

**In the name of His Highness Sheikh Hamad bin Khalifa Al-Thani,
Emir of the State of Qatar**

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

11 April 2013

CASE NO: 02/2012

KHALED HASSAN BAHR AHMED

Plaintiff

v

DOHA BANK ASSURANCE COMPANY LLC

Defendant

JUDGMENT

Members of the Court:

Justice Lord Scott of Foscote

Justice Hassan Al-Sayed

Justice Chelva Rajah SC

JUDGMENT OF THE COURT

1. The plaintiff, Khalid Hassan Bahr Ahmed, was an employee of the defendant, Doha Bank Assurance Company LLC (DBAC). The contract of employment was in writing and was signed by the plaintiff and by Mr. Manoj Kumar, the executive manager of DBAC on behalf of DBAC. By a claim form dated 21 November 2012 the plaintiff has claimed damages against DBAC for the wrongful termination of his employment. DBAC denies that its purported termination of the employment was wrongful. This is the central issue in the case. It is necessary, therefore, to refer to the relevant provisions of the contract of employment.
2. The contract was dated 20 April 2010. Under Article 1, DBAC appointed the plaintiff to the position of “Surveyor, Motor Claims” for an indefinite period but the Article provided also that:

“...either party shall have the right to terminate the contract without giving any reasons, provided to take into consideration the notice period which is not less than one month if service period [of the plaintiff] is not less than five years and a notice period of two months if the service is more than five years”

Article 3 of the contract set out the details of the salary and additional allowances to which the plaintiff would be entitled, and Article 4 set out the details of the various other benefits to which the plaintiff would or might become entitled. The contract contained thirteen Articles in all but none of the others appear to the Court to have any relevance to the current dispute between the plaintiff and DBAC.

By a letter dated 7 February 2011 addressed to “Mr. Khaled Hassan Bahr Ahmed” DBAC claim to have given the plaintiff notice to end his employment contract on 8 February 2011. The true effect of this document is in issue. It is necessary, therefore, to refer in some detail to the contents of the document. The paper on which the contents were written was DBAC headed writing paper. Under the name of DBAC there appears “(A

100% owned subsidiary of Doha Bank)”. The document then sets out the name of the plaintiff and describes his employment as “Surveyor, Motor Claims, Doha Bank Assurance Company, Emp. No. 7755”. The substantive contents of the document read as follows:

“Re: End of Employment”

“It has been decided to end your Employment Contract with effect from the close of office hours on 8th February 2011. You will be paid an amount equivalent to one month gross salary as notice period pay on the basis of your present salary. Please handover all your responsibilities and Company belongings that is currently under your custody to your Department Head and get in touch with the HR Department for settling all your outstanding liabilities towards the Bank and completion of your exit formalities”.

The document was signed by Mr. A. Rahman Ali Al Mohammed, described as “Head of Human Resources”.

The plaintiff’s claim form states that after receipt of the 7 February 2011 termination notice he appealed to the Chairman of the Board of Directors of DBAC asking “to return to his previous job in [DBAC] based on the absence of any legal ground or excuse to terminate the services of the plaintiff...”.

Whether as a response to the plaintiff’s appeal or for some other reason, a letter dated 24 March 2011 and signed, as had been the termination notice of 7 February 2011, by Mr. A. Rahman Ali Al Mohammed was received by the plaintiff. This letter was on the writing paper of Doha Bank, DBAC’s parent company. The letter referred to the predecessor letter of 7 February 2011 and continued as follows:

“The Management has decided to reinstate your services and transfer you to the Field Recovery Unit as Recovery Officer with effect from 28th March 2011. You are requested to report to the Head of Field Recovery Unit on the above mentioned date. The period of your absence from 9th February 2011 to 27th March will be considered as Leave without

Pay. Accordingly, the above memo under reference [i.e., the termination letter of 7 February 2011] hereby stands cancelled”.

The “Management” above referred to was plainly the management of Doha Bank. The Field Recovery Unit referred to was a department not of DBAC but of Doha Bank. And, as appears from page 1 of the plaintiff’s claim form, the plaintiff “accepted the work for Doha Bank...on 27/03/2011” and commenced work in Doha Bank’s Field Recovery Unit.

The reference in the letter of 24 March 2011 to the plaintiff’s absence from 9 February 2011 to 27 March 2011 which would be considered as “Leave without Pay” was puzzling to the Court. The letter was plainly written on behalf of Doha Bank, not DBAC. And why should Doha Bank describe as “Leave without Pay” a period preceding the commencement of the plaintiff’s employment by the Bank? The significance of this only became apparent to the Court during the submissions being made by counsel for DBAC on the first day of the trial. The Court will return to this later in the judgment.

After nearly a year of working for Doha Bank the plaintiff received a second termination notice letter from Mr. Al Mohammed. This letter was dated 25 March 2012 and was, like the letter dated 24 March 2011, written on Doha Bank writing paper. The letter said that

“It has been decided to end your Employment Contract with effect from the close of office hours on 25 March 2012. You will be paid an amount equivalent to 1 month gross salary as notice period pay on the basis of your present gross salary...”

The termination of employment purported to be effected by this letter was not withdrawn. Nor has the plaintiff, insofar as this Court is aware, commenced proceedings against Doha Bank or alleged against Doha Bank that his employment had been wrongfully terminated.

The plaintiff's claim against DBAC in this action is based upon the alleged invalidity of his first dismissal. The grounds on which the first dismissal, purported to have been effected by the letter of 7 February 2011, is alleged to have been invalid and ineffective are set out on page 2 of the plaintiff's claim form. It appears to the Court that there are three separate grounds on which the plaintiff relies. First, the plaintiff contends that his dismissal was "arbitrary...without any reason or legal justification". Next he contends that Mr. Al Mohammed was not an officer of DBAC, his employer, and lacked authority from DBAC to dismiss him. These two grounds are expressed in the following passage to be found on page 2 of the claim form.

"Legal and judiciary provisions necessitate and require that the termination of employment and the dismissal from work have a legal reason and justification and the decision must be issued by a competent party and those who have the capacity to issue the same".

As to the first ground, DBAC relies on the terms of the contract between itself and the plaintiff. Article 1 of the contract provides that "either party shall have the right to terminate the contract without giving any reasons". By a direction given by the Chairman of the Court on 21 March 2013, each party was given liberty to make written representations to the Court on the question whether there was "...any and if so what principle of Qatari law" that invalidated the right of parties to a contract of employment to agree in the contract that either party had the right by notice to terminate the contract without giving any reason for so doing. No written representation identifying any such principle of Qatari law has been received by the Court and none of the members of the Court is aware of any such principle. But DBAC, in written representations dated 8 April 2013, has drawn attention to (i) Paragraph 1 of Article 49 of the Qatari Labour Law No. 4 of 2004 which provides, inter alia that

"If the employment agreement is for an indefinite duration, any of the parties thereto may terminate it without giving the reason for the termination..."

and (ii) to Article 6 (1) of the QFC Contract Regulations No. 4 of 2005 which provides, inter alia, that

“Every person shall be free to enter into a contract and to determine its content...”

The Court accordingly rejects the first ground on which the plaintiff seeks to attack the validity of the dismissal notice given by the letter of 7 February 2011. No reasons were given but the law does not require reasons to be given if the contract between the parties does not so require.

The plaintiff's next point was that the 7 February 2011 termination letter was sent by Doha Bank and not by DBAC, his employer. This point seems to be based on the fact that the author of the letter, Mr. Al Mohammed, was an officer of Doha Bank, not an officer of DBAC. But this point, too, in our judgment fails. It is apparent from the face of the letter that its author was purporting to send it on behalf of DBAC, the employer as the author must have known, of the plaintiff. Whether the author had authority from DBAC to send the letter on its behalf is, of course, another matter, and it is to that issue that the Court must now address itself.

It is correct, as the plaintiff has pointed out, that DBAC, his employer under the 20 April 2010 employment contract, is, although a “100% owned subsidiary of Doha Bank”, a distinct legal person in its own right. Doha Bank, too, is a legal person, but a separate legal person. Mr. Al Mohammed, the signatory of the 7 February 2011 letter, was an officer of Doha Bank. He was the Head of the Human Resources Department of Doha Bank. He was not an officer of DBAC. But it is clear than in writing and signing the 7 February 2011 letter he was purporting to act on behalf of DBAC. But did he have the authority of DBAC to do so?

DBAC's case that Mr. Al. Mohammed did have that authority is set out in its Rejoinder submitted to the Court on 13 March 2013. The pleading relies on and annexes an agreement, described as a “Material Outsourcing Agreement” (the MOA). The MOA had

three signatories, namely, Mr. Seetharaman, described as the “Chief Executive Officer Doha Bank and DBAC” who signed on 22 November 2009, Mr. Al Mohammed, described as “Head of Human Resources Doha Bank” who signed on 22 November 2009 and Mr. Manoj Kumar described as “Executive Manager DBAC” who signed on 18 November 2009. The MOA recited that

“This Material Outsourcing Agreement is between Doha Bank and Doha Bank Assurance Company to outsource Human Resources functions of Doha Bank Assurance LLC (DBAC) to its parent company Doha Bank”

and recorded the parties’ agreement that Doha Bank’s corporate Human Resources Department would perform a number of specified functions on behalf of DBAC. The specified functions included “Selection and Recruitment of Employee” (sic) and “Personnel Administration”. The MOA further provided that Doha Bank would “provide HR services to...DBAC”, and that the agreement would remain in force until revoked by either party and would be reviewed on an annual basis. Other provisions in the MOA combined with those expressly mentioned above make clear in the Court’s opinion that the MOA authorised Doha Bank’s Human Resources Department to (inter alia) hire and fire employees of DBAC. The contention by the plaintiff that Mr. Al Mohammed lacked authority from DBAC to send the plaintiff the termination notice letter of 7 February 2011 is, in the Court’s judgment, refuted by the contents of the MOA.

The Court’s direction of 21 March 2013 invited the parties to lodge with the Court written representations on a number of questions. These included the following questions:

- (i) Whether the MOA on its true construction authorised the Head of Human Resources of Doha Bank to serve notice on an employee of DBAC terminating, in accordance with the employment contract between the employee and DBAC, that employment?
- (ii) Whether there is any, and if so, what basis for holding the notice given to the plaintiff on 7 February 2011 to have terminated the employment contract between

DBAC and the plaintiff if the MOA, on its true construction, did not authorise the Head of Human Resources of Doha Bank to do so?

Both the plaintiff and DBAC responded to this direction. The plaintiff's response, in a document dated 2 April 2013, took the form of a full scale attack on the MOA. He insinuated that the MOA had been fraudulently created by, presumably, the three signatories in order to defeat his, the plaintiff's, claim that Mr. Al Mohammed had had no authority to send on behalf of DBAC the 7 February 2011 letter giving the plaintiff notice of the termination of his employment by DBAC. There were also suggestions that the signature that purported to be that of Mr. Manoj Kumar was not his true signature. No evidence in support of these insinuations was led and the Court regards them as inherently improbable. There is a well known rule applicable to disputed documents known as the presumption of regularity. If a document is produced by the person or persons who would have been expected to have had custody of the document in question and the document appears to have been executed or signed by the right individuals, there is a presumption that the document is in order and has been properly executed or signed. The presumption of regularity is, of course, rebuttable but the onus is on the person who challenges its validity to satisfy the Court that the document has not been properly executed or signed or is, for some other reason, an invalid document. In the present case this onus lies on the plaintiff but he has not, in our opinion, come close to discharging it.

DBAC's response to the 21 March 2013 direction was, by contrast to the plaintiff's response, helpful. It disclosed that the existence of the MOA had been notified to the Qatar Financial Regulatory Authority (QFCRA) by a letter dated 24 November 2009. A copy of the letter was exhibited to DBAC's response and shows that the MOA was in existence and known to the QFCRA well before the plaintiff had entered DBAC's employment.

These conclusions appeared to the Court to be sufficient to dispose of this action until an interjection by the plaintiff in the course of the submissions being made to the Court by Mr. Walid, counsel for DBAC, raised a further issue for consideration by the Court.

Before describing the interjection, reference should be made again to the contents of the termination notice letter of 7 February 2011. The letter purported to terminate the plaintiff's employment by DBAC "...with effect from close of office hours on 8th February 2011". So peremptory a termination is not, in our opinion, consistent with a contractual obligation to give a "notice period of not less than one month..." (Article 1 of the plaintiff's employment contract). The author of the letter, Mr. Al Mohammed, and Mr. Walid in his submissions to us, appear to have believed that, provided 1 month's salary "as notice period pay" were paid, the termination of the employment contract could be, in effect, immediate without the necessity of providing any notice period at all. In our opinion, a construction of the employment contract to produce that result is a misconstruction. Under Article 1 of the contract at least one month's notice to terminate the plaintiff's status as an employee of DBAC was, unless the plaintiff agreed to accept a shorter notice, needed. If, of course, an employee were to accept the employer's offer of one month's wages as a quid pro quo for agreeing to a shorter notice or, indeed, an immediate termination of the employment contract, the shorter or abridged notice period would be acceptable. But if an employee who was entitled to a month's notice were to refuse to accept a notice period shorter than the one month and to insist on continuing with his or her employment for the full notice period, it would not, in our opinion, be open to the employer to deny him or her that right.

While this point was being discussed with Mr. Walid, he, Mr. Walid, commented that the plaintiff had been offered his full one month's notice period pay, that the plaintiff had accepted that offer and had been paid. If that had been so, it would, in our opinion, have disposed of the point. But the plaintiff interjected to deny that DBAC had ever paid him the one month's notice period pay. The Court enquired of Mr. Walid whether or not that was true. Mr. Walid did not know and, since no one from DBAC attended Mr. Walid in Court, no one was able to advance the matter. So the trial was adjourned until 10.00am on the following morning in order for Mr. Walid to take instructions from DBAC. The Court is reminded, however, of the apparently strange reference in the so-called "re-instatement" letter of 24 March 2011 to the plaintiff's "absence from 9th February 2011 to 27th March" which would "be considered as Leave without Pay". It may be that Doha Bank's Human Resources Department thought that the offer of a job

with Doha Bank could be associated with withholding from the plaintiff the one month's salary, attributable to the one month notice period, that DBAC would have to pay him.

Mr. Walid's submissions on the first day of trial, seeking to uphold the right of the employer to subject an employee contractually entitled to a period of notice before dismissal to an immediate dismissal on simply offering the employee his contractual wages for the notice period of which he, the employee, would be deprived appears to us to be wrong in principle. A party to a contract can buy his way out of a contractual obligation if the other party accepts what is on offer as the price for the breach of contract but not otherwise. And Mr. Walid's submissions to the contrary seem to the Court to be inconsistent with Article 23 of the QFC Employment Regulations. This Article, entitled "Termination of employment with notice" provides in paragraphs 1 to 4 as follows:

- (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 the Employee has been continuously employed for one (1) month or more, shall not be less than
 - (A)...
 - (B) one (1) month if the period of continuous employment is three (3) months or more but less than five (5) years;
- (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) This Article shall not prevent an Employer and Employee from agreeing to a longer or shorter period of notice nor shall it prevent either party from waiving notice or from accepting a payment in lieu of notice.

It is clear from these provisions, which form part of the law of Qatar, that it is not contractually open to an employer to give an employee short notice and proffer to the employee one month's wages in lieu of full notice.

Of course, if the employee accepts the notice period pay, that will do. But if the employee does not accept it and insists on remaining an employee for the period of the notice to which he was contractually entitled, he is, in our opinion, within his rights in so insisting – and a fortiori if the employee is never offered, or is never paid, the notice period pay.

Whether the plaintiff was ever offered by DBAC the notice period pay or, if it was offered, whether the plaintiff accepted the payment, remained, at the conclusion of the first day of the trial, uncertain. It seemed to the Court, when the Court adjourned, that there were two alternative scenarios. One possibility was that the one month's notice period pay was offered by DBAC and accepted by the plaintiff. If that was so, there would have been bank statements or other documentation that established those facts and the plaintiff could not, in our opinion, still complain of the invalidity of the termination of his employment by a one day's notice period. But, alternatively, the one month's notice period pay may not, as the plaintiff's interjection suggests, have ever been paid to him.

When the trial re-commenced on the next morning, Mr. Walid accepted that the one month's notice period pay had never been paid to the plaintiff. The plaintiff's interjection was, therefore, justified. The many assertions to the contrary made by DBAC were false. In that case, it appears to the Court that the termination letter of 7 February 2011, was in breach of contract since it did not give the plaintiff the length of notice to which his contract of employment entitled him. It was accordingly, an invalid notice. It follows that, in our opinion, the plaintiff is entitled to contractual damages, the measure of which is the amount of wages and allowances to which the plaintiff would have been entitled under his employment contract with DBAC up to the date on which he entered into the employment of Doha Bank i.e. 28 March 2011.

It appears from Article 3 of the plaintiff's employment contract with DBAC that he was entitled to be paid monthly a total of QR 8,000.00. From 8 February 2011 to 28 March 2011 is one month and, roughly, 2/3 of a month. So the plaintiff's damages should start with the sum of QR 8,000.00 plus 2/3 of 8,000, say 2,700 i.e. a total of QR 12,700.00.

In addition, the plaintiff has been kept out of his money for upwards of 2 years. He is entitled, in the Court's opinion, to damages for the worry and anxiety occasioned to him by that delay, worry and anxiety accentuated by DBAC's assertion in the termination notice letter of 7 February 2011 that "you will be paid an amount equivalent to 1 month gross salary as notice period pay on the basis of your present gross salary", an assertion never fulfilled, and its false assertion in paragraph 9 of its Defence dated 13 January 2013 and paragraph 5 of its written representations dated 8 April 2013 that, DBAC having offered to pay the plaintiff a one month salary in lieu of the one month notice period, the plaintiff had "accepted such payment in lieu of notice". The Court assesses the damages due to the plaintiff for having been subjected to that worry and anxiety at QR 3,000.00. It follows that the Court orders the payment by DBAC to the plaintiff of damages for breach of contract of QR 15,700.00.

The plaintiff has sought, in addition, damages for health problems he has suffered, in particular, in relation to his eye sight, which he has attributed to DBAC's breach of contract. In the Court's opinion, damages of this character are not recoverable, first on causation grounds, there being no evidence of DBAC's breach of contract having contributed to the health problems of the plaintiff, and, secondly, on remoteness grounds. The plaintiff must, in our opinion, be content with the award to him of damages of QR 15, 700.00. For the avoidance of doubt we must make clear that the damages recoverable by the plaintiff for DBAC's breach of contract in neither allowing him his contractual one month's notice period nor paying him one month's wages in lieu of his contractual notice cannot entitle him to recover damages for loss of wages from DBAC after he accepted employment with Doha Bank i.e. 28 March 2011.

Finally the Court proposes to make a few additional comments. First, the Court thinks it right to make a comment on the so-called re-instatement letter of 24 March 2011. That letter cannot be taken at its face value. It did not re-instate the plaintiff as "Surveyor, Motor Claims" for DBAC. It did not, therefore, cancel the termination letter of 7 February 2011. What it did do was to offer the plaintiff alternative employment in Doha Bank's Field Recovery Unit, but, presumably, on the same terms as to salary, allowances and other benefits as were set out in his 20 April 2010 employment contract with DBAC. The plaintiff accepted that offer and became an employee of Doha Bank until that employment was terminated by the letter of 25 March 2012 and, the Court

presumes, the plaintiff's acceptance of the one month's notice period pay referred to in that letter. If that presumption is wrong, the plaintiff may have some right to redress from Doha Bank but as far as the Court is aware no claim has yet been made by him against the Bank.

Second, the Court is firmly of the opinion that the practice of shortening or abridging the contractual notice to which an employee would normally be entitled without first obtaining the agreement of the employee to accept a payment in lieu of that notice is an unacceptable practice which is bound from time to time to lead the employer into legal difficulties, as it has done in this case.

And thirdly, if an employee does agree to accept a payment in lieu of his or her contractual notice, the agreement is worthless if the payment in lieu is never in fact made.

For the reasons we have given there will be judgment for the plaintiff in the sum of QR 15,700.00 which must be paid within 28 days of the date of this judgment.

Representation:

For the Plaintiff: Khaled Hassan Bahr Ahmed (self-represented)

For the Defendant, Doha Bank Assurance Company LLC: Mr. Walid Honein (Badri and Salim Elmeouchi Law Firm)

Dated: 11 April 2013

Signed by:

Scott of Foscote

Justice Lord Scott of Foscote, QFC Civil and Commercial Court, First Instance Circuit:

Hassan Al-Sayed

Justice Hassan Al-Sayed, QFC Civil and Commercial Court, First Instance Circuit

Chelva Rajah

Justice Chelva Rajah SC, QFC Civil and Commercial Court, First Instance Circuit

