



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: [2022] QIC (F) 24

**IN THE QATAR INTERNATIONAL COURT
FIRST INSTANCE CIRCUIT**

Date: 27 November 2022

CASE NO: CTFIC0020/2022

XAVIER ROIG CASTELLO

Claimant

v

MATCH HOSPITALITY CONSULTANTS LLC

Defendant

JUDGMENT

Before:

Justice Frances Kirkham

Justice Arthur Hamilton

Justice Fritz Brand

ORDER

1. The Court determines that provision in a fixed-term contract of employment for termination with notice by either party can constitute “mutual agreement of the Employer and Employee” within the meaning of Article 17(B)(4)(A) of the Employment Regulations; and that accordingly the Claimant’s claim, in so far as it is based on the contention that the Defendant could not lawfully terminate the Claimant’s contract with notice, is unsound in law.
2. The Court finds it unnecessary to resolve any issue under Article 57(2)(E) of the Employment Regulations.
3. The Claimant is allowed a period of 4 weeks from the issue of this judgment to consider his position and, if so advised, to file and serve any proposed amendment to his Claim Form.
4. The Defendant is allowed a period of 4 weeks from the date of service of any such amendment to file and serve a response thereto.

JUDGMENT

1. By contract in writing made between the parties on 14 December 2020 (the “**Contract**”) it was agreed that the Claimant be employed by the Defendant (referred to therein as the “**Employee**” and the “**Company**” respectively) on certain terms and conditions in the capacity of Production Project Realisation Manager. The Contract was expressly made subject to the QFC Employment Regulations, as from time to time amended, re-enacted or consolidated (the “**Regulations**”).

2. Clause 1 of the Contract (headed “**Period of Employment**”) provides:

1.1 Employee’s period of service in Qatar is for a fixed term and will commence on the 07th of November 2020 and terminate on the 31st of March 2023 unless otherwise agreed in writing between the Parties.....

1.2 Either Party may terminate this Agreement at any time giving the other Party a written notice, in accordance with the provisions of the Employment Regulations.

3. Clause 5 is headed “**Probationary Period is deemed to have been served**”, though it then goes on to make certain provisions with respect to probation. The inference would appear to be that the template used for the Contract made provision for probation but that the present parties agreed that any probation period would be treated as if it had been served.

4. Clause 9.3 provides: “*If Employee leaves the Company’s employment without giving the required notice, the value of Employee’s pay for the notice period will be deducted*”.

5. Clause 12 (headed “**Term and Termination**”) provides:

This agreement is entered into for a Fixed Term. It may be terminated by either party giving the other not less than the following notice:

*12.1 During the Probation Period the Company or the Employee may give not less than **two (2) weeks’ written notice** to terminate Employee’s employment.*

*12.2 Either the Company or Employee may give not less than **three month’s written notice** if the period of the Employee’s continuous employment is **six (6) months or more but less than three (3) years.***

*12.3 Either the Company or Employee will give **three month’s written notice** if the period of the Employee’s continuous employment is more than five (5) years.*

12.4.....

12.5 The Company will give notice as above except in the event of dismissal for gross misconduct whereby the Company has the right to dismiss immediately.....

12.6.....the Company reserves the right to terminate the employment with immediate effect by paying Employee in lieu of notice or any part thereof.

6. The Claimant commenced his employment with the Defendant in around November 2020. There is a dispute between the parties as to what occurred in the period immediately prior to the issue by the Defendant on 18 February 2022 of a letter (purportedly) terminating the Claimant's employment. It is unnecessary for present purposes to enter into the detail of that dispute. Suffice it to say that the Claimant maintains that he, having raised legitimate concerns about a conflict of interest by a director or directors of the Defendant, was suspended from work and an investigation instituted; and that, while that investigation was subsequently abandoned, the termination of his employment was motivated by the Defendant's view of his conduct. The Defendant disputes this account. It is unnecessary for present purposes to enter into the detail of that dispute.
7. By that letter of 18 February 2022, the Defendant gave to the Claimant notice, purportedly in exercise of clause 12.3 of the Contract, of termination of his employment. Three months' notice was given, although he had been employed for less than five years. Termination was with immediate effect but with payment in lieu of notice.
8. The Claimant maintains that the Contract was not validly terminated by that notice on the ground that a fixed-term Employee's contract cannot, during its term, lawfully be terminated by a (unilateral) notice of termination. The Defendant maintains that it can. The resolution of that issue, which turns essentially on the meaning and effect of Article 17(B)(4) of the Regulations, is fundamental to this action, in which the remedies sought include payment of compensation for unlawful premature termination. A further legal issue (under Article 57(2)(E) of the Regulations) arose by reason of another of the remedies sought by the Claimant in his Claim Form.

9. The Court, by order issued on 18 September 2022, directed that these issues be determined as preliminary issues. An oral hearing took place remotely on 23 October 2022, preceded (and followed) by written submissions from each party. The second of these issues did not, in the event, give rise to much discussion. It is referred to towards the end of this judgment. The principal subject matter at the hearing was the first issue, which is now dealt with. It is necessary first to set out the terms of the relevant legislation.

10. The QFC Employment Regulations were first enacted in 2006. They were subsequently amended on several occasions, including in 2020 (though prior to the parties entering into the Contract). Article 17 (1) provides that the Employer shall give each Employee a written employment contract which shall include as a minimum “...*(F) whether the employment is for a specified fixed term or of unlimited duration...*”. Article 17(2) provides: “*Employment contracts may be for a fixed term or of unlimited duration.*” Article 17(A) makes provision for Part-Time Employees.

11. Article 17(B), which was introduced by amendment in 2020, provides:

(1) A Fixed-term Employee is an Employee who works under an employment contract that has a commencement date and an expiry date,

(2) A Fixed-term Employee’s contract ends on the expiry date without need to give notice, unless the parties agree in writing to renew it,

.....

(3) A Fixed-term Employee has the same rights conferred by these Regulations as an Employee under an indefinite contract.

(4) A Fixed-term Employee’s contract can be terminated before the expiry of the agreed term only in the following circumstances:

(A) in writing, by mutual agreement of the Employer and Employee; or

(B) for cause, in accordance with Article 24 of these Regulations.

[Article 24 identifies various circumstances in which an Employer may, by reason of misconduct by the Employee, terminate the employment without notice. It is not suggested that any such circumstance occurred here.]

12. Article 18, which was part of the Regulations prior to 2020, made provision for probation periods. It provides:

(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)

(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.

13. Article 23, which also was part of the Regulations prior to 2020, provides for termination of employment with notice. By Article 23(1), except as otherwise provided for in the Regulations, Employers and Employees must provide notice of their intent to terminate employment. Article 23(2) specifies what notice is required (dependent on length of continuous employment). All such notices must be in writing (Article 23(3)). Further provision is made.

14. The Regulations provide for two, and only two, classes of employment contract, namely, “for a fixed term’ or “for an unlimited duration” (Article 17(2)). It is plain from the terms of the Contract that the parties intended that this employment should be for a fixed term. That expression appears in clause 1.1 and (with each word introduced by a capital letter) in the introduction to clause 12. However, in both places the expression is immediately followed (clause 1.2 and the rest of clause 12) by provision for unilateral termination by notice.

15. Parties were agreed before us that the Contract was “for a fixed term” (namely, from 7 November 2020 to 31 March 2023) within the meaning of Article 17(2), and that the Claimant was a “Fixed-term Employee” within the meaning of Article 17(B)(1). Accordingly, it was a contract to which Article 17(B)(4) applied. The legal question is whether termination by the Employer before the expiry of the agreed term, by notice in writing consistent with clause 12 of the Contract, was a circumstance contemplated by Article 17(B)(4). That, in turn, depends on whether such termination was “*by mutual agreement of the Employer and Employee*” within the meaning of Article 17(B)(4)(A). No question arises under Article 17(B)(4)(B).
16. The Claimant contended that the Defendant’s purported termination was not within the contemplation of Article 17(B)(4) and was accordingly unlawful. He was entitled to payment of the salary and other benefits under the Contract for the unexpired period of the fixed term. What was contemplated, and alone contemplated by Article 17(B)(4)(A), was a mutual agreement between the parties, arrived at in the course of its term, to the effect that, on specific terms, it be terminated before the expiry of that term. Mutual agreement in the employment contract on a mechanism for termination unilaterally by notice was not, it was contended, termination by mutual agreement within the meaning of Article 17(B)(4).
17. Numerous decided cases and other authorities were cited in the Defendant’s written and oral submissions. Many of these were related to the interpretation of contracts, which were of limited assistance, as the critical issue turns not on the meaning of the employment contract but on the meaning, and in particular the scope, of the legislative provision. *Elseco Limited v Lys* DIFC [2016] CA 011 (a decision of the Appeal Court of the Dubai International Financial Centre) was concerned with the interpretation of legislation but in the context of the “Golden Rule” (under which a court may modify the language of legislation as to avoid absurdity, repugnance or inconsistency). No question arises in the present case of modifying otherwise clear statutory language, only of construing language which may be open to more than one interpretation. The English cases of *KSO v Commissioner of Police of the Metropolis* [2022] EWHC 2514 (KB) and *Hamilton v Secretary of State for Business etc* [2021] EWHC 2647 (QB) (both decisions at first instance) include observations on statutory interpretation but do not materially advance matters here.

18. The Defendant contended that the termination of the Contract by it in exercise of the power conferred by clause 12, as read with clause 1.2, was lawful and not in breach of Article 17(B)(4). As a matter of language that provision was wide enough to encompass termination by notice in furtherance of a right, exercisable by either party, conferred by the Contract. Employment contracts encompassing a term date but also providing for termination earlier by notice were not uncommon internationally, including in Australian jurisdictions. An employment contract for a fixed term but with provision for termination by notice during the contract period had been the subject of proceedings in the Employment Appeal Tribunal in the UK (*Allen v National Australia Group Europe Ltd* [2004] IRLR 847). Such contracts were sometimes referred to as “maximum term” contracts. They had advantages for both parties: they envisaged that each party could anticipate the contract running, in ordinary circumstances, for its stated term, but allowed either party unilaterally to terminate the contract earlier by notice. It was consistent with the legislative purpose of Article 17(B) that such a contract be within the circumstances contemplated by Article 17(B)(4)(A). It was analogous with equivalent legislation under Qatari national law.
19. It is appropriate to notice, but to distinguish, the approach taken by the English Court of Appeal in *British Broadcasting Corporation v Ioannou* [1975] 1 Q.B. 781. There the court had to interpret and apply the term “fixed term” as used in the Redundancy Payments Act 1965, section 15(2), and in the Industrial Relations Act 1971, section 30(b), both UK statutes. The employment contract in issue in that case did not use the expression “fixed term” but provided: “This agreement...shall date from August 7, 1967 and shall expire on August 6, 1970, unless previously determined as hereinafter mentioned or renewed by mutual agreement”. Provision was then made for determination by notice in the course of the engagement. The Court of Appeal held that such a contract could not constitute a contract “for a fixed term”. Lord Denning MR, giving the leading judgment, said at page 786A:

In my opinion a “fixed term” is one which cannot be unfixed by notice. To be a “fixed term” the parties must be bound for the term stated in the agreement: and unable to determine it by notice on either side. If it were only determinable for misconduct, it would, I think, be a “fixed term” - because that

is imported by the common law anyway. But determination by notice is destructive of any “fixed term”.

20. It is also appropriate to bear in mind the observation by the Appellate Division of this Court in *Chedid & Associates Qatar LLC v Said Bou Ayah* [2015] QIC (A) 2 at paragraph 18 (re-emphasised in *Leonardo SpA v Doha Bank Assurance Company LLC* [2020] QIC (A) I at paragraph 45 and in *Prime Financial Solutions v Qatar Financial Centre Employment Standards Office* [2022] QIC (A) 1 at paragraph 29) that foreign jurisprudence can sometimes be of assistance but should be used sparingly as a last and not a first resort.
21. In the QFC under the Employment Regulations, a contractual provision for termination by notice in the course of a fixed term contract is not destructive of that contract being “*for a fixed term*”. Article 17(2) identifies two classes of permissible employment contract, including one “for a fixed term”. Article 23 provides for termination of employment with notice. That Article does not limit its application to contracts of unlimited duration. It was not suggested to us that, elsewhere in the Regulations or otherwise, contractual provision for termination by notice is inconsistent with the contract being “*for a fixed term*”. The parties, regard being had to the terms of the Contract, clearly envisaged that their contract could be both fixed term and yet terminable by notice.
22. The essential issue for determination in this case is the scope of Article 17(B)(4). That is a limiting provision. It identifies the only circumstances in which a Fixed-term Employee’s contract can lawfully be terminated. The language of the provision has to be construed in the context of the Regulations as a whole, due regard being had to their general purpose being the protection of the interests of employees.
23. In our view that Article cannot properly be read as narrowly as the Claimant contends. The Article does not say that the mutual agreement of the Employer and Employee must be an agreement made after the contract is in operation for termination of it on specific terms. It is, as a matter of language, consistent with mutual agreement for termination provided for in the contract of employment itself. In this case the parties by clause 1.2 specifically agreed that either of them might terminate the contract at any

time. It went on to identify (later in that clause and in clause 12) the mechanism by which that right (or power) might be exercised. But, underlying that mechanism was a mutual agreement under which either party was entitled to terminate the contract at any time. A mutual agreement of that sort is, as a matter of language, within the scope of Article 17(B)(4)(A).

24. That construction is not inconsistent with the general purpose of the Regulations being for the protection of the interests of employees. The contractual right to terminate at any time was one exercisable by the Claimant, as it was by the Defendant. It is in the interests of an employee that he has the right to terminate a Fixed-term employment if it is no longer acceptable to him, without the risk of being exposed to a claim for damages for breach of contract.
25. Article 17(B) was introduced into the Regulations by amendment in 2020. It makes specific provision for Fixed-term employees. Already in the Regulations was Article 23, which provided for termination of employment with notice. That Article was not amended to the effect that it did not apply to Fixed-term contracts. The implication is that it applied to both classes of employment contract.
26. Further, Article 18, which had been in force from prior to 2020, made provision for probation periods. That authorised the inclusion in an employment contract of a provision for the termination (by the Employer) of the contract during a probation period. Any such termination was to be by written notice. There is nothing to suggest that such termination was unavailable in Fixed-term contracts. The agreement for termination was to be found in the employment contract as made, not in any subsequent agreement. The apparent effect of the 2020 amendment is to extend the facility for termination by an Employer by notice during a probation period to termination by notice by mutual agreement at any time, including such agreement in the employment contract.
27. These other provisions of the Regulations support the construction of Article 17(B)(4)(A) which we favour.

28. The Defendant drew the Court's attention to developments in Qatari national law. The principal legislation in that jurisdiction is the Labour Law (No.14 of 2004). That Law was amended by Law No.18 of 2020, enacted at about the same time as the 2020 amendment was made to the Regulations. The sources of these amendments are similar, the first being the Emir of the State of Qatar (following perusal of the Draft Law Submitted by the Council of Ministers) and the second two individual Ministers of that State. In these circumstances the amendments made to the national law may be an aid to the interpretation of the contemporaneous amendment of the Regulations. It is not "foreign jurisprudence".

29. Article 49 of the 2004 Law (prior to amendment in 2020) made provision for unilateral termination for termination by notice "*if the contract is of an indefinite duration*". The amendment in 2020 involved a substitution for Article 49. The substituted Article did not include any such restriction. Thus, from 2020 under national law a contract of employment, whether fixed term or of an indefinite duration, might include provision for termination by notice. In *Qatar Foundation v Nawaf Khabbab Mejr Mohamed Al-Nuaimi*, decision No.2021/363, the national Court of Appeal stated:

Whatever the case, the law allowed the contracting parties to terminate an employment contract for an indefinite period or a fixed-term employment contract according to the amendment by Law No. 18 of 2020 to the Labour Law without giving reasons [translation from the Arabic provided by the Defendant, the accuracy of which was not challenged by the Claimant].

This judgment confirms that, from 2020, it was legitimate under national law to terminate without cause (though presumably by notice) an employment contract, whether it be for an indefinite period or for a fixed-term. There is no reason in principle why the legislative intent behind the 2020 amendment to the Regulations should have been different. If that be so, it confirms the view that the mutual agreement referred to in Article 17(B)(4)(A) includes mutual agreement that the contract be terminable by notice prior to the fixed term, including agreement to that effect in the contract itself.

30. For these reasons the Court is satisfied that there was, in writing, mutual agreement between the Defendant and the Claimant on termination of the Contract such that it

could be terminated before the expiry of the agreed term; and that it was lawfully so terminated. Accordingly, the Claimant's contention that his employment was, by virtue of Article 17(B)(4), unlawfully terminated must be rejected.

31. In the Claim Form the Claimant invited the Court, in addition to making awards in his favour personally, to order the Defendant to pay a penalty under the QFC Employment Regulations. At the hearing it was acknowledged on his behalf that this Court has no jurisdiction to impose such a penalty. Accordingly, the second preliminary issue is not live. The imposition of such a penalty might arise in other proceedings.
32. As earlier noted, there is a factual dispute between the parties as to what occurred in the weeks prior to the issue of the Defendant's letter terminating the Claimant's employment. The Claimant refers in the Claim Form to Article 16 of the Employment Regulations (Whistleblowing). Although it is not as yet clear, the Claimant may be advancing (or wish to advance) a contention that the true reason for his dismissal was that he had raised concerns about conflict of interest and that dismissal for that reason infringed Article 16. We say nothing about the merits, or lack of them, of any such contention. We shall, however, allow time to the Claimant to consider his position in that respect and to make, if so advised, any relevant amendment to his pleadings.

By the Court,



[signed]

Justice Arthur Hamilton

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

Representation:

The Claimant was represented by Gulf Legal Consultants and Clyde & Co.

The Defendant was represented by Al Ansari and Associates, Doha.