Manager role effectively and was not given formal appraisals expressing concern about his performance. Mr Kee's evidence was that there were concerns about the Claimant's performance in this new role, which were drawn to his attention. An example was given, in relation to a failure to obtain signed work orders from clients which, it was said, raised billing problems. The Claimant says that this was a problem which pre-dated his appointment to the role.

10. Another example was an email from Mr Kee to the Claimant on 8 June 2025, querying why his business was still 99% focused on Qatar, since it was over a month after the Claimant had been promoted to Regional Manager for Middle East and France. Mr Kee asked the Claimant for a "*detailed business plan*" of what the Claimant was proposing for the Middle East and France, "*since we have agreed prior to you taking up this new role that I will be assessing your performance for the Middle East and France over the first six months*". The Claimant responded to this query by email four days later, on Thursday 12 June 2025, attaching a two-page business plan. The Defendant's case was

that this was too flimsy; the Claimant did not agree. He said that his regional reporting was good and showed the tasks achieved.

11. The Defendant says that the Claimant was afforded a reasonable opportunity to perform the Regional Manager role, and that concerns were properly drawn to his attention. The Claimant denied this. He did accept that there had been discussions of general challenges, but not criticisms of his performance, and gave evidence about his achievements during June 2025, and examples of his having brought challenges to the attention of his superiors – for example, in a report dated 29 May 2025, in which he highlighted a lack of clarity about lines of responsibility which was rendering clients uncertain about who was doing what.

12. The company's operations in Qatar remained unprofitable; the Claimant says that this was not his fault and that revenues were going up during his period of performance in the Regional Manager role.

13. Unfortunately, the Claimant suffered two close family bereavements during the six-month probation period. On 14 June 2025, he had to take a period of bereavement leave following the death of his father in Brazil. He says that these periods of leave were not fairly taken into account in assessing his performance.

14. In any event, Mr Kee gave evidence that he formed the view that the Claimant was not yet ready for the Regional Manager role to which he had been promoted; he was not focusing on developing work in France or the wider Middle East outside Qatar, and Mr Kee's view was that he was not yet ready for this. His view was that the Claimant should build up some more skills before becoming a Regional Manager, and should be asked to concentrate on the Qatar market only and be moved to a Senior Business Development Manager role. This was an increment higher, and at a salary of 5% more than the Business Development Manager role before May 2025. He said he thought the Claimant could become a Regional Manager at a later date, "*but not yet*".

15. On 31 July 2025, the Claimant was invited to an online formal appraisal meeting attended by Human Resources and Mr Bryan Kee, the CEO of the group of companies of which the Defendant formed a part. The Claimant was informed that, as a result of ongoing performance evaluation conducted during the trial period, it was considered that he was not demonstrating the proactive leadership or accountability expected of the Regional Manager position and that, in the light of that assessment, he would be

redesignated to the position of Senior Business Development Manager – Middle East, in accordance with the terms of clause 5 of the Addendum dated 2 May 2025. This was a promotion from his role before 2 May 2025. The Claimant's evidence was that he was spoken to discourteously during this meeting by Mr Bryan Kee, including being told to "*shut the f*** up and listen*", and that the Human Resources staff present did not prevent this unprofessional and abusive behaviour. It was put to the Claimant in cross-examination that this was not true, but he said that it was, and no evidence was advanced to dispute his account.

16. A memo was sent to the 's employees them of the Claimant's re-amended role as Senior Business Development Manager – Middle East. He gave evidence that he found this humiliating when he had not yet indicated whether he would accept this alternative role. The Defendant's case was that it did not need the Claimant's consent to exercise the discretion in clause 5 of the Addendum to redesignate him to a suitable alternative role.

17. There followed a further MS Teams meeting with Mr Richard Kee on 12 August 2025, at which the intended amended role was discussed. The Claimant raised concerns about the Key Performance Indicators ('**KPIs**') for the role, and was informed that he would have some time to make representations on these.

18. On 13 August 2025, the Claimant was a sent a "*Re-designation Addendum*" to his Employment Contract by Esther Loo, the Defendant's HR Manager. The Re-designation Addendum was said to re-designate the Claimant from Regional Manager to Senior Business Development Manager – Middle East, with effect from 1 August 2025. He was given until 18 August 2025 to make comments on what were his proposed KPIs in that role. The Claimant's evidence is that the KPIs were completely unrealistic.

19. On the same date, the Claimant wrote back to Ms Loo expressing surprise to see the redesignation as (he said), "*we had agreed to review and provide feedback on the proposed changes to my position, job scope and salary by 18 August 2025*". He was also concerned that there had already been an internal announcement circulated about his new role. He said that he was reviewing the proposed Re-designation Addendum and associated changes and would provide formal feedback by 18 August 2025. He challenged the redesignation of his role before 31 October 2025, which was when he said the trial period came to an end; asked if his agreement was required for the changes to come into effect; and noted the "*shift in expectations*" constituted by the KPIs. He

said that for the avoidance of doubt, he had "*not yet provided his consent*" to the changes outlined in the Re-designation Addendum and that his review remained ongoing.

20. On 15 August 2025, Muilian Lim, the Defendant's Senior HR representative, wrote to the Claimant setting out the Defendant's position on the trial period, performance feedback and appraisal, and that the contractual right to redesignate as expressly outlined in the Addendum of 2 May 2025 "*does not require your agreement*". Ms Lim pointed out that the August 2025 Addendum was in fact a promotion from the Claimant's substantive (pre-May 2025 Addendum) role and that the company had acted fairly and reasonably offering a suitable and progressive role aligned with his experience. She invited his feedback on the KPIs by 18 August 2025, and said that if this was not received by that date, it would be taken as an indication that he was not keen to proceed with the role and that the company would "*have to then consider alternative steps*".

21. By an email dated 18 August 2025, the Claimant rejected the new KPIs (with reasons), and objected to the alternative role, because according to him the 5% increase above his pre-May 2025 duties did not amount to a fair reward or a fair basis for renegotiation. He provided no counter-proposals. The Claimant said that he remained committed to the Defendant's growth in Qatar and the wider region but that, "*I cannot accept terms that represent a demotion in scope, impose inconsistent and unrealistic conditions, and disregard both my contributions and the agreed evaluation process*". The Claimant's case was that this letter amounted to resignation, which should then be treated as constructive dismissal, with damages for constructive breach of contract to be assessed on the basis of the salary level as amended on the 2 May 2025.

22. Mr Kee's evidence was that the Defendant having exercised the discretion to offer suitable alternative employment allowed for in clause 5 of the Addendum, and the Claimant rejecting this as a suitable alternative offer, the Defendant had "*no option*" but to terminate his employment on notice in accordance with the Employment Contract and article 23 of the Employment Regulations.

23. On 21 August 2025, Ms Lim wrote the Claimant in response to his email of 19 August 2025. Her email was very long and detailed. Ms Lim noted that clause 5 of the Addendum to the Employment Contract had provided the Defendant with a discretion to make a determination of suitability at any point during the evaluation period, not just at its conclusion. She said:

> [Following] *a thorough assessment of your performance and suitability for the Regional Manager – Middle East and France role, the company has determined that redesignation is in the best interests of both the business and your professional alignment.*

24. Ms Lim added:

> *We wish to make it absolutely clear that this is not a demotion. You are not being reverted to your previous Business Development Manager role, instead you are being appointed as Senior Business Development Manager, Middle East, which is a step above your original position.*

25. Ms Lim explained that this meant an adjustment down from the previous role of 5% which was, she said, benchmarked internally and externally. She set out a long explanation of why the KPIs were, in the Defendant's review, reasonable. She said that the company had a contractual right to redesignate the role and adjust salary, and that "*Following your decision to decline the proposed transition to a Senior Business Development role, we have decided not to prolong further discussions in order to focus our efforts on business priorities and delivery*". Accordingly, the email of 21 August 2025 served the Claimant was served with a Termination Notice providing one month's notice and putting the Claimant on garden leave. The email said that during the notice period, his pay "*would be based on the Senior BD salary applicable to that role*". The Defendant's case is that it was this email which terminated the Claimant's employment, with a month's notice, on the basis of the salary to which it had reasonably reassigned him with effect from 1 August 2025.

26. On 1 September 2025, the Claimant sent an email noting that his Employment Contract "*was coming to an end*" and requesting an end of service airline ticket to France to resume his role in Paris. This, the Defendant submits, shows that there was an actual dismissal on notice in accordance with the terms of the Employment Contract, and not a constructive dismissal. The Defendant's case is that the Employment Contract came to an end on 21 September 2025.

27. The Claimant says that the decision to redesignate him was taken unfairly, without a fair opportunity to prove himself; that the alternative role offered was not a suitable alternative; and that the meeting on 31 July 2025 was conducted in an unprofessional manner. He also says that his redesignation was unfairly communicated within the firm before he had had an opportunity to accept or reject the new contract or to comment on his KPIs.

28. The Defendant, however, says that the redesignation decision was taken in good faith, not capriciously, and that the Claimant was given a fair opportunity to comment – which he took, by rejecting the new KPIs but failing to offer a workable alternative (or to resign).

The Relevant Provisions of the Employment Regulations

29. The Claimant alleges breaches of articles 8, 18 and 23 of the Employment Regulations. The relevant provisions provide, so far as is material, as follows:

> *Article 8 – No waiver of minimum standards*
>
> *(1) The requirements set out in these Regulations are minimum requirements and a provision in an agreement to waive any of these requirements, except where expressly permitted under these Regulations, has no effect.*
>
> *(2) Nothing in these Regulations precludes an Employer from providing in any contract of employment, terms and conditions of employment that are more favourable to the Employee than those required by these Regulations.*
>
> *(3) A contravention of these Regulations constitutes a contravention of a Relevant Requirement under the QFCA Rules.*
>
> *Article 18 – Probation period*
>
> *(1) The employment contract may contain a provision subjecting the Employee to a probation period, provided that the probation period shall not exceed six (6) months.*
>
> *(2) The Employee shall not be subjected to more than one (1) probation period with the same Employer except for cause.*
>
> *(3) If such a probation period exists the Employer may terminate the employment contract within the terms of the probation period if it determines that the Employee is not capable of carrying out the work for which he has been employed. In such a case the Employer shall give the Employee no less than two (2) weeks written notice.*
>
> *Article 23 – Termination of employment with notice*
>
> *(1) Except as otherwise provided for in these Regulations Employers and Employees must provide notice of their intent to terminate employment.*
>
> *(2) The notice required to be given by an Employer or Employee to terminate an Employee's employment where an Employee has been continuously employee for one (1) month or more …*
>
> *(3) All such notices shall be given to the other party in writing and the Employer shall pay the Employee his salary during the notice period.*
>
> *(4) …*

(5) This Article shall not affect the right of the Employee to terminate the employment without notice in the event of a material breach of the employment contract or these Regulations by the Employer.

Analysis

Constructive dismissal or actual dismissal?

30. Constructive dismissal arises where an employer acts in a way which constitutes a fundamental breach of contract – going to the heart of the contract; and that the employee is both entitled to and does bring the contract to an end immediately as a reaction to the breach, immediately, and without giving notice. The employee can then bring a claim for damages for loss caused by what is treated as the employer's breach of contract, even though the act of termination was that of the employee.

31. The parties disagreed on whether the Defendant had breached any express or implied term of the Employment Contract; and also as to whether it was the Claimant who brought the Employment Contract to an end (through his email of 18 August 2025, indicating that he did not accept the proposed removal of his Regional Manager promotion and alternative role and KPIs), or whether there was an actual dismissal, on notice, through Ms Lim's email of 21 August 2025.

Did the Defendant breach the contract as alleged?

32. Turning first to the question of whether there was an actual breach of contract by the Defendant to which the Claimant was entitled to respond to by resigning, the Claimant put his claim for constructive dismissal on the basis of three alleged breaches of contract. First, that it was a breach of contract for his trial period as Regional Manager to be unfairly and prematurely curtailed; second, that there was a breach of trust and confidence in that he was spoken to disrespectfully during the meeting of 31 July 2025; and third, that he was not given a fair offer of alternative employment because the so-called "*Senior Business Development Manager*" role was insufficiently remunerated, and that he was given wholly unrealistic KPIs.

33. I do not find that any of these three matters amounted to a breach of contract by the Defendant; nor that in fact the Claimant resigned in response to them.

34. The Claimant's claim that he had six months to prove himself in the new Regional Manager role before a decision could be taken whether to affirm him in it is not

supported by the language of clause 5 the Addendum of 2 May 2025. This clearly provided that the promotion to Regional Manager was for a trial period of six months, but that the Defendant had a discretion to withdraw the amendment to the existing underlying Employment Contract if it (the Defendant) determined, either "*during or at the end*" (emphasis added) of the trial period, that the employee was not suitable for the role. This was, as Mr Ogg submitted, a subjective decision for the Defendant to take, the only requirement being that it was taken in good faith, in the sense of not being taken for an ulterior purpose.

35. The Defendant made an honest appraisal of the Claimant's performance in the new role. I found Mr Kee to be an honest witness who had in good faith formed a view that, while the Claimant had promise, his performance between May 2025 and the end of July 2025 established that he was not yet performing adequately as a Regional Manager. Mr Kee's view was that it would be better for the Claimant and the company if he were to have a less elevated promotion from his 2 May 2025 Business Development role, and to act as a Senior Business Development Manager – Middle East, concentrating on developing the Qatar business.

36. As a matter of contract, the Defendant was not bound by any particular procedure in drawing this conclusion, but in any event Mr Kee had drawn concerns to the Claimant's attention. So, the Defendant acted in accordance with, and not in breach of, the Addendum of 2 May 2025 when it indicated unilaterally to the Claimant in the meeting on 31 July 2025 that it was revoking the trial promotion to Regional Manager with effect from 1 August 2025.

37. Second, it was suggested that there was a breach of trust and confidence through the language said to have been used by Mr Kee during the meeting on 31 July 2025. While there may be circumstances in which speaking to an employee in a disrespectful a way may be sufficient as to breach this implied term, I was not convinced that the language described in the meeting on 31 July 2025 was necessarily sufficient to cross the threshold so as to amount to a breach of the contractual duty of trust and confidence. So much depended on context and tone, on which I had no evidence. However, I do not need to determine whether this did amount to a breach, because on no view could it be said that the Claimant resigned in response to the use of that language, since he continued to work and negotiate KPIs etc after that meeting.

38. Third, in relation to the re-designation of the Claimant from 1 August 2025 to a Senior Business Development Manager – Middle East role at 5% more than his pre-2 May 2025 salary, this decision was one which the Defendant had contractual authority to make on a unilateral basis. The Senior Business Development Manager role was an appropriate re-designation: it was a grade higher than the role which the Claimant had occupied before his trial period as a Regional Manager started, and the salary was commensurate with this because it was paid 5% more than that pre-2 May 2025 role.

39. The only issue about whether the redesignated role was 'suitable' was as to the scope of the KPIs and whether these were realistic. On this, the Claimant had made submissions which may have been reasonable concerns to express. He might, for example, have advocated for this role to be based on his pre-May 2025 KPIs, but retaining the 5% increment to reflect his increased experience. However, in his email of 18 August 2025, he described his concern about the KPIs as a "*rejection*" of the decision to take away his Regional Manager role; and as Ms Lim had pointed out in her email of 15 August 2025, this gave the company a choice to make, since their view of what amounted to a reasonable alternative offer was rejected by the Claimant, without any alternative role being suggested.

40. Accordingly, there was no breach of the terms of the Addendum by the trial as a Regional Manager having been brought to an end before the end of the six-month period, or the suitable alternative role of Senior Business Development Manager – Middle East being offered.

41. It follows that the Claimant cannot have been constructively dismissed, because the Defendant was not in fundamental breach of contract in any of the three ways described.

<u>Did the Claimant resign in response to the Defendant's behaviour?</u>

42. A second, independent, reason why the Claimant was not constructively dismissed was that the Claimant did not resign as a result of his treatment in the meeting of 31 July 2025, nor the decision on that date to replace his trial Regional Manager role with a Senior Business Development Manager role; nor the email of 13 May 2025 informing him that this decision was final and effective from 1 August 2025. The Claimant continued to express his commitment to the company until his email of 18 August 2025 at the latest – and even then said that he was committed to the development of the Defendant's business in Qatar.

43. The Claimant also says the new KPIs he was given were so unrealistic as to be setting him up to fail. As the Defendant points out, the decision of the Appellate Division of this Court in *Al Tamimi v QFCA* [2018] QIC (A) 3 at paragraph 79 establishes that, by virtue of article 22 of the Employment Regulations, an offer of a wholly unrealistic alternative job may be such as to amount to a breach of the existing contract. So if the KPIs rendered the new job an unsuitable alternative, this may have rendered the alternative role an unsuitable one.

44. These were not, however, presented as a take-it-or-leave-it fait accompli: the Claimant was given a week to consider these, and he took that full time.

45. I do not need to decide if offering these KPIs was capable of being a breach of contract, because I find that on construction of the correspondence, the Claimant did not resign in response to these having been issued: instead he wrote to the Defendant rejecting them, without however proposing what he said to be realistic alternatives, but also indicating his "*ongoing commitment*" to the development of the Defendant's business in Qatar, which does not sound like a walking away.

46. In this respect, the precise language of the Claimant's email of 18 August 2025 was important. He said:

> *Dear Mui Lian,*
>
> *Thank you for sharing the proposed re-designation and associated memorandum. I have carefully reviewed the terms and after consideration, I must respectfully decline the proposal in its current form ...*" (emphasis added).

47. He went on to explain his objections, and concluded the email:

> *I remain committed to Sheffield's growth in Qatar and the wider region. However, I cannot accept terms that represent a demotion in scope, impose inconsistent and unrealistic conditions and disregard both my contributions and the agreed evaluation process.*

48. In other words, the Claimant saw himself as refusing the alternative role as Senior Business Development Manager and what he saw as an unrealistic proposal "*in its current form*": he appeared to be inviting a different proposal. But he expressed ongoing commitment, and continued to work for the Defendant until 21 August 2025, when he was placed on gardening leave.

Termination of the Claimant's Employment Contract by the Defendant

49. The Employment Contract was actually terminated by the Defendant, in express terms, by a letter from Mr Kee, dated 21 August 2025, headed "*Termination of Employment*". His last working day was 20 September 2025. The formal letter specified that during this time he would be on gardening leave, and that upon completion of his notice period:

> *...in accordance with your contract and company policy, you will be entitled to the following upon completion of your notice period:*
>
> 1. *Payment for your demobilization air ticket to Brazil* (subsequently amended to France),
> 2. *August salary and September salary up to 20 September and*
> 3. *Accrued Leave Balance.*

50. A more detailed explanation of the decision to terminate the Claimant's employment was contained in an email from Ms Lim also dated 21 August 2025, two days after the Claimant had rejected the redesignation, but continued to work. This email also explained that the Claimant would be terminated on one month's notice, and that he would be placed on gardening leave.

51. These two letters constituted actual termination of the Claimant's employment on notice, with effect from close of business on 20 September 2025. His employment was not 'constructively' terminated by the Claimant's email of 18 August 2025.

52. This interpretation of how the Employment Contract came to an end is confirmed by the Claimant's correspondence on 1 September 2025 about his end-of-service flight back to Paris. If he regarded himself as having resigned on 19 August 2025, he could not have claimed this flight: he would only have been able to sue for damages for breach of contract, including the costs of it. His evidence was that this would have been difficult and inconvenient, which is understandable. However, that is what treating the contract as having terminated would have looked like. Instead, he opted to affirm the contract and claim the costs of the flight, and accordingly there was no constructive dismissal.

<u>Alleged breaches of the Employment Regulations</u>

53. For completeness, I turn to the claim based on breaches of the Employment Regulations. There was no attempt by the Defendant to contract out of minimum labour standards and consequently no breach of article 8 of the Employment Regulations.

54. While it is true that article 18 of the Employment Regulations provided that there could not normally be more than one probation period in respect of a contract of employment ("*except for cause*"), there was no breach of this provision, because the Re-amendment Addendum was not a new offer of employment, but a conditional contractual amendment, to offer of a more senior role for a trial period, which could be terminated at the Defendant's option. In any event, it was reasonable to offer a trial period for so substantial a promotion, and the period of notice offered (one month) was not below the minimum allowed for during a probationary period by virtue of article 18.

55. Article 23 is no more than a statutory re-enactment of the ordinary common law of constructive dismissal, and adds nothing to the contractual claim in this case.

Alleged underpayments of contractual compensation

56. In the formal letter of termination of employment from Mr Kee dated 21 August 2025, Mr Kee said that "*in accordance with [his] contract*" the Claimant was entitled to certain payments including salary to date of termination and "*accrued leave balance*".

57. The issue between the parties is whether the payments which were made to the Claimant in fact met these contractual obligations. It is common ground that the Claimant was paid salary for his notice period, and given an end-of-service air fare, and some accrued holiday leave pay.

58. However, the Claimant says that these payments were not what he was contractually entitled to receive. There were three areas of dispute between the parties.

59. The first was as to the rate of pay on which the termination payments should have been calculated. The Claimant says that, because he did not accept the 1 August 2025 amendment of his Employment Contract, his salary until 20 September 2025 should have been calculated at the higher Regional Manager rate of QAR 32,900 per month, and not the lower Senior Business Development Manager rate of QAR 24,675 per month.

60. The second area of dispute related to the number of days of outstanding leave which fell to be paid.

61. The third was whether the contractual accommodation allowance, which was paid for the period of notice, ought also to have been paid as part of the holiday pay which was

outstanding, or whether this was a separate contractual entitlement continuing only during the actual period of employment and notice.

Rate of pay: what contractual terms applied to the contract on date of the termination?

62. I hold that the correct rate of pay for calculating the Claimant's post-dismissal entitlements was at the level of remuneration for a Senior Business Development Manager – which is the basis upon which the Defendant made its calculation.

63. The Employment Contract was brought to an end by the Defendant on 21 August 2025, on its terms on that date. The issue is what the extant terms on that date provided for. There are two possible approaches to this. Either – the Claimant having rejected the alternative employment proposed – the 2 May 2025 Addendum ceased to apply, so the true position is that the terms of the Employment Contract entered into on 19 February 2024 (i.e. as it stood before 2 May 2025) applied; or the Claimant's rejection of the Defendant's redesignation was irrelevant, because the discretion to make that redesignation was provided for in the terms of clause 5 of the Addendum itself, so the Senior Business Development Manager terms were the ones in place on 21 August 2025. These were more favourable to the Claimant than the terms of the 19 February 2024 contract, and it was these latter terms which the Defendant treated as applying.

64. The Claimant's proposed construction of the Employment Contract – namely that on date of termination, the proper contractual rate of pay was that prescribed in the Addendum of 2 May 2025 – is not a tenable one. The Defendant had expressly brought that Amendment to an end with effect from 1 August 2025, and treated itself as bound by the unilateral offer of a re-amendment to Senior Business Development Manager with effect from that date.

65. Clause 5 of the Addendum cannot be interpreted as applying unless and until the Claimant accepted an alternative contract or until it was ended on notice. The 2 May 2025 amendment was an Addendum to the existing Employment Contract, not a replacement of it. Under the terms of the Addendum, the Defendant had an option to remove the trial promotion during a six-month trial period. Having decided the Regional Manager promotion was not working out, it might, at its own option, simply have terminated the Addendum and said that the Claimant's previous role, which he had performed well, was a suitable one. In fact the Defendant did not exercise that option. It treated itself as having unilaterally re-amended the Addendum as permitted

by its terms, so as to offer the Claimant a suitable alternative (and more highly paid) role than his pre-May 2025 role. It also treated itself as bound to pay him at the higher Senior Business Development Manager rate.

66. This was a valid exercise of a contractual discretion by the Defendant, and – having found the Senior Business Development Manager role was a suitable alternative, the Defendant's unilateral decision to amend the contract in that way with effect from 1 August 2025 was a valid one. Accordingly, it was that re-amended Employment Contract which was terminated on notice by the letter of 21 August 2025, with effect from 21 September 2025, and the Senior Business Development Manager rate which was applicable to the Claimant's remuneration during that period of notice and for the purposes of calculating accrued holiday pay.

67. Accordingly, I find that there was no underpayment of the Claimant's entitlements during his period of notice as respects calculation of the correct salary rate.

Underpayment of holiday pay

68. The Defendant accepted that it had under-calculated the Claimant's entitlement to untaken days of holiday by four days, and informed the Court that it had asked for the Claimant's bank details to correct this underpayment. I find that the Defendant was correct to treat the balance of untaken holiday days as applying pro-rata, so the whole holiday year did not become due at the end of the contract on 21 September 2025. The Defendant's barrister showed how this should have been calculated as 13.5 days accrued leave, but in fact only 9.5 days had been paid.

69. The Defendant was correct to accept that four more days of holiday leave had been accrued, and that the Claimant was correct to say that he had been underpaid for holiday pay in this respect.

Should the Claimant have received his accommodation allowance as well as his basic salary for the outstanding days of holiday pay?

70. This was a somewhat technical issue on which there is, as of yet, no authority in this jurisdiction.

71. The Employment Contract entitled the Claimant, during his employment, to payment of salary and also an accommodation allowance. Both his holiday pay and accommodation allowance were paid during his period of gardening leave. However,

the Defendant contended, when paying unaccrued days of holiday pay, the Claimant's entitlement was only to his basic salary for each day of leave not taken, and not also accommodation allowance – because in fact he was no longer employed when the leave was taken.

72. At first blush, this submission on the Defendant's behalf was a somewhat surprising and counter-intuitive one: when someone is on holiday, they are entitled to the normal contractual emoluments of their employment, so why should they not receive the regular contractual allowances on top of base salary?

73. Moreover, the Employment Contract provided, in relation to Annual Leave (at clause 10.1) that he was entitled to "*paid annual leave of 20 working days to be accrued pro rata since the first day of employment*".

74. The basis for the Defendant's submission to this effect was its construction of the Employment Regulations, and the meaning of "*salary*" in article 36(1) of the Employment Regulations. These were interesting and ingenious submissions, but I do not need to decide if they were right, because there is a simple answer to them, namely, that the Employment Contract provided for calculation of annual leave in lieu, so there is no need for recourse to the regulations.

75. Clause 10.5 of Employment Contract dated 19 February 2024 provided that:

> *… compensation in lieu of accrued annual leave is allowed in case of termination of employment or upon agreement between the Parties and it is calculated on the Employee's monthly usual salary inclusive of basic salary, allowances and benefits.*

76. This is in contrast to clause 6.3 of the Employment Contract, which expressly excluded payment of an "*Annual Wage Supplement*" in the event a contract terminated before its payment date.

77. Accordingly, the Defendant is required to recalculate the sum payable by way of holiday entitlement so as to include a pro-rata daily amount for his accommodation allowance and the value of any other allowances or benefits to which his holiday entitled him for the 13.5 days of accrued holiday leave to which he was entitled, as well as his salary.

Conclusion

78. Accordingly, the claim for constructive dismissal and breach of clauses 8, 18, and 23 of the Employment Regulations dismissed. The claim for under paid holiday pay is allowed.

79. Since costs normally follow the event in this jurisdiction, and the claim was successful in part and unsuccessful in part, the just solution is for costs to lie where they fall. There will be no order for costs.

By the Court,

[signed]

Justice Helen Mountfield KC

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

Representation

The Claimant was self-represented.

The Defendants were represented by Mr Thomas Ogg of Counsel (11KBW, London, United Kingdom), instructed by Al-Tamimi and Company (Dubai, United Arab Emirates).