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

IN THE CIVIL AND COMMERCIAL COURT OF THE QATAR FINANCIAL CENTRE APPELLATE DIVISION

20 November 2018

CASE No's: 3 and 4 of 2018

BETWEEN:

ABDULLA JASSIM AL TAMIMI

Applicant

v

QATAR FINANCIAL CENTRE AUTHORITY

QATAR FINANCE AND BUSINESS ACADEMY LLC

First Respondents

AND

BETWEEN:

ABDULLA JASSIM AL TAMIMI

Applicant

v

EMPLOYMENT STANDARDS OFFICE

Second Respondent

JUDGMENT

Lord Phillips, President
Justice Hassan Al Sayed
Justice Sir William Blair

ORDER

1. The Application for Permission to Appeal against the judgment of the Court is dismissed.

2. The Application for Permission to Appeal against the decision of the Tribunal is allowed, but the appeal is dismissed.

JUDGMENT

Introduction

1. We have heard together two applications for permission to appeal. The first relates to the judgment of the First Instance Circuit dated 13 May 2018. The second to the decision of the Regulatory Tribunal dated 8 July 2018. In each case the Applicant was refused a hearing of the merits of his claim. The Court acceded to a challenge to its jurisdiction. The Tribunal ruled that the Applicant's claim was out of time.

2. In each case we directed that, if permission to appeal were granted, the application would be treated as the appeal. The effect of such a direction is that the merits of the appeal are fully argued on the application. This enables the Court to address any issues of principle that arise, whether or not the criteria for the grant of permission to appeal are satisfied.

3. The Applicant has at all times appeared in person. We have had the advantage of the submissions of Mr Khawar Qureshi QC as Advocate to the Court and we are grateful to him for his assistance. We are also grateful for the detailed submissions that have been advanced by Mr Ben Jaffey QC, who has appeared for the Respondents in the First Application and by Mr Matthew Walker, who has appeared for the Respondent in the Second Application.

The Statutory and Regulatory framework

4. The Qatar Financial Centre ("the QFC"), the Qatar Financial Centre Authority ("QFCA"), the Regulatory Tribunal ("the Tribunal") and the Civil and Commercial Court ("the Court") are all creatures of The Qatar Financial Centre Law of 2005 as amended ("the Law"). The Qatar Finance and Business Academy ("QFBA") is a wholly owned subsidiary of the QFCA.

5. Article 8.2(c) of the Law gives the Tribunal jurisdiction to hear appeals against decisions of the QFCA, the Regulatory Authority, and other QFC Institutions. Schedule 5 to the Law provides that such appeals "*may be filed*" within 60 days of publication of the decision.

6. Article 8.3(c) of the Law gives the First Instance Circuit of the Court jurisdiction to hear certain "*civil and commercial disputes*" that include disputes between entities established in the QFC and their employees.

7. Article 9 of the Law makes provision for the Minister to make Regulations submitted by the QFCA, the Regulatory Authority, the Tribunal and the Court. The Regulations referred to below have been made pursuant to this power.

The QFC Employment Regulations

8. The QFC Employment Regulations, as amended in the version of May 2016 ("the Employment Regulations"), by Article 2 apply to, among others, employees of QFC Institutions. Article 6 establishes the Employment Standards Office ("the ESO") to "*administer these Regulations and all aspects of employment within the QFC.*" The ESO is subject to the supervision of the QFCA whose powers include giving the ESO written directions as to the furtherance of any of its objectives or the performance of its functions. The following further Articles of the Regulations are material.

9. By Article 7 the functions of the ESO include the investigation of any contravention of the Employment Regulations and the enforcement of these.

10. Article 17 requires the employer to give each employee a written contract of employment that includes the job title or job description. Article 22 provides:

> *Work description*
> *Unless otherwise stated in the employment contract, the Employer may change the Employee's job title, work description or location within the State from time to time...If a condition of employment is substantially altered, the employee may seek a determination from the Employment Standards Office that his employment has been constructively terminated.*

11. Article 23 provides for the termination of an employment contract with notice. The minimum period of notice is two weeks; this rises to one month if the period of employment is between three months and five years and to three months if the period of employment exceeds five years. Unless the contract otherwise provides a contract of employment can be terminated without cause subject to these notice requirements.

12. Part 12 of the Regulations deals with "*Investigations and Proceedings*". Article 55 entitles an employee to make a complaint to the ESO that a person has contravened the Regulations and may request the ESO to review any penalty imposed on him by his employer. The ESO may reject a complaint in specified circumstances that include where there is not enough evidence to prove the complaint.

13. Article 57 gives the ESO wide powers to make a variety of orders, including an order requiring an employer to pay all due salary payments to an employee or to pay a person compensation, provided always that it is satisfied and has made a determination that "*a person has contravened a provision of these Regulations or any rule, policy or order issued*

thereunder". If satisfied that there has been no such contravention the ESO is required to dismiss the complaint. A person on whom a requirement is made under this Article is required to comply with that requirement.

14. Article 62(2) gives a person affected by a final decision, determination or fine of the ESO a right to appeal the matter to the Regulatory Tribunal within 30 days of receipt. The ESO is a party to such appeal.

15. Article 63 deals with the powers of the Tribunal on such an appeal. These include dismissing the appeal without a hearing if satisfied that the appeal is not within the Tribunal's jurisdiction.

The Tribunal Rules

16. The Tribunal has made Regulations and Procedural Rules ("the Tribunal Rules").

17. Article 9.5 of the Tribunal Rules provides:

> *Subject to any contrary provision in the QFC Law or in QFC Regulations, the Chairman has power (which he may delegate to a judge or to the Registrar) to extend or abridge any time limit imposed by these Regulations and Procedural Rules or ordered by the Regulatory Tribunal, but nothing in this article empowers the Regulatory Tribunal to abridge any time limit set out in the QFC Law.*

18. Article 10.2 of the Tribunal Rules provides that any notice of appeal commencing an appeal must be filed within 60 days of the publication of the decision appealed against.

The Court Rules

19. The Court has also made Regulations and Procedural Rules ("the Court Rules").

20. Article 9.4 of the Court Rules provides that

> *Any issue as to whether a dispute falls within the jurisdiction of the Court shall be determined by the Court whose decision shall be final. If the Court considers it desirable or appropriate it may decline jurisdiction or may refer any proceedings to another Court in the State".*

21. Article 9.5 of the Court Rules provides that no appeal may be brought to the Appellate Division of the Court without the permission of the Court.

22. Article 35 of the Court Rules provides

> 35.1 *A first instance judgment or decision of the Court will usually be final. However, if there are substantial grounds for considering that a judgment or decision is erroneous and there is a significant risk that it will result in serious injustice, then a Court consisting of three judges (whether the first instance Court or a differently constituted Court) can give permission for an Appeal to the Appellate Division of the Court. Any decision to refuse permission to appeal is final.*
>
> *35.2 The Appellate Division of the Court shall, in addition, have power to hear appeals from determinations and decisions of the Regulatory Tribunal as set out in Article 8.3 of the QFC Law, but only:*
>
> > *35.2.1 if the Regulatory Tribunal has made a determination in relation to its jurisdiction and there is a dispute in relation to that determination; or if there are substantial grounds for considering that a judgment or decision is erroneous and there is a significant risk that that decision will result in serious injustice; and*
> >
> > *35.2.2 with the permission of the President of the Court or with the permission of two of the judges.*

The Applicant's contract

23. The Applicant concluded with the QFBA on 20 September 2012 a standard form contract of employment of indefinite duration for Qatari employees ("the Contract").

24. The Applicant's job description under the contract was Head of Program Delivery with a salary grade of 10A and a monthly salary of 33,000QAR.

25. Clause 5 of the Contract entitles either party to terminate the agreement by written notice at any time without stating any reason, subject to the notice periods in the QFCA HR Policies Handbook.

26. By Clause 19 of the Contract the applicant agreed:

> *To comply with the requirements of the QFC Law, Regulations and Rules issued thereunder and the Employer's policies, procedures and other requirements, including the HR Policies Handbook.*

27. Clause 2 of the Contract provided that

> *The HR Policies Handbook may be amended from time to time and the Policies that apply to the Employee's employment will be those Policies as amended and in effect.*

Code of Conduct, Grievance and Disciplinary Policy ("the Code")

28. On 14 March 2013 the QFCA issued the first version of the Code, which had been prepared by the HR Manager. The 4th and current version was issued on 15 September 2015. It has been common ground that the provisions of the Code apply to the Applicant. It seems to the Court that they do so by reason of Clauses 2 and 19 of the Contract, i.e. because the Applicant and the QFBA have agreed that they should.

29. The Code includes a detailed Grievance Policy and Disciplinary Policy. The latter makes provision for disciplinary action in the event of specified offences. In particular it provides that in the event of *"unjustifiable refusal to carry out essential duties when called to do so during the official working hours"* the employee will be sent a 1st Warning Letter and will suffer a deduction of three days salary.

The Applicant's complaints and grievances

30. On 21 September 2017 the Applicant received from the Acting Chief Executive Officer of the QFBA ("the A/CEO") notice of a Resolution transferring him from Head of Program Delivery to the position of Projects Adviser. The A/CEO informed him that the Human Capital Department of the QFCA ("HC"), which dealt with matters of human resources on behalf of the QFBA, would explain the reason for this.

31. The Applicant wrote a series of letters by email to the Chief Administration Officer of the QFCA ("CAO") seeking an explanation for the change. These included a letter of 1 October in which the Applicant claimed that he was entitled to an upgrade to Grade 11 and that if he did not receive this he refused to accept the change of job which had been imposed without discussion.

32. On 15 October 2017, the Applicant sent the CAO a reminder of his grievances together with a lengthy paper attacking the competence of the A/CEO over the last two years, initially as Head of Sales and Marketing and subsequently as A/CEO.

33. On 25 October the CAO replied saying that there were only three matters capable of constituting grievances inasmuch as they affected the Applicant himself, being in summary (i) that the A/CEO had victimised him, (ii) that the A/CEO had promised him participation in various work activities, all of which transpired to be "a bunch of lies" and (iii) that the A/CEO was

incapable of giving clear guidelines as to what he expected from those working for him. The CAO added that the other matters that the Applicant had raised, which did not constitute grievances, would be addressed in accordance with *"operational management policies and procedures."*

34. Later on 25 October 2017 a meeting took place between the Applicant and the CAO, at which an 'Operations Specialist' from HC was present, and at which the three grievances identified by the CAO and other complaints raised by the Applicant were discussed. At this meeting the Applicant was given a copy of the job description in relation to his new position. This required him to perform various functions in relation to projects in accordance with instructions to be given by the QFBA CEO.

35. After this meeting the Applicant sent an email to the CAO stating that the main points of his grievance were that the A/CEO had lied to him and threatened him in relation to the change of his job description. He alleged that the A/CEO had stated that HC had decided to terminate his employment but that he, the A/CEO, had requested that he be permitted to stay on at the same salary and bonus as adviser. This was not true.

36. On 5 November 2017 the CAO wrote to the Applicant informing him that, as he had failed to produce any documents or other evidence to support his grievance, the grievance was considered invalid.

The first complaint to the ESO

37. On 12 November 2017 the Applicant made a written complaint against the A/CEO to the ESO in accordance with article 55 of the Employment Regulations. This complaint summarised the matters set out at paragraphs 30 to 32 and 35 above and asked the ESO to investigate why the A/CEO lied to him and threatened him when informing him of his job change and why this was made without any discussion between himself and HC. The ESO replied on 14 November 2017 stating that it could only investigate

complaints relating to alleged breaches of the Regulations. The Applicant confirmed to the ESO that his complaint was related to his change of role, job title and work description and threats made by the A/CEO in relation to this. The ESO requested evidence supporting the Applicant's complaint and the Applicant replied that he was not able to provide any as his complaint related to events that occurred when he was alone with the A/CEO.

38. The ESO produced its Determination of the complaint on 5 December 2017, by which time the Applicant had raised a second complaint that the ESO had considered and determined (see below). The ESO treated the Respondent to the complaint as the QFBA rather than the A/CEO. It concluded:

(i) As the Applicant had produced no evidence to support his allegation in respect of threats made by the A/CEO, this part of his complaint was rejected;

(ii) The change of the Applicant's role did not breach the Regulations as it was permitted by Article 22 of the Employment Regulations. Accordingly,

(iii) All complaints of the Applicant based on alleged breach of the Regulations were rejected.

The second complaint to the ESO

39. In one of the emails sent to the A/CEO on 25 October 2017 the Applicant stated that *"I have rejected the advisor position and I'm performing my daily normal duty as head of program administration."* The A/CEO replied *"The business decision to move you into the advisor position remains in effect. You will be accountable for any violation of this decision."* The Applicant responded *"The transfer is false, as it's been done without my knowledge or acceptance, therefore my position remains the same by law, until the official investigation and the appropriate decision is taken."*

40. On 23 November the Applicant received a letter headed "1st Warning Letter", signed by the A/CEO, the CAO and Ms Burton, the A/Director of HC. This stated that, subsequent to the email exchanges of 25 October,

"your conduct in refusing to carry out your duties as Project Advisor contravenes the QFCA Code of Conduct. It is expected that with immediate effect you resume the duties of the new role and work to establish an effective work environment.

In accordance to QFCAHC Policy – Code of Conduct, Grievance and Disciplinary Policy – Section 4.7 Disciplinary Procedure – Point D.6 "Unjustifiable failure to carry out essential duties" of Appendix A – Table of Disciplinary Actions and Penalties, you are receiving this warning letter. In addition to this letter and in accordance with the said policy the equivalent of three (3) days salary shall be deducted from your December 2017 salary."

41. On 26 November 2017 the Applicant wrote an email letter to the A/Director of HC on the subject of "*A grievance on the unfair attached warning letter*". This alleged, among other things, that the A/CEO had declined to give the Applicant any instructions as to his tasks in the organisation and requested that the A/CEO should be asked to provide evidence of any job or task given to the Applicant that he had refused to do. The letter sought advice as to the person with whom the Applicant should raise his grievance in respect of "*this unfair warning letter*". The A/Director of HC replied immediately that she would respond in detail as soon as possible.

42. On 27 November, the very next day, the Applicant received an email letter from the ESO. This proceeded on the premise that the Applicant had made a complaint to the ESO about the 1st Warning Letter. We assume that the A/Director of HC must have passed on the Applicant's complaint to the ESO. The ESO refused to accept the Applicant's complaint. It stated that the change of the Applicant's role was not a breach of Regulations having regard to the provisions of Article 22 of the Employment Regulations. It referred to the Applicant's refusal to accept his new role and concluded that this contravened the Code of Conduct, as alleged in the 1st Warning Letter, so that the deduction from his salary was justified.

The decision not to appeal to the Tribunal

43. In the Determination of the first complaint the ESO informed the Applicant that he was entitled to appeal to the Tribunal within 30 days of the Determination. The Applicant did not avail himself of this right. In his application for permission to appeal from the decision of the Tribunal the Applicant has explained that he was, at that time, under the impression that the Tribunal was a department of the QFC reporting to QFC management, so that it would be a waste of time to appeal.

The Claim before the Court

44. The Claim Form was issued on 21 February 2018. This named the Defendant as the CEO of QFCA. The Court subsequently held that the proper defendants to the claim were the QFCA and the QFBA ("the Defendants").

45. In Part 2 of the Claim Form the Applicant made a number of complaints, the substance of which can be summarised as follows:

(i) the A/CEO had changed his job without discussion in circumstances where the A/CEO had made threats and told lies, and without promoting him, even though the previous CEO had requested that he be promoted to Grade 11.

(ii) The 1st Warning Letter had been written without the Applicant's knowledge or any discussion. The content of the letter was untrue.

(iii) The QFC performance process had been violated in that the end of year evaluation process had not been properly carried out.

46. By Part 3 of the Claim Form the Applicant called for:

–withdrawal of the warning letter and re-imbursement of the deduction of 3 days salary;

–a letter of apology from the three persons who had signed the warning letter;

–the return of his job and authority within the QFBA;

-an investigation with the CEO and CAO of QFC in relation to his grievances and complaints;

–answers from the CAO to a lengthy series of questions relating to the Applicant's job change and the manner in which his grievance had been handled.

The challenge to the jurisdiction of the Court

47. On 7 March 2018, on the Defence and Counterclaim Form, the QFCA filed a challenge to the jurisdiction of the Court. This invited the Court to *"dismiss the claim as outside its jurisdiction"*. In written submissions dated 24 April 2018, settled by Mr Jaffey on behalf of the Defendants, the following contentions were advanced:

(a) The jurisdiction of the Court is limited to civil and commercial disputes – i.e. a breach of the Applicant's contract of employment. The Claim raises no identifiable breach of contract;

(b) It is an abuse of the Court to attempt to re-litigate an issue that has already been determined by a binding adjudication procedure under QFC law. The Court recognises and takes into account fundamental principles of litigation and international practice and may decline jurisdiction where "*desirable or appropriate*".

(c) Where the ESO has issued a binding determination that is not appealed the issue is *res judicata.* All the issues raised by the Applicant's claim have been finally determined by the ESO.

The submissions ended

"The Claim raises no identifiable breach of contract, nor any point that has not already been determined by the ESO. The Court is invited to decline jurisdiction".

The Judgment of the Court

48. The Court did not find it necessary to make a final determination in respect of the Defendants' first submission, namely that the Applicant had no claim that fell within the jurisdiction of the Court. In paragraph 11 of its judgment it rejected the assertion that the jurisdiction of the Court was restricted to claims for breach of contract. In paragraph 16 it held that it was unnecessary to decide whether a complaint to the ESO was the only route by which an employee could seek relief in respect of a breach of the Regulations by an employer. In paragraph 17 it held that *"it may be that an aggrieved person could opt to bring proceedings in this Court rather than to make a complaint to the ESO"*. In paragraph 19 it found that the matters complained of to the ESO were, in substance, the same as those the Applicant sought to advance before the Court. The Court did not, however, make a finding as to whether those matters, or any part of them, would have fallen within the jurisdiction of the Court had the Applicant initially brought proceedings in the Court rather than making a complaint to the ESO.

49. In paragraph 12 of its Judgment the Court rejected the Defendants' third submission that the principle of *res judicata* applied to decisions of the ESO. This was because the decision of a body, usually a court, can only give rise to the principle of *res judicata,* if that body is manifestly independent of each of the litigating parties. Having regard to the structural links between the ESO and the QFCA the Court was not satisfied that the requirement of manifest independence was satisfied.

50. The basis upon which the Court decided the issue of jurisdiction against the Applicant appears from paragraph 18 of its Judgment:

> *These complaints were investigated by the ESO and determined adversely to the Claimant. He did not in either case exercise his right of appeal against such decisions to the Regulatory Tribunal. In these circumstances the question arises whether, having taken the ESO route and these complaints having been finally determined against him, he*

can now resort to this Court with essentially the same contentions. The answer to that question is, in our judgment, in the negative. ***Where there are two alternative routes by which a person may seek to vindicate his rights and he proceeds to take one of these routes and pursues it to a final determination, the alternative route is no longer available to him. That is particularly so where the route here pursued could have invoked the jurisdiction of the Regulatory Tribunal, a judicially-manned body with wide powers, including investigatory powers, to secure justice in the case****. For that reason the Court declines to exercise jurisdiction to entertain the Claimant's claim, which must be dismissed.*

We shall describe the passage that we have emphasized as "the Court's governing principle".

Is the decision of the Court final?

51. We refer to Article 9.4 of the Court Rules set out at paragraph 20 above. Did the Court decide that it had no jurisdiction or did it decline to exercise its jurisdiction? In the former case it may be that its decision is not open to challenge. In the latter case it is unquestionably open to the Applicant to challenge the decision of the Court not to exercise its jurisdiction, albeit that such a decision is not one that a Court will readily overturn.

52. This was one of a number of questions that we invited the parties to consider in advance of the hearing. In his written submissions Mr Jaffey submitted that the Court did not rule that it had no jurisdiction but that it declined to exercise its jurisdiction. This was a change of stance. The initial challenge filed by way of Defence was unequivocally a challenge to the jurisdiction of the Court. The Court was invited *"to dismiss the claim as outside its jurisdiction"*. The Defendants' submissions dated 25 July 2018 in answer to the Application for Permission to Appeal, averred that

"the Court was correct to hold that it has no jurisdiction to deal with the claim made by Mr Al-Tamimi."

53. Mr Qureshi submitted that the language used by the Court suggested that the Court considered that it might well have had jurisdiction but for the choice of the Applicant to engage the ESO complaint route, which thereafter required any appeal to be made to the Tribunal.

54. We do not find this an easy issue. The Court sat to resolve a challenge to its jurisdiction and the Order of the Court recites that *"The Defendants' jurisdictional challenge succeeds and the proceedings are accordingly struck out"*. Yet in his written submissions before the First Instance Court hearing Mr Jaffey reminded the Court that Article 9.4 of the Court Rules entitled the Court to decline to exercise its jurisdiction and invited the Court to do just that. The Court's language reflected this invitation – *"The Court declines to exercise jurisdiction to entertain the Claimant's claim"*.

55. We think that this difficulty has arisen because the initial challenge of the Defendants to the jurisdiction of the Court was not procedurally appropriate. A defence of *res judicata* or abuse of process does not go to the jurisdiction of the Court. It may be a good ground for striking out a claim or giving summary judgment in favour of the defendants, and we note the observation of Mr Jaffey in paragraph 41 of his written submissions that the Court could have summarily disposed of the claim under Article 22.6 of the Court Rules.

56. On balance we have reached the conclusion that Mr Jaffey's submissions on this point are correct. The Court did not decide that it had no jurisdiction but decided that it would not exercise its jurisdiction for the reasons given in paragraph 18 of its judgment. We turn to consider those reasons.

Was the claim res judicata by reason of ESO's decision?

57. Both Mr Jaffey on behalf of QFCA and QFBA and Mr Walker on behalf of the ESO have submitted that the Applicant's claim was barred on the ground

that it was *res judicata.* Mr Jaffey has submitted that the principle of *res judicata* has universal recognition, being, inter alia, a basic principle of English Law and one that is applicable under Article 300 of the Qatar Civil and Commercial Procedure Law. Mr Walker has supported Mr Jaffey, relying particularly on the position under English law.

58. We are in no doubt that it is appropriate to apply the principle of *res judicata* to claims commenced before the Court. It is a principle of general application and, in particular, one that applies both under English common law and under the domestic law of Qatar.

59. At paragraphs 11 and 12 of its judgment the Court considered whether the decision of the ESO was capable of constituting *res judicata.* It held that it was not by reason of the lack of independence of the ESO.

60. Mr Jaffey challenged that finding. He sought to draw a comparison between the ESO and an ombudsman. It is plain that in England a decision of an ombudsman can constitute *res judicata* – see *Clark v In Focus Management & Tax Solutions Ltd* [2014] EWCA Civ 118. Mr Jaffey also sought to draw an analogy, this being an employment case, between a complaint to an Employment Tribunal and a complaint to the ESO. Again it is clear that in England a decision of an Employment Tribunal can constitute *res judicata.* But the independence from the parties of an ombudsman or an Employment Tribunal is not in doubt. Here it is the independence of the ESO that is in question.

61. Mr Jaffey did not accept that the structural connection between the QFCA and the ESO excluded the application of the principle of *res judicata.* In the course of the hearing he referred us to a passage in the leading judgment of Elias LJ in *Christou and Ward v London Borough of Haringey* [2013] EWCA Civ 178:

> *51. This is not to say that the doctrine of res judicata could never apply between employer and employee. It would, in my judgment, be open to*

an employer to agree that, say, a bonus payable to employees should be determined by an independent arbitrator and I do not see why in principle the doctrine should not apply to any such determination. But that would not be the natural inference to draw whenever the employer adopts and applies disciplinary procedures staffed by his own personnel. The critical question is not the formality of the procedures, but rather whether they operate independently of the parties such that it is appropriate to describe their function as an adjudication between the parties.

62. Mr Qureshi's oral submissions were to the contrary of those of Mr Jaffey. He supported the decision of the Court in respect of *res judicata.* He submitted that, far from being independent of the QFCA the ESO was structurally dependent by reason of the provisions of Article 6.4 of the Employment Regulations. Its decisions were not in the nature of judgments that could give rise to *res judicata.*

63. We agree with Mr Qureshi that the Court was right on this point. The ESO was created by the QFCA under Regulations made pursuant to the powers conferred by Article 9 of the Law. Its role is very broad, being not merely to enforce the Employment Regulations but to *"administer...all aspects of employment within the QFC"* subject to the supervision of the QFCA, which can give the ESO written directions as to the performance of its functions. The ESO is an important part of the administrative machinery of the QFC. It is under the overall control of the QFCA. It does not have the independence to perform the quasi-judicial function of making binding resolutions of disputes between the QFCA, or entities linked to the QFCA such as the QFBA, and their employees.

64. Furthermore the ESO did not satisfy the test set out in *Christou and Ward v Haringey* of operating independently of the QFCA and QFBA so that it was appropriate to describe its function as *an adjudication between the parties.* The HC of the QFCA performed HR services for the QFBA and was a signatory to the 1st Warning Letter. We consider that there was at least a

perception that the ESO might not be operating independently of the HC and the QFCA This is particularly so in relation to the ESO's rejection of the Applicant's second complaint within 24 hours of his submitting this to the A/Director of HC. So far as we can see the Applicant was not afforded any opportunity to deal with the basis on which his complaint was rejected.

65. For these reasons we agree with the Court that the decision of the ESO was not capable, of itself, of constituting *res judicata.* However, as the Court remarked, the matter did not end there.

The legal principles underlying the Court's decision

66. Although the Court ruled that a decision of the ESO could not constitute *res judicata* because of the lack of independence of that body, it went on to rule that the Applicant could not challenge its decision before the Court, for the reasons set out in the Court's governing principle. The Court did not identify the legal doctrine or doctrines underlying its governing principle. Mr Jaffey, Mr Walker and Mr Qureshi all supported the Court's governing principle. Mr Jaffey and Mr Qureshi did so on the basis that it was an application of the doctrine of *res judicata.* Mr Qureshi advanced the alternative basis that it was an abuse of process to seek to reopen the decision of the ESO.

67. Mr Walker submitted that the reasoning of the Court represented fundamental litigation principles and international best practice. By way of example he cited the approach of the civil courts of the Netherlands to the binding effect of administrative decisions under the principle of *res judicata* or, in terms more familiar to civil jurisdictions, *non bis in idem*:

> *The following two-stage test is applied:*
>
> 1. *Has an administrative determination-making body used its administrative powers to make a determination related to a certain subject matter?*
> 2. *If so, did the Litigant, who was the subject of the determination under item 1, have access to an appeal process that would*

ultimately result in a review by a judicially-manned body with wide powers, including investigatory powers?

If both these questions are answered in the affirmative, then the 'non bis in idem rule' applies. This is even the case where the Litigant has not filed an appeal against the (first or second) determination.

68. We have been referred by counsel to a considerable body of English authority on the principles governing the doctrine of *res judicata.* Most helpful has been the analysis of the general principles to which this doctrine gives effect by Lord Sumption in *Virgin Atlantic Airways Limited v Zodiac Seats UK Ltd* [2013] UKSC 46 at paragraphs 17 to 26. He starts by stating that *res judicata* is a portmanteau term that is used to describe a number of different legal principles with different juridical origins. He goes on to identify different types of *res judicata* – (i) cause of action estoppel; (ii) the bar on a successful claimant bringing a second claim for the same cause of action; (iii) merger of a cause of action in a judgment; (iv) issue estoppel; (v) the bar on raising in a subsequent action a matter that should have been raised in an earlier action; he ends by referring to:

> *"the more general procedural rule against abusive proceedings, which may be regarded as the policy underlying all the above principles with the possible exception of the doctrine of waiver".*

69. We do not consider that any of the individual varieties of *res judicata* identified by Lord Sumption is exemplified by the Court's governing principle. That principle more closely reflects the approach of the civil courts of the Netherlands, as advanced by Mr Walker. We do consider, however, that the Court's governing principle properly reflects the policy identified by Lord Sumption as underlying the various different varieties of *res judicata,* namely *"the more general procedural rule against abusive proceedings".* We turn to consider whether the Court's governing principle can be supported on this basis, as Mr Qureshi has submitted.

70. We approach this question having regard to the following particular features of the regime set up by the QFC Law and Regulations:

(i) The Employment Regulations establish basic rights of employees to which their contracts of employment are subject.

(ii) In some cases it is open to the employee to enforce these rights either by a complaint to the ESO for breach of a Regulation ("the Administrative route") or by bringing a civil claim for breach of contract before the Court ("the Court route").

(iii) The employee has a right of appeal against a decision of the ESO to the Tribunal. The Tribunal is an independent judicial body. Such an appeal must be brought within 60 days of the ESO's decision (as to which see below).

(iv) An appeal lies from the Tribunal to the Appellate Division of the Court.

(v) The Administrative route will often be more attractive than the Court route in terms of speed, simplicity, expense, investigative powers of the ESO, and expertise of both the ESO and the Tribunal.

71. It would conflict with this careful and detailed regime for resolving employment disputes if a litigant were permitted to elect to claim relief by way of a complaint to the ESO and then, if dissatisfied with the result, to commence proceedings before the Court in order to challenge the decision of the ESO, rather than to appeal to the Tribunal which is the judicial body that is given the statutory function of reviewing decisions of the ESO. It would also enable a litigant to evade the 60 day time limit for appealing against a decision of the ESO laid down by Article 8(2)(c) of the Law (as to which see below).

72. We have concluded that these considerations justify the Court's governing principle on the basis that this is designed to prevent an abuse of process. We do not consider, however, that this governing principle falls to be applied as an absolute and inflexible rule in all cases. It is one that will normally lead the Court to decline to exercise its jurisdiction on the ground that any challenge of a decision of the ESO should be made to the Tribunal. There may, however, be exceptional cases where the Court concludes that the requirements of justice, or of procedural convenience, justify commencing an action that brings a civil claim before the Court, notwithstanding that this involves a challenge to a decision of the ESO.

73. The scenario that we have been considering is, we think, rarely likely to occur. Any litigant who wishes to challenge a determination of the ESO is likely to opt for an appeal to the Tribunal in any event. The reason why the Applicant did not do so in this case is that he failed to appreciate that the Tribunal is an independent judicial body and not subject to any actual or apparent influence from the QFCA. That is not, however, the limit of the Applicant's failure to appreciate the respective roles of the Court and the Tribunal and the limits of those roles.

Does the relief sought by the Applicant fall within the jurisdiction of the Court?

74. The Court at paragraph 10 of its judgment identified Article 8.3 (c) of the Law as being the directly relevant provision so far as jurisdiction was concerned. No submission has been advanced that the Court had jurisdiction to entertain the Applicant's claim insofar as it did not give rise to a civil or commercial dispute. Accordingly we turn to consider whether, or to what extent, the claim advanced by the Applicant gave rise to such a dispute.

75. It was not clear to us, nor we think to the Court, precisely what relief the Applicant was seeking from the Court. This was one of the questions that we raised prior to the hearing. The Applicant made a lengthy written response. This begins "*I am looking for justice in a corrupt environment*". It goes on to complain that he has been unfairly treated by senior

management because he has made complaints of misbehaviour by, among others, the previous CEO of QFBA. It ends *"This behaviour will never stop until a legal body take a serious action against their mismanagement"*.

76. The more significant unfair treatment of which the Applicant complains is that to which his first complaint to the ESO related. This has, at its heart, his removal from his previous position as Head of Program Delivery and his appointment instead to the position of Projects Adviser. He complains not only of the change, but the manner in which it was carried out – without discussion with him or any explanation, and accompanied by threats. The Applicant further complains that he has not been asked to perform any duties in his new position. He seeks to be reinstated in his old position and an enquiry into the manner in which he has been treated.

77. A less significant though more specific complaint relates to the first warning letter and to the deduction of three days salary pursuant to this. The Applicant seeks withdrawal of the letter, a letter of apology from the three persons who signed it and reimbursement of the three days salary.

78. The circumstances in which a civil court will intervene in a dispute between employer and employee are limited. It will not normally make any mandatory order as to the manner in which an employee is to be employed, or even a mandatory order that the employer continue to employ the employee. An employer will not normally be entitled to require the employee to perform services that fall outside those that the employee agreed to perform in the contract of employment. If the employer insists on so doing the employee may be entitled to treat this as amounting to dismissal ("constructive dismissal") and to claim the salary payable during the notice period.

79. Unusually Article 22 of the Employment Regulations entitles the Employer to change the Employee's job title, work description or location but it goes on to provide that if a condition of employment is substantially altered the employee may seek a determination from the ESO that his employment has

been constructively terminated. Thus Article 22 does not give the Employer a right to insist that the Employee perform a completely different job to that which he agreed to perform in his contract of employment.

80. Had the Applicant wished to contend that his change of role amounted to constructive dismissal it would have been open to him to do so either by the Administrative route or by the Court route. He has not sought to do either. This is understandable as the consequence of such a contention would be that his employment had been terminated and that he was entitled to a maximum of three month's salary in respect of the notice period to which he was entitled, but no more.

81. What the Applicant has sought to do is to complain of the manner in which his change of role was imposed. That is not a complaint that can properly be made the subject of a claim to relief in civil proceedings before the Court.

82. The Applicant's second complaint related to the 1st Warning Letter. He had refused to accept his change of role to that of Projects Adviser but submitted that he had never been given any specific instructions in his new role so that the warning letter was unjustified, and the deduction of three days salary unlawful. He sought repayment of the salary and an apology from the three signatories of the letter.

83. The Applicant could not have obtained an order for an apology as part of a civil claim before the Court. He could however, have alleged that the 1st Warning Letter had been written without justification and have claimed repayment of the three days salary in an action before the Court for breach of contract. This is the only part of the Applicant's complaints that we have identified that was capable of being advanced as a civil claim before the Court. It forms a relatively small part of the Applicant's overall grievances and we consider that the Court could properly have declined to exercise jurisdiction on the simple ground that the Applicant's grievances, taken overall, were not properly the subject of a civil or commercial dispute.

84. For all these reasons we have concluded that there are no valid grounds for attacking the decision of the Court to decline jurisdiction in this case and that its decision to do so has not caused the Applicant substantial or any, injustice. That is not to say that the Applicant may not have good cause to feel aggrieved at the manner in which he has been treated. Save in the minor respect that we have identified his grievances do not, however, fall within the jurisdiction of the Court. Accordingly the application for permission to appeal from the decision of the Court is dismissed.

The Applicant's dissatisfaction with his appraisal.

85. At paragraph 3 of its judgment the Court held:

> *It was conceded that there was one matter raised in the Claim which had not been determined by the ESO. That related to the Claimant's dissatisfaction with his recent appraisal. It was contended, however, that that issue did not give rise to an identifiable cause of action before the Court.*

86. Paragraph 18 of the Court's judgment did not apply to this matter. The Court reverted to it at paragraph 14 of its judgment:

> *"It may be added that the Claimant has also objected to a year-end appraisal made by the Acting Chief Executive Officer. There appears to be an ongoing internal procedure with respect to that matter".*

87. It seems that the Court considered that as the matter was still subject to internal procedure it was not appropriate for the Court to deal with it. We understand that the Applicant may have made a further claim before the Court in respect of this matter.

The Appeal to the Tribunal

88. Following the adverse decision of the Court handed down on 13 May 2018, on 23 May 2018 the Applicant filed an appeal notice with the Tribunal Registry against both ESO decisions. The grounds of challenge were substantially the same as those which constituted the proceedings which he had brought in the Court.

89. However, by then it was nearly six months since the ESO decisions, whereas as explained above, the Employment Regulations impose a 30 day time limit for appeals, and the QFC Law provides for appeals within 60 days, as do the Tribunal Rules. On either basis, the appeal was out of time.

The Decision of the Tribunal

90. In these circumstances, a preliminary issue was directed concerning the power of the Tribunal to extend the time limit for the lodging of an appeal to it from decisions of QFC institutions. The Tribunal dealt with the issue on the papers without an oral hearing, all parties having lodged written submissions.

91. The Tribunal pointed out that the preliminary issue raised the fundamental legal issue of whether the Tribunal has the power to extend, as a matter of discretion, the time for lodging an appeal beyond the period prescribed in the relevant primary and secondary legislation.

92. The Tribunal explained the differing time limits in the three principal legal instruments relevant to lodging an appeal to the Tribunal, stating that it is evident that the two sets of Regulations are to be seen as of subordinate status to the Law. It was clear that the Applicant had failed to act in time, whether one is considering the 60 day time limit in the Law, its equivalent in the Tribunal Rules, or the 30 day time limit applicable to appeals specifically from decisions of the ESO in the Employment Regulations.

93. As regards the power in Article 9(5) of the Tribunal Rules to extend or abridge time, it was difficult to see how it could be read as empowering the Tribunal to relax or extend the 60 day limit in the Law. It reached this conclusion without enthusiasm, considering it to be one which may well lead to injustice in some cases. Nonetheless, that by itself could not override the clear position resulting from the provisions of the Law. The appeal was accordingly dismissed.

The submissions of the parties

94. The Applicant contends that he had been subject to unjust treatment by the senior management of QFC, and that his complaints have not been acted upon. As to why he did not go to the Tribunal first, he did not know that the Regulatory Tribunal was like a court, believing it to be another department of the QFC reporting to QFC management like the ESO. For that reason, he considered it to be a waste of time going to the Tribunal, as it would come to the same result. He considers that in refusing his complaint, the Court in effect referred him to the Regulatory Tribunal, and he contends that in the circumstances, the Tribunal should have heard his complaint.

95. The QFBA and the QFCA submit that the decision of the Tribunal should be upheld. They submit that the 30 day period prescribed by the Employment Regulations applies, and that there is no power to extend the time limits in these regulations in article 9.5 of the Tribunal Rules. This reflects the importance of prompt resolution of employment disputes and the benefit of certainty for all parties, especially where the employment relationship, as here, is ongoing. In any event, the Tribunal Rules could not modify the time limits imposed by the primary legislation, i.e. the QFC Law. Only an amendment to the QFC Law, a law of the State of Qatar, could achieve that result. Permission to appeal should accordingly be refused.

96. The ESO supports the QFBA and the QFCA to the effect that permission to appeal should be refused. The ESO also seeks the Appellate Division's

decision on the question as to which time limit applies for appeals to be made against determinations of the ESO. It submits that, in the hierarchy of legislation, a law prevails over regulations. Accordingly, it considers that the time limit of 60 days specified in the QFC Law should prevail over the 30 day period set out in the Employment Regulations. It also considers the 60 day appeal term to be appropriate for reasons of fairness. It seeks the Appellate Division's guidance on this matter to clarify the time limit for appeals against future ESO determinations.

97. On this part of the case also, we had the advantage of the submissions of Mr Khawar Qureshi QC as Advocate to the Court. He contends that permission to appeal should be granted in respect of the Tribunal's decision, and an extension of time to pursue the appeal granted to the Applicant. His contention is based on submissions that the 60 day period in the Law is drafted in permissive terms, that the period in the Law cannot be cut back by subordinate legislation in the regulations, and that when read in the context of Article 63, the 30 day period in Article 62 of the Employment Regulations does not apply in the present case.

The issue on the application for permission to appeal

98. As noted above, there are three time limits which are potentially applicable to an appeal against a decision of the ESO to the Tribunal as in the present case:

(1) Article 8(2)(c) and Schedule 5(8) of the Law gives the Tribunal jurisdiction to hear appeals against decisions of the QFCA, the Regulatory Authority, and other QFC Institutions, on the basis that appeals "may be filed" within 60 days of publication of the decision (paragraph 5 above):

(2) Article 10.2 of the Tribunal Rules provides that a notice of appeal must be filed within 60 days from the date of publication of the decision (paragraph 18 above);

(3) Article 62 of the Employment Regulations provides that an appeal from the ESO shall be filed within 30 days of receipt of the determination, decision or fine (paragraph 14 above).

99. In this case, the appeal was filed long after these time limits had elapsed, so that, as the Tribunal pointed out, the issue is whether there is power to extend the time limits pursuant to Article 9.5 of the Tribunal Rules (set out in paragraph 17 above). The Tribunal held that there is no such power, and the question is whether it was right to do so or not.

100. In this regard, the unofficial English translation of Schedule 5(8) of the Law is in apparently permissive terms ("may be filed" within 60 days). The Respondents' case, however, is that the original Arabic version-

> (يطعن أمام محكمة التنظيم في القرارات الصادرة عن أي من هيئات أو أجهزة المركز خلال ستين يوماً من تاريخ نشرها في النشرات الخاصة بالجهة مصدرة القرار "إن وجدت"، أو إعلان صاحب الشأن بها بموجب كتاب مسجل مصحوب بعلم الوصول)

-is better translated into English as, "The decisions of any authority or QFC bodies shall be appealed before the Regulatory Tribunal within sixty days... " (underlining added). In oral argument, Mr Qureshi accepted that Schedule 5(8) should be translated as meaning "must be filed", and that has not been in dispute before us.

101. The Regulatory Tribunal only has the jurisdiction which the Law gives it, and in our opinion that Law limits its jurisdiction to appeals filed within 60 days of the decision as stipulated in Schedule 5(8). We agree with the Tribunal that there is no power to extend that period, and this is reflected in Article 9.5 of the Tribunal Rules, by which the Tribunal's power to extend or abridge any time limit is "subject to any contrary provision in the QFC Law".

The 30 day period in the Employment Regulations

102. That is sufficient to decide the appeal in this case. As noted, however, the ESO seeks the Appellate Division's guidance to clarify the time limit for appeals against future ESO determinations, given the 30 day time limit in the Employment Regulations, and the 60 day time limit in the Law and the Tribunal Rules.

103. Mr Jaffey submitted that the applicable time limit for appeals from a decision of the ESO is 30 days as prescribed in the Employment Regulations, and that this is reasonable in the case of employment disputes. By its terms, he submitted, the power of extension in Article 9.5 of the Tribunal Rules only applies to time limits imposed by such rules or ordered by the Regulatory Tribunal, and cannot apply to a time limit in the Employment Regulations.

104. Mr Walker submitted that since the law prevails over regulations, the time limit of 60 days specified in the QFC Law prevails over the 30 day period specified in the Employment Regulations. Similarly, Mr Qureshi submitted that the time limit in the Law cannot be cut back by subordinate legislation in the form of the Regulations.

105. We do not accept an argument advanced by Mr Qureshi orally to the effect that when read in the context of Article 63, the 30 day period in Article 62 of the Employment Regulations does not apply in the present case. We agree with Mr Jaffey that this appeal falls within the terms of Article 62.

106. However, on the point of principle, we agree with Mr Walker and Mr Qureshi. Article 6(1) of the Employment Regulations states that the ESO is established by the QFCA pursuant to Article 6 of the QFC Law. The Employment Regulations are made by the Minister pursuant to Article 9 of the law. As stated above, Article 8.2(c) of the Law gives the Tribunal jurisdiction to hear appeals against decisions of the QFCA, the Regulatory Authority, and other QFC Institutions. Schedule 5(8) of the Law provides for the 60 day time limit. Just as that time limit cannot be extended by the Tribunal under the Tribunal Rules, in our opinion, it cannot be abridged

under the Employment Regulations. These Regulations are made under the Law, and cannot limit the right of appeal provided by the Law to appeals filed within 30 days.

107. We make it clear that the Applicant's appeal against the decisions of the ESO fails because it was not brought in time. Like the Tribunal, we have not ruled on the substance of his complaints.

Conclusion

108. In the event, the application for permission to appeal against the judgment of the Court is dismissed.

109. In the case of the decision of the Tribunal, the position is that time limits go to jurisdiction (see *Nayif v The High Commission of Brunei Darussalam* [2014] EWCA Civ 1521 at [25]). It follows that we have power to hear the appeal pursuant to Article 35.2.1 of the Court Rules (see para 22 above). As, however, the Tribunal was correct in holding that it had no jurisdiction to extend the time limit, the appeal must fail. We will reflect these matters by giving permission to appeal, but dismissing the appeal.

By the Court,

Lord Phillips of Worth Matravers
President of the Court

Representation:

The Applicant appeared in person.

The First Respondents were represented by Mr Ben Jaffey QC (Blackstone Chambers, London).

The Second Respondent was represented by Mr Matthew Walker (K&L Gates LLP, QFC Branch).

Mr Khawar Qureshi QC (McNair Chambers, Doha) appeared as Advocate to the Court.