In the name of His Highness Sheikh Tamim bin Hamad Al Thani,
Emir of the State of Qatar

Neutral Citation: [2019] QIC (C) 1

IN THE CIVIL AND COMMERCIAL COURT
OF THE QATAR FINANCIAL CENTRE

22 April 2019

CASE NO's 3 and 4 of 2018

BETWEEN:

ABDULLA JASIM AL TAMIMI

Applicant

v

QATAR FINANCIAL CENTRE AUTHORITY
QATAR FINANCE AND BUSINESS ACADEMY LLC

First Respondents

ABDULLA JASIM AL TAMIMI

Applicant

v

EMPLOYMENT STANDARDS OFFICE

Second Respondent

COSTS ASSESSMENT

Before:
Mr Christopher Grout, Registrar

JUDGMENT

Introduction

1. On 24 January 2019 the Appellate Division of the Court (Lord Thomas, President, Justices Al Sayed and Blair) issued its judgment in relation to costs ('the Judgment'). The Judgment followed an earlier judgment of the Appellate Division (differently constituted) which refused an Application seeking Permission to Appeal a judgment of the First Instance Circuit of the Court but allowed an Application seeking Permission to Appeal a Decision of the Regulatory Tribunal, albeit dismissing the substantive appeal.

2. The Judgment awarded the First Respondents their reasonable costs but limited these to those costs which related to proceedings before the First Instance Circuit. The Second Respondent did not seek its costs and there was no order as to costs in respect of the proceedings before the Appellate Division.

3. The parties have been unable to reach agreement on the issue of costs. On 7 March 2019, the First Respondents wrote to the Applicant seeking his agreement as to the amount of costs payable. The total amount sought was QAR 98,232.75. In short, that figure comprised QAR 34,177.50 which related to counsel's fees and QAR 64,055.25 which was said to relate to other (internal) costs incurred by the Qatar Financial Centre Authority. A schedule accompanied the letter to which it will be necessary to return. The Applicant responded on the same day making it clear that he was not prepared to pay anything towards the First Respondents' costs.

4. On 10 March 2019 I provided the parties with Directions in relation to costs submissions. Those Directions appear at Annex A. The First Respondents responded to those Directions on 17 March 2019 and the Applicant filed a reply on 28 March 2019.

5. As is customary in cases before the Court and Regulatory Tribunal, I have, in my capacity as Registrar, been involved with the case since its inception. In addition to having read and considered the parties' submissions on costs, I have read all the papers in the case and was present throughout the course of the proceedings both before the First Instance Circuit and the Appellate Division. I am, therefore, acutely aware of the issues raised by the parties, how the case was conducted and how various matters have been resolved.

The Need for a Hearing

6. I am afforded a 'wide discretion' as to the procedure to be adopted when undertaking a Costs Assessment.[1] Ordinarily, such Assessments will be undertaken on the papers, i.e. without the need for an oral hearing. In this case, the parties were invited to state whether they sought an oral hearing or were content for the matter to be determined on the papers. In their submissions of 17 March 2019, the First Respondents stated that they were content for the Costs Assessment to be undertaken on the papers. The Applicant, in his reply of 28 March 2019, simply wrote the word 'None'.

7. There needs to be a Costs Assessment as the parties have been unable to agree on the appropriate amount. Both parties have filed written submissions and neither have sought an oral hearing. Accordingly, I am satisfied that the Assessment in this case can be undertaken on the papers without the need for oral submissions.

The Principles to be Applied

8. In the present case the Appellate Division has ordered that the Applicant shall pay the 'reasonable costs' incurred by the First Respondents in relation to the proceedings before the First Instance Circuit. In *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (C) 1 I laid down the principles to be applied when assessing 'reasonable costs'. At paragraphs 10-12 I said:

[1] *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (F) 2, at paragraph 21. That principle was not interfered with by the Appellate Division of the Court in the same case in its judgment dated 11 September 2017.

How is the issue of reasonableness to be approached? In my judgment, in order to be recoverable costs must be both reasonably incurred and reasonable in amount. If they are not then they are unlikely to be recoverable.

I have identified the following (non-exhaustive) list of factors which will ordinarily fall to be considered when assessing whether or not costs have been reasonably incurred by a party and, if they have, whether they are also reasonable in amount:

(a) Proportionality;
(b) The conduct of the parties (both before and during the proceedings);
(c) Efforts made to try and resolve the dispute without recourse to litigation (for example through Alternative Dispute Resolution);
(d) Whether any reasonable settlement offers were made and rejected; and
(e) The extent to which the party seeking to recover costs has been successful.

When considering the proportionality factor, the following (again non-exhaustive) factors are likely to fall to be considered:

(a) In monetary or property claims, the amount or value involved;
(b) The importance of the matter(s) raised to the parties;
(c) The complexity of the matter(s);
(d) The difficulty or novelty of any particular point(s) raised;
(e) The time spent on the case;
(f) The manner in which work on the case was undertaken; and
(g) The appropriate use of resources by the parties including, where appropriate, the use of available information and communications technology.

9. Those principles were, upon review by the First Instance Circuit of the Court, approved.[2] In the present case, neither party sought to suggest in their written submissions that those principles should not be applied here.

[2] *Hammad Shawabkeh v Daman Health Insurance Qatar LLC* [2017] QIC (F) 2 at paragraph 20. The decision of the Court to approve those principles was not interfered with by the Appellate Division of the Court in the same case in its judgment dated 11 September 2017.

10. In addition, I am mindful of the observations of the First Instance Circuit of the Court in *Khalid Abusleibah v Qatar Financial Centre Authority* [2016] QIC (F) 1 where, at paragraph 15 of its judgment, the Court observed, among other things, that

> (a) Whereas a party is entitled to be represented by advocates of its choice, including Counsel based abroad, in a straightforward matter such as the present this should not be at the expense of the unsuccessful individual;
>
> (b) ...
>
> (c) The Court does not wish to deter employees and other unrepresented litigants from seeking the assistance of the Court.

Those observations are relevant because, in the present case, the First Respondents were represented by counsel based abroad and the Applicant was not only an employee of the First Respondents, specifically the Qatar Finance and Business Academy LLC, but was also unrepresented throughout the course of the proceedings.

The Submissions of the Parties

11. The First Defendants seek an order for costs of QAR 98,232.75. They provide two short tables which break down these costs. The first reveals that QAR 34,177.50 are costs incurred by 'Blackstone Chambers' for the 'Review of claim, defence and hearing'. The reference to 'Blackstone Chambers' is a reference to the barrister instructed to represent the First Respondents. The barrister, Mr Jaffey QC, is a highly experienced Queen's Counsel based in the United Kingdom. Indeed, he is recognised as such in The Legal 500 and Chambers and Partners, both leading legal directories. In their submissions of the 17 March 2019, the First Respondents explain that a (discounted) hourly rate of GBP 250 was agreed and that that rate is considerably lower than the rate considered in *Hammad Shawabkeh v Daman Health Insurance Qatar LLC*. They also observe that

> The instruction of counsel was reasonable. The case was of sufficient complexity and importance that it was later heard by the Appellate Circuit which noted in its judgment that it did not find the issues

entirely straightforward. It was therefore appropriate to instruct counsel with appropriate expertise in QFC law. The case raised issues of some novelty and importance.

The First Defendants also submit that the fees charged are 'reasonable' and 'considerably lower' than rates charged by QFC law firms for lawyers. They also observe that no disbursements were incurred as the hearing was conducted by video-link.

12. The first table then reveals that QAR 64,055.25 relates to further expenses incurred by the Qatar Financial Centre Authority relating to 'Phone conferencing with the QC, bundle preparation, hearing attendance in person, draft and review emails / case materials.' I refer to these as the 'internal costs'.

13. The second table breaks down the internal costs. It sets out a general description of the work and then how many hours were spent by individuals at different 'pay bands' undertaking that work. In total, 73 hours are said to have been expended- 3 relating to 'phone conferencing with the QC', 13.5 relating to 'bundle preparation and review', 11 relating to 'hearing attendance in person' and 45.5 relating to 'draft and review emails / case materials'.

14. The pay bands are explained by reference to a further table which sets out guideline figures for carrying out a summary assessment of court costs in England and Wales on the lowest suggested recoverable rate. The First Respondents, in their submissions, explain that they have proposed this rate because 'it is generous to the Claimant and appears fair in all the circumstances, without prejudice to the QFC Authority's position in other cases'. The amount claimed is described as 'reasonably modest'.

15. As to whether internal costs such as these are recoverable at all, the First Respondents rely upon my decision in *Pinsent Masons LLP (QFC Branch) v Al Qamra Holding Group* [2018] QIC (C) 1 where I concluded, at paragraph 25, that there was no reason why, as a matter of principle, a self-represented law firm should not be able to recover at its professional rates providing that those rates are reasonable. The First Respondents submit that there is no reason why an in-house legal team of a public authority should be in any different position than a self-represented law firm. They cite the decision of

the England and Wales Court of Appeal in *Re Eastwood* [1975] Ch 112 to which I shall return. They observe, among other things, that

> It is proper that a public body should be able to operate a specialist in-house legal team, which includes members who hold practicing certificates in England and Wales and Australia and satisfy practicing requirements in Qatar, and to recover the reasonable costs of that team.

16. In his submissions in reply, the Applicant states that

> I totally reject the [First Respondents] cost claims, and I'm not willing to pay one QAR for his representatives.

He cites a number of reasons. Firstly, that the First Respondents have failed to provide a break-down of their costs. Secondly, the Applicant criticises the First Respondents for instructing an external lawyer (Mr. Jaffey QC) rather than relying upon the in-house legal team within the Qatar Financial Centre Authority. Thirdly, he states that he has used his own money to pay for legal advice and has not sought to recover it. The Applicant makes some additional observations but these are not relevant to the Costs Assessment.

Argument, Consideration and Conclusions

Proceedings before the First Instance Circuit

17. Before turning to the individual heads of claim and the related submissions, it is necessary to say something about the case to which these costs relate. Factually, the matter was a relatively straightforward employment dispute. The Applicant was an employee of the First Respondents (specifically the Qatar Finance and Business Academy LLC) who had a number of grievances in relation to his employment. He had filed a number of complaints with the Employment Standards Office which were resolved against him. He did not appeal to the QFC Regulatory Tribunal within the time

permitted under the QFC Law. Instead, he filed a claim with the First Instance Circuit of the Court, in essence repeating the complaints he had made to the Employment Standards Office.

18. In light of the fact that the complaints had already been determined by the Employment Standards Office (and those determinations had not been appealed to the QFC Regulatory Tribunal) the First Respondents challenged the jurisdiction of the Court to hear the claim. In its judgment of 13 May 2018, the First Instance Circuit 'declined to exercise' jurisdiction and dismissed the Applicant's claim.

19. Accordingly, the First Respondents' jurisdictional challenge succeeded. However, much of what was argued before the First Instance Circuit by the First Respondents was explicitly rejected. For example, at paragraph 10 of its judgment, the First Instance Circuit rejects the First Respondents' submission that the jurisdiction of the Court is limited to contractual disputes. At paragraph 12, it rejects the submission that the determinations of the Employment Standards Office in this case are *res judicata*. At paragraph 16, the First Instance Circuit found it 'unnecessary' to rule upon a submission that the sole mechanism by which an aggrieved employee could file a complaint alleging contravention of the Employment Regulations was with the Employment Standards Office. Indeed, at paragraph 17, it observed that it may be possible for an aggrieved employee to opt to have his or her grievances resolved by the Court instead of the Employment Standards Office. These are relevant considerations as much of the First Instance Circuit's time was occupied with arguments, advanced by the First Respondents, which were ultimately not accepted.

20. It is also noted that the parties, in particular the Applicant, did try to resolve the dispute without recourse to the Court. As mentioned above, the Applicant, in the first instance, sought the assistance of the Employment Standards Office. Only when his complaints were rejected did he seek a remedy through the Court.

21. As to conduct generally, neither party suggests, subject to the Applicant's criticism of the First Respondents' decision to instruct counsel based abroad, that the other behaved unreasonably throughout the course of the litigation. It is a curious feature of these proceedings that had the Applicant pursued, within time, an appeal to the QFC

Regulatory Tribunal he would have been entitled to a full *de novo* hearing. Even if he had been unsuccessful, the general costs rule that operates before the QFC Regulatory Tribunal would have militated against costs recovery as the general rule is that each party pays its own costs. As it is, the Applicant has lost on jurisdictional grounds before the Court and is now liable in costs as a result.

22. Finally, it is noted that, although the Applicant was unsuccessful, the appeal proceedings which arose as a result of this case were, as the First Respondents accept, 'of some novelty and importance'. Accordingly, this was not a claim that could be characterised as vexatious or manifestly without merit.

The Decision to Instruct External Counsel

23. The Applicant criticises the decision of the First Respondents to instruct counsel based abroad. He points out that the Qatar Financial Centre Authority has its own internal legal department and that it was unnecessary to instruct a lawyer from abroad. The First Respondents' answer to this is that whilst they have an internal team that could (and did) perform a number of tasks relating to the preparation of this case, they required the assistance of counsel to perform a number of specialist tasks, including advocacy.

24. Whilst the factual matrix of this case was not difficult, the case did raise certain novel questions of law. I have concluded that it was, in the circumstances, reasonable to instruct counsel to perform certain specified functions, most notably advocacy. I also note that the fact that counsel is based abroad has not, in this case, resulted in any additional claims for disbursements because counsel appeared via video-link.

25. I will return to the overall amount claimed in my final assessment below.

The Internal Costs

26. In arguing that the internal costs are recoverable in principle, the First Respondents rely on my decision in *Pinsent Masons LLP (QFC Branch) v Al Qamra Holding Group* [2018] QIC (C) 1 and the judgment of the England and Wales Court of Appeal in *Re Eastwood* [1975] Ch 112.

27. In the former, I concluded that, as a matter of principle, a self-represented law firm could recover at its professional rates, providing that those rates are reasonable. The position here is slightly different. The in-house legal team of the Qatar Financial Centre Authority is not a law firm. It does not offer legal services to the public and does not, as a consequence, charge rates. Instead, it has salaried employees who perform a range of tasks, including tasks related to litigation. It seems to me that there is no reason why, as a matter of principle, in-house legal teams such as the one at the Qatar Financial Centre Authority, should not be able to recover their costs. To find otherwise would act as a disincentive to use in-house legal teams and encourage parties to instruct external lawyers, even in simple cases. This may lead to greater costs being incurred.

28. The problematic issue lies in determining the basis for assessment of such costs. I decline to place any reliance on guideline figures for carrying out a summary assessment of court costs in England and Wales. There is simply no basis to do so. Quite apart from the fact that the QFC has its own legal community, those who are instructed to appear before the Court hail from a variety of jurisdictions where, no doubt, the costs regimes differ. There is no reason why I should adopt rates considered appropriate in England and Wales as opposed to anywhere else in the world.

29. In *Re Eastwood* (a decision which is not, of course, binding in this jurisdiction), the issue under consideration was as follows:

> A solicitor who is the salaried officer or employee of the Crown or of a commercial undertaking does not practice in order to earn profits. Is a party to litigation, represented by such a solicitor, entitled on a taxation to the like costs as would be allowed to a solicitor who, being in private practice, conducts his business in order to earn profits?[3]

[3] [1975] Ch 112, 119 (Brightman J)

30. In answering that question, the Court of Appeal observed, among other things, that

> …the employed solicitor or legal department renders no bill to the employer or organisation: he or it makes no professional charges. It is however quite clear on authority that it is not permissible to say that consequently the party is limited to disbursements specifically referable to the particular litigation on the ground that the salaries of employees and other general expenses of the department would have been paid in any event…
>
> And we observe that for very many years there have been examples of organisations such as railways with their own legal departments engaged in considerable litigation resulting in orders for costs in their favour which have required taxation: the system seems to have worked without objection, and without a suggestion that in such cases some detailed and complicated method should be adopted of breaking down the activities of the legal department so as to arrive at a proper attribution of the total expense of the department to the particular litigation.[4]
>
> …It is the proper method of taxation of a bill in a case of this sort to deal with it as though it were the bill of an independent solicitor, assessing accordingly the reasonable and fair amount of a discretionary item such as this, having regard to all the circumstances of the case.[5]

31. Whilst I do not disagree with this reasoning, it must be remembered that the backdrop to that case was what was then a quite complicated mechanism for costs recovery operating in England and Wales. No such framework exists in the QFC. Accordingly, the sensible way to proceed is, in my view, to allow the recovery of such costs provided

[4] At 130 (Russell LJ)
[5] At 132 (Russell LJ)

that they have been reasonably incurred and are reasonable in amount. In addition, it will be necessary to take into account any further factors which may be relevant in the circumstances of the particular case.

32. As neither the QFC Law, nor any of the subordinate regulations, provide for a table of recoverable legal fees in respect of litigation before the Court, the best I can do, in the present circumstances, is to consider the rates claimed in light of my experience of cases before this Court in the last seven years. Taking that approach, the rates charged by counsel, as well as those sought to be recovered as internal costs, seem to me to be reasonable. They are certainly not markedly out of line with professional rates claimed in other cases I have dealt with. The internal costs are, in fact, somewhat lower.

33. I consider that the hours spent by counsel in reviewing the submissions and attending the hearing (by video-link) are reasonable.

34. The internal hours said to have been spent on this case are not reasonable. In particular, I immediately discount the 11 hours claimed in relation to attendance at the hearing by various employees of the Qatar Financial Centre Authority. They did not materially assist the Court. The First Respondents were capably represented by counsel and cannot recover their further attendance costs from the Applicant. I would also reduce by half the 13.5 hours claimed in relation to the preparation and review of the bundle. Ordinarily, an applicant/claimant will take the lead in preparing the hearing bundle. In this case, my recollection is that the First Respondents agreed to do so, taking into account the fact that the Applicant was not legally represented. It is unfair to now seek to recover the full cost of doing so. I also consider that the 45.5 hours spent on drafting and reviewing emails and case material is excessive in the circumstances of a reasonably straightforward case, notwithstanding the novel points of law that arose. The 3 hours claimed as part of conferencing with counsel are reasonable.

35. It is also necessary to take into account the observations made at paragraph 19 above. Much of the time spent by the First Respondents (both in preparation and at the hearing) were on matters that were either rejected or not adjudicated upon by the Court. This needs to be reflected in the overall amount deemed to be recoverable.

36. Finally, I again remind myself of the observations of the First Instance Circuit in *Khalid Abusleibah v Qatar Financial Centre Authority*, in particular the desire not to deter employees and other unrepresented litigants from seeking the assistance of the Court.

37. Taking into account all these matters, and applying a broad brush, it seems to me that a reasonable amount recoverable is QAR 20,000 which represents approximately one fifth of the costs claimed.

Final Conclusion

38. For the reasons given above, the First Respondents' submissions as to their reasonable costs are successful but only to the extent of QAR 20,000.

39. Accordingly, the Applicant shall pay to the First Respondents the sum of QAR 20,000.

By the Court,

Mr Christopher Grout

Registrar

Representation:

For the Applicant: The Applicant was self-represented.

For the First Respondents: For the purposes of their submissions on costs, the First Respondents were represented by the in-house legal department of the Qatar Financial Centre Authority.

Annex A

1. By no later than **4pm** on **Sunday 17 March 2019**, the Defendant (the QFCA / QFBA) is to file and serve any Submissions in support of its Schedule of Costs already filed. Those submissions should address, among any other matters considered relevant by the Defendant, the following:

   (a) Provide a break-down (with a short accompanying narrative) of the costs claimed by counsel;

   (b) State whether the Defendant seeks an oral hearing or is content for the costs assessment to be determined on the papers;

   (c) Address the question of to what extent an in-house legal department is entitled to recover its 'internal costs', particularly in circumstances where it has instructed external counsel; and

   (d) Identify on what basis it is appropriate to calculate 'internal costs' by reference to professional rates charged by solicitors in England & Wales.

2. By no later than **7 days** after the Defendant has complied with the above, the Claimant (Mr Al Tamimi) is to file and serve a Response to the Schedule of Costs and Submissions. That Response should:

   (a) State whether the Claimant seeks an oral hearing or is content for the costs assessment to be determined on the papers;

   (b) Identify which costs on the Schedule are considered reasonable (and are therefore not disputed);

   (c) Identify points of dispute in respect of those costs on the Schedule which are considered unreasonable. Points of dispute should be concise and to the point. They should, first, identify any general points or matters of principle which require a decision before the items contained within the Schedule are scrutinised. They should then address the individual items on the Schedule, stating concisely the nature and grounds of dispute. Where individual items are disputed, the Claimant

should identify what sum, if any, he considers to be reasonable in respect of each disputed amount claimed;

(e) Address the points made by the Defendant in its Submissions; and

(e) Provide any further information the Claimant wishes to rely upon.

3. When making their submissions, the Parties should have regard to the jurisprudence on costs which is available from the Court's website.

4. Once the Parties have complied (or failed to comply) with the above, I will then determine how the assessment is to be undertaken.