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: [2023] QIC (F) 5

IN THE QATAR INTERNATIONAL COURT

FIRST INSTANCE CIRCUIT

Date: 15 February 2023

CASE NO: CTFIC0011/2022

KHADIJA AL MARHOON

Claimant

v

OOREDOO GROUP COMPANY

Defendant

JUDGMENT

Before:

Justice Fritz Brand

Justice Helen Mountfield KC

Justice Dr Muna Al-Marzouqi

ORDER

1. The claims based on substantive race discrimination, i.e. under article 15(2) of the Qatar Financial Centre Employment Regulations, are dismissed.

2. The claims of unfair dismissal and that the Claimant was not properly paid her notice period succeed.

3. The Defendant is to pay the Claimant the sum of QAR 494,679.00 in compensatory damages for loss of pay and other compensation to which the Claimant was entitled under the contract of employment, and interest at a rate of 5% per annum thereupon from 14 December 2021 until payment.

4. The Claimant is also awarded QAR 15,000.00 in moral damages for the Defendant's failures to give proper consideration to her grievances and to comply with the requirements of the contract of employment.

5. The total sum due to the Claimant at paragraphs (3) and (4), above – QAR 509,679.00 [plus interest due on the compensatory damages] – is to be paid within 14 days of the date of this judgment.

6. The Defendant is also to pay the reasonable costs incurred by the Claimant in pursuing this claim, to be assessed by the Registrar if not agreed.

7. The Registrar is directed to send a copy of this judgment to the Employment Standards Office to enable it to consider what if any further action it wishes to take in respect of procedural breaches of articles, 15, 17 and 23 of the Qatar Financial Centre Employment Regulations.

JUDGMENT

Introduction

1. The Defendant is a large telecommunications company in Qatar, and is regulated by the Qatar Financial Centre ("**QFC**"). The Claimant was employed by Ooredoo Qatar from 17 September 2008 until her employment was transferred to the Defendant, a different member of the same group, on 1 June 2012. That employment continued until the Defendant terminated her employment, by way of a letter 8 December 2021, purportedly with retrospective effect from 31 October 2021. The asserted reason for dismissal was that the Claimant had taken a period of unauthorised absence of more than seven days.

2. The claim before the Court on behalf of the Claimant had a number of aspects, but in short, the principal issues were that the dismissal had been contrary to the terms of her contract, as guaranteed by the law of the QFC, and the laws of the State of Qatar, and that she had been subjected to unlawful discrimination on the grounds of her race, contrary to article 15 of the QFC Employment Regulations (Regulation No.10 of 2006 as amended, version 7, June 2020; the "**Regulations**" or the "**Regulation**").

3. The Claimant averred in her claim to this Court that there was no proper reason for her dismissal; she had been arbitrarily treated and discriminated against; deprived of her proper 90 days' contractual notice; had been subjected to harassment, bullying and unfair evaluation; as well as being deprived of an allowance in lieu of notice and an end of service gratuity to which she said she was contractually entitled. She sought damages for material and moral damages arising from these breaches. Her case was that she was entitled to be promoted, but instead was arbitrarily dismissed.

4. The Defendant's case was that it was entitled to dismiss the Claimant because she was absent for more than seven consecutive days without explanation. Following disagreements about whether the Claimant was entitled to be promoted, and an offer of agreed severance, they said, she simply stopped turning up for work, and failed to respond to attempts to reach her, by both telephone and text message. Eventually, a letter was sent notifying her that her employment was at an end.

5. The Defendant specifically denied allegations of race or other discrimination had been made by the Claimant during her employment and said that it was a very international and diverse organisation, whose workforce was also around 30% female. It was said by Ms Al-Kuwari, an executive officer of the Defendant who was called by the Claimant to give evidence, that the Defendant "*would not abide*" discrimination.

The legal framework

6. The Defendant is a QFC entity as defined by article 66 of the Regulations, i.e. a company established in or licenced to do business in the QFC. Moreover, clause 15 of the employment contract between the Claimant and the Defendant stipulates that it was governed by the laws of the QFC, and that this Court has jurisdiction to consider any dispute arising out of or related to it. Consequently, the primary legal framework which governed the relationship between the Claimant and the Defendant was the terms of her contract and the laws of the QFC, particularly the Regulation. This Court has jurisdiction to consider the disputes arising from the Claimant's employment with the Defendant.

Relevant provisions of the Regulations

7. Provisions of the Regulations relevant to this dispute are as follows.

Article 2
Article 2(2)(C) provided that the provisions applied to the Claimant, as an employee of a QFC Entity.

Article 4

Article 4 provides that the English language version of contracts and other relevant legal instruments prevail over others.

Article 8

Article 8(1) provides that minimum standards provided for in the Regulation may not be waived except where the Regulation specifically so states, and that any waiver has no effect.

Article 8(2) provides that nothing in the Regulation precludes an employer from providing more favourable terms and conditions in a contract of employment than those provided for by the Regulation.

A QFC employer must abide by the Regulation because, by virtue of article 8(3), a failure to do so is a breach of a Relevant Requirement under the Qatar Financial Centre Authority Rules.

Article 14

Article 14 imposes record-keeping requirements on an employer, which includes a requirement to keep records of annual and sick-leave taken and any disciplinary measures taken against the employee.

Article 15

Article 15 is a prohibition of discrimination by an employer against an employee because of that person's sex, marital status, race, nationality or religion, and mental or physical disability, unless there is a bona fide occupational requirement. An employer is required to have in place policies and procedures implementing the requirements of this article and must make sure they are known by their employees.

Article 17

Article 17 requires the employer to give each employee a written employment contract which must contain the list of specified minimum information set out in article 17(1). These include terms and conditions relating to sick leave, and/or disciplinary rules and/or grievance procedures applicable to the employee. By virtue of article 17(3), where annual leave, holidays, hours of work and sick leave are not specified in the employment contract, the terms included in the Regulations are implied into the employment contract.

Article 19

Employees' obligations, other than those set out in their contracts of employment are set out in article 19 and include duties to (A) attend to their duties and exercise the care of a reasonable person; and … (C) carry out the employer's orders apart from to the extent to which they would contravene QFC law, the laws of the State of Qatar or the employment contract, or subject the employee to danger.

Article 23
Article 23 provides for termination of a contract of employment with notice. Article 23(1) provides that, except as otherwise provided for in the Regulation, employers and employees must provide notice of their intent to terminate employment.

Article 23(2)(C) provides that for employees who have been employed for more than five years, the period of notice is 3 months.

Article 23(3) provides that such notice shall be given in writing and the employer shall pay the employee his salary during the notice period.

Article 23(4) provides that the employer and employee may agree a longer or shorter period of notice, waive notice or accept a payment in lieu of notice. Article 23(5) provides that the employee can terminate the employment without notice in the event of a material breach of contract by the employer.

Article 24
Article 24(1) provides for the circumstances in which an employer may terminate a contract without notice. So far as is material, these circumstance are where

> (A) there has been a material breach by the employee of his contract or these Regulations, …
>
> and
>
> (I) (relied upon the Defendant in these proceedings) that:
>
> > the Employee has been absent without a justified reason for more than seven (7) consecutive days or for more than fifteen (15) days in the aggregate in a twelve (12) month period.

Article 24(2) provides that, in the event of termination without notice, the employee is entitled on request to a written statement of reasons for the termination.

Article 25
After the end of service, the employer shall comply with the terms of the employment contract in respect of termination, and shall pay all outstanding wages and other outstanding fees within thirty days after the termination of the employment.

Article 38
In terms of article 38(1), an employee is entitled to a total of 60 working days' sick leave in any twelve-month period. Article 38(2) provides that an employee

who is absent due to illness must notify the employer as soon as reasonably practicable, either himself or through another person, that the employee is unable to fulfil his duties. Article 38(3) requires the employee, if required by the employer, to provide a sick certificate for sickness related absence.

Articles 38(4) and 38(5) provide that the employee has a right to receive his usual salary during sick leave, unless the employee has failed to comply with articles 38(2) or (3) relating to notice or certification.

If an employee is absent due to illness for more than an aggregate of 60 working days in any 12-month period, the employer may terminate the employment in writing immediately without notice.

Part 12

Part 12 of the Regulations relate to the ability of an employee to make a complaint to the Employment Standards Office ("**ESO**"), and the ESO's powers to investigate and to mediate or impose sanctions. This is not a compulsory route of redress, and as it is not one which the Claimant pursued here; thus, we note the existence of this remedial route simply for completeness.

Article 66

Article 66 of the Regulation is the definitions section and defines, so far as is material, "*Usual Salary*" as "*the salary the employee is usually paid; it includes basic salary, allowances and benefits given at each pay period*".

Schedule 1

Schedule 1 contains a list of contraventions and maximum financial penalties which may be imposed by the ESO for contraventions. So far as is material, the maximum penalty for contravention of the prohibition on discrimination in article 15 is $3,500.00. The maximum penalty for failure to comply with the minimum requirements of a written employment contract as required by article 17 is $1,500.00. The maximum penalty for failure to provide the notice period required by article 23 is $1,500.00. The maximum penalty for delay in payment for any outstanding amounts is $2,500.00.

The contract of employment

8. Clause 15 of the contract of employment (the "**Contract**") provided that the Contract was governed by the laws of the QFC. It further provided that, "*any unresolved matter arising out of or in connection with this contract shall be resolved in accordance with the laws of the QFC and the laws of the State of Qata*r", and that this Court should have exclusive jurisdiction over any dispute

arising out of or in connection with the Contract. Other terms of the Contract relevant to the dispute before us provided as follows.

9. Clause 1.5 designated the Claimant to be senior management staff.

10. Clause 1.7 provides for a 90-day notice period after the probationary period. Article 1.11 set out her salary and remuneration allowances, and provided that after probation, she was entitled to an Annual Performance Bonus, dependent upon individual and company performance and subject to board approval. Clause 1.12 provided that the bonus was not payable if an employee was not in employment on 31 December of the performance year.

11. Clause 3 provided for salary and other benefits which would be in accordance with the Defendant's Human Resources Policy from time-to-time. During the course of the hearing, it became apparent to us that the Human Resources Policy was not a document generally disclosed to employees, and we had to ask for a copy of the policy relating to the relevant period to be disclosed to the Court.

12. Clause 9 provided that either party could terminate the Contract upon the notice period (90 days) specified in the summary in clause 1.

13. Clause 9.2 provided that at the end of the employment, the employee would receive an end of service gratuity, "*in accordance with the then-current HR Policy*".

14. Clause 9.3 permitted leave entitlement to be required to be taken, or repaid, during the notice period upon notice of termination.

15. Clause 9.4 provided:

> *the Company may terminate the Appointment with immediate effect if the Company has good reason to believe that the Employee has been grossly negligent or has done something illegal or that amounts to gross misconduct. In such a case, the Company remains free to exercise any of its other legal rights and remedies against the Employee*.

Employee Policies

The Human Resources Policy

16. By virtue of the various references to it in the Contract (e.g. clauses 9.2 and 9.3) the relevant provisions of the Human Resources Policy (the "**Policy**") were incorporated into the Contract by reference, and ought to have been available to employees of the Defendant (indeed, the very first paragraph of the Policy itself said that it was the responsibility of the Executive Director for Organization and Talent Development to ensure that the updated version of the Policy be circulated to all relevant personnel of the Ooreedo Group and circulated to all staff on a '*need to know*' basis). The Policy's purpose was said to be to ensure that the more generic elements of the employment contract were clearly understood, and the objectives included delivery of fair, consistent and lawful treatment of all employees.

17. During the course of evidence, witnesses employed by the Defendant accepted that the Policy was part of the Contract, and that it was not available to employees other than upon what was described as a '*need to know*' basis. However, since the Policy itself provided at HRM PL 3.4.3 that all employment contracts were subject to HR policy and procedures, we consider that all employees had a need to know what it contained. Moreover, the contractual power to dismiss for gross misconduct at clause 9.4 of the Contract was subject to the procedures in the Policy for ensuring that decisions relating to misconduct were taken fairly. It is therefore necessary to set out the relevant provisions of the Policy as well as the core provisions of the contract.

18. HRM PL 3.4.32 provided for three months' notice for those with a particular period of continuous employment, and HRM PL 3.4.34 provided that that reasons to terminate by notice may include disciplinary action or medical reasons.

19. Part 3.5 of the Policy addressed leave and absence. HRM-PL 3.5.1 provides for 30 working days of leave in any calendar year. HRM-PL 3.5.2 provides an entitlement to 60 days' sick leave on 100% pay, but that an employee who is

absent due to illness must notify the line manager as soon as reasonably practicable that they are unable to fulfil their duties, and provide a medical certificate at least once during every 7 days of absence. There was also provision for prolonged sick leave, "*due to a serious illness or serious injuries*" of up to six months, paid at 100% pay for the first three months, and at 50% pay for the second three months. Thereafter, the employee may be considered medically unfit for work and the contract terminated.

20. Part 3.6 related to salary structure, and explained that there is a basic salary, performance bonus, and allowances and benefits which vary by grade. Salaries were subject to annual review following the Employee Performance Management Cycle. A performance rating of 5 (outstanding) justified a 7% annual increase in basic salary; 4 (exceeding) 5%; 3 (solid performer) 3.5%; 2 (marginally below target) 1%; and 1 (needs development) 0%. Performance bonuses were payable at the discretion of the board. There were also provisions for social and housing allowances. There were also payments for employee reward, recognition, long service, and pension.

21. Part 3.10 related to discipline. It explained that the company's disciplinary policy was designed to allow it to address conduct and behaviour that it deemed to be unsatisfactory; and to be progressive, fair and in accordance with applicable legislation. It stated that the company would make every effort to ensure that any disciplinary action was taken as quickly as possible, and that the process was properly documented and the employee clearly informed.

22. Misconduct could be either minor or major/gross misconduct. HRM-PL 3.10.2 defined misconduct as:

improper conduct or behaviour undertaken in the knowledge that:

- *Violates or wilfully disregards any company policy*
- *Has the intention to harm another person (physically, mentally or emotionally)*

- *Leads to immoral behaviour towards others such as employees, customers or vendors*

- *Leads to personal profit, advantage or gain*

- *Violates Qatar Labour Law and/or Qatar Financial Centre employment regulations.*

23. The policy provided for three stages of warnings in relation to minor misconduct, before dismissal with cause without notice or benefits.

24. HRM-PL 3.10.4 described major or gross misconduct as a serious offence or wilful act to cause damage, harm, destruction to property or reputation or grievous hurt to others. A list of examples of acts that might be classified as major misconduct included such matters as assault, breach of health and safety rules so as to endanger life, having been found guilty of a crime involving immorality or dishonesty, and "*absence from work without legitimate cause for more than seven consecutive days, or fifteen days in a twelve-month period*".

25. The Policy provided that a manager who believed that an employee had acted in a way which could amount to gross misconduct should discuss this with the Human Resources Department to agree a course of action. HRM-PL 3.10.7 provided for a three-person discipline committee to carry out an investigation, consisting of a chairperson and two employees, one of whom would be a representative from the Legal Department, and all of whom would be at least equal in grade to the employee who [was said to have] committed the offence. A number of potential penalties for gross misconduct were listed at HRM-PL 3.10.9, depending on the severity of the conduct.

26. HRM-PL 3.10.10 provided for a list of situations which warrant immediate dismissal, which again included, "*the employee is absent from work without reason for seven consecutive days or fifteen days in a calendar year*".

27. HRM-PL 3.10.11 provided that there might be some circumstances that were so serious that a disciplinary interview was not necessary. The Human Resources

Department would determine which situations fell into this category in discussion with the line manager.

28. Where, however, a disciplinary interview was necessary, HRM-PL 3.10.12-13-15 provided for at least five days' notice of such an interview, and a number of other provisions to allow for a fair and open-minded procedure, including notes of the interview being taken. HRM-PL 3.10.15-16 provided for an appeal procedure.

29. Part 3.11 related to employee performance management. It was intended to provide "*one transparent system*" and ratings from 5 (outstanding) to 1 (needs development). Decisions were to be based on evidence, and employee and manager were required to collect and share evidence. Only those with ratings of 2 (marginally below target) or 1 would be subject to poor performance management. There were some exceptions, for example, in relation to change of role or a manager. There was also a provision for appeals by employees dissatisfied with performance management decisions.

The Employee Policy

30. As we have noted, the Policy was incorporated into the Contract in various respects, so it is important to highlight relevant provisions of the policies which were exhibited before us. It does not appear that these documents were made available to employees as a matter of course, and this in itself was problematic, as employees did not have clear access to the policies and procedures which formed part of their employment. However, a separate document called the Employee Policy was exhibited in our bundles, and does appear to have been shown to employees. We consider that both these policies formed implied parts of the Contract (we do not have to decide in this case what would have happened had there been an inconsistency between the two policies).

31. *Notice and reasons for termination with Notice:* The Employee Policy had a section on end of service, which provided that the notice period for Senior Management Staff was three months. It provided that the authority to terminate

for the Company was "*as per approved decision rights authority*". It then specified that reasons for termination by notice from the Company, "*may include but are not limited to: 1. Resignation; 2. Poor performance; 3. Disciplinary action; 4. Medical reason; 5. Job Redundancy; 6. Obsolete skill*s".

32. *Sick leave:* The Employee Policy also provided that employees might be entitled to paid sick leave provided they had a medical certificate; the first two weeks on full pay, the following 4 weeks at 50% of salary, and any beyond that unpaid. The contract might be terminated after 12 weeks certified sick leave (we note that this is less favourable than the provisions in article 38 of the Regulations, which is a floor entitlement and which therefore prevail).

33. As to "Prolonged Sick Leave", the Employee Policy provided that employees absent from work for more than 10 working days at a stretch due to a serious illness or injuries maybe eligible for leave with pay for a longer period.

34. *Grievances:* As to grievances, the Employee Policy encouraged employees to seek counselling from their line manager to start with, but if not, they could take the matter further through the grievance procedure. A long process was set out for how an employee could and should first seek informal resolution through employee counselling, and thereafter could go to a grievance committee, which it was said would handle a grievance within 30 days of receipt. No specific documentation was required: the Employee Policy stated that any written documentation would be accepted.

35. *Employee Performance Management:* A long section of the Employee Policy was devoted to employee performance management, through what was said to be one transparent system with performance ratings. Evaluation was intended to be based on evidence; and an employee with a rating of "*marginally below target*" was to be placed on a 3-month performance improvement plan. There were some exceptions for people in new roles, and provision for grievances on a grievance form.

The interaction of the Contract and the Regulation

36. There was some discussion in the hearing before us as to whether the Claimant was entitled to any terms and conditions which were contained in the Contract which exceeded those in the Regulation. We find that she was. This is because of the express provisions of article 8 of the Regulations which provides that the Regulations set out *minimum* requirements. Article 17 imposes a duty on an employer to set out contractual entitlements in a written document, and the express terms of article 8(2) provide that nothing in the Regulation precludes and employer from providing more favourable terms and conditions.

37. Accordingly, our approach has been to analyse the Claimant's rights under her contract first, and to use the Regulation as a fall-back position.

The Long-Term Incentives Plan

38. The Defendant operated a so-called Long-term Incentives Plan (the "**LTI Plan**"). Part of the Claimant's case was that, by being dismissed, she was unfairly deprived of the benefits of "*incentive points*" which she had been awarded under the LTI Plan during her employment. Neither party had produced a copy of the LTI Plan, but at the Court's request, we were shown and considered the terms of the Plan. In short, the LTI Plan provided for the grant of "*incentive points*" to employees on the basis of a discretionary scheme, which would then result in a financial grant on a "*Normal Vesting Date*" (or a later date in certain exceptional circumstances).

39. However, we do not consider that we have power to consider this part of her claim. This is because the LTI Plan expressly provided that there was no right to an award under its terms unless expressly provided in an employee's contract of employment (and there was no such provision in the Contract).

40. Rule 9 of the LTI Plan provided so far as is material that:

Notwithstanding any other provision of the Plan:

(a) The Plan shall not form part of any contract of employment between any member of the Group and an Eligible Employee;

(b) Unless expressly so provided in his contract of employment, an Eligible Employee has no right to be granted an Award;

(c) The benefit to an Eligible Employee of participation in the Plan (including in particular but not by way of limitation any Awards held by him) shall not form any part of his remuneration or count as his remuneration for the purpose of any employer's contribution to any pension or other benefit scheme operated by a member of the Group; and

(d) If any Eligible Employee ceases to hold an office or employment within the Group he shall not be entitled to compensation for the loss of any right or benefit or prospective right or benefit under the Plan (including, in particular but not by way of limitation, any Awards held by him which lapse by reason of his ceasing to hold an office or employment within the Group whether by way of damages for unfair dismissal, wrongful dismissal, breach of contract or otherwise) …

41. This made it clear that there was no contractual right to the benefits of the LTI Plan, and that any "*points*" awarded under it were not part of remuneration and could not form the basis of a claim for damages in the event of termination of employment.

42. We consider that the terms of rule 9 of the LTI Plan are sufficiently clear to show that there was no right to an LTI payment on the basis of accrued points. Accordingly, we have not considered the LTI Plan aspect of the claim further.

43. This means that we did not need to decide the prior question of whether we had jurisdiction over this aspect of the claim. We note that rule 13 of the LTI Plan at least purported to provide that the LTI Plan is governed by the laws of the State of Qatar, and that the Courts of Qatar have jurisdiction to settle any dispute which may arise out of or connection with the LTI Plan.

44. On its face, the combination of rule 9(a) and rule 13 might be enough to take determination of issues as to the meaning and effect of the LTI Plan outside this Court's jurisdiction, notwithstanding that clause 15 of the Contract confers jurisdiction on this court for anything "*in connection with*" the Contract. However, we also note that article 9.1.3 of this Court's Procedural Regulations and Rules (the "**Rules**") states that disputes between QFC entities and their

employees are within the jurisdiction of this Court unless the parties agree to waive this jurisdiction. We would not be inclined to hold that the terms of the LTI Plan could amount to such a waiver, because they were not available to the employee, and so could not in themselves amount to an agreement to waive this Court's jurisdiction. However, for the reasons given above, we do not need to decide this point for the purposes of resolving this issue.

The relevance of Qatari State law

45. We were shown a number of provisions and authorities concerning employment under Qatari State law. However, by virtue of article 2(4) of the Regulations, no laws, rules or regulations of the State of Qatar relating to employment apply to employees whose employment is governed by that Regulation.

46. Accordingly, and notwithstanding the provisions of clause 15 of the Contract, Qatar State law is applicable only by way of analogy or illustration, as other law external to the structure of QFC law may be applied from time to time to determine the scope and meaning of QFC law.

47. For completeness, we add that it may be that there are some circumstances where the provisions of Qatari State law are more favourable than the provisions of either the Regulations or those explicitly set out in Contract; and, we see that in those circumstances, a clause such as that in clause 15 of the Contract might give some residual, implied contractual right to the benefit of more favourable rules contained in Qatari State law. However, no such case was explicitly made before us, and we concluded that there was no need for us to consider any provision of Qatari State law in the present case.

Case management and directions

48. It was apparent that the allegations and counter-allegations in this case were complex ones, and that the legal framework was not clear. In an effort to ensure that the hearing was a smooth as possible, by an Order dated 4 September 2022,

the Court gave clear directions for case management. These included the parties giving us a chronology; a dramatis personae; providing documents upon which they wished to rely; witness statements for every witness who was intended to be called; and one written argument each summarising their submissions.

49. It was disappointing, and made conduct of the hearing more time-consuming and more difficult, that neither party properly complied with these directions. In particular, we did not receive the skeleton arguments or chronology of key events which we sought; and key people in the dispute were not called to give evidence by either party. Nor were many of the witnesses in court, although they were in Doha at the date of the hearing, which made the receipt of evidence more difficult. Our procedures require compliance with directions and attendance in court in person where possible.

50. At the Claimant's request, the Defendant produced the following witnesses for cross-examination (albeit remotely): Mr Firas Al-Masri, the human resources manager who had sent the Claimant the letter of dismissal, Ms Fatima Sultana Al-Kuwari (an executive officer), and Ms Sengul Ozun, a human resources officer. The Claimant herself had not intended to give evidence though ultimately, she did so. The Defendant did not produce any of the managers who had evaluated the Claimant. To piece together much of the story, we were reliant on identifying relevant documents in the large bundle of materials produced before us.

51. In addition, considerable numbers of documents were provided late, and we refused to allow a number of fresh allegations to be advanced in a document called "*Khadija's issues*" which was only produced on behalf of the Claimant mid-way through the hearing. We declined to consider this document as we had made it clear in our Order of 4 September 2022 that we expected issues to be raised in good time and in accordance with the directions, which this document did not do; it raised a number of new matters; and, by the time the document was produced, it was too late for the Defendant to have a fair opportunity to consider and respond to them.

52. These failures, by both parties, to comply with directions made untangling the complex allegations and counter-allegations of fact and the nature of the legal complaints more difficult than it ought to have been. We note that in this jurisdiction, directions are made to be complied with. Under the Rules, the Court's overriding objective (article 4.1) is to deal with cases justly. This includes (article 4.3.1) so far as is practicable, ensuring that litigation before the Court takes place expeditiously and effectively, using proportionately no more resources of the Court and parties than is necessary. And it is the duty of parties in any case before the Court to assist the Court in ensuring that cases are dealt with in accordance with the overriding objective (article 4.5). The failure, by both parties, to comply with our directions, made it difficult to deal with the case in the time allocated to it. The Court has a number of procedural powers, in article 10, which include the power to adjourn the case, and on another occasion, the Court may choose to exercise these powers to ensure smooth running of court procedures.

53. The factual background which follows is what we have derived from a close reading of the documents before us and the oral evidence we heard, albeit without written witness statements setting out the witnesses' intended evidence in chief having been provided in advance, a chronology confirming the dates of various alleged grievance and disciplinary steps, or proper explanation of the role which each witness played in the dispute at the relevant time.

The factual background to the dispute

Career history before the Claimant's move to the Defendant's Strategy Department

54. The Claimant worked for the Defendant and its associated company for more than 15 years. She started with Ooredoo Qatar, an associated group company on 17 September 2008, and transferred to the direct employment of the Defendant on 1 June 2012, with the title Assistant Executive Director of Commercial Strategy and Performance, and thereafter was promoted. In 2017, she became Assistant Director, Strategic Planning and Performance Management. However,

she was not promoted after 2017, and this became a source of grievance to the Claimant who considered that her performance merited promotion.

55. As explained above, the Defendant provided for annual evaluations of employee performance, where scores were on a scale of 5 (outstanding) to 1 (needs development). The Claimant's case was that, until around 2019, her work was always highly rated (at grade 4 – 'exceeding') and relationships with colleagues were harmonious. She was disappointed, therefore, when in 2020 she received a grade 3 ('solid performance' – i.e. meeting but not exceeding expectations for the role) for the first time.

56. Her claim was that, until the events which formed the basis of this claim, her relationships with managers and other employees were always harmonious. But this was not entirely borne out by the documents in the bundle. These illustrated that there had been previous disputes and disagreements about the appropriateness of her communication style with managers. For example, she received a first written warning in May 2011 for disrespectful and undermining behaviour towards her then-manager (calling him a "*zero manager*" in a loud voice), and for having repeatedly being late to work. We also saw evidence of a grievance procedure conducted by the Defendant in November 2018, following a quarrel between the Claimant and the person who was then her line manager, Adil Ayoub Sheikh. This resulted in another verbal warning to the Claimant for minor misconduct. It is notable that the account of the grievance procedure includes the Claimant criticising her manager's management, admitting raising her voice, and Maryam Al-Nasr telling the Claimant to get coaching to control her temper.

57. Nonetheless, until 2019, her evaluations were usually relatively good. She was evaluated at level 4 in 2018 and 2019. The Claimant said that in 2019, the person who was then her line manager, Mr Andrew Kvalseth (Group Chief Commercial Officer), gave her a level 4 in her 2019 evaluation, confirmed on 3 March 2020 and based on her KPIs. The 3 March 2019 email reflects that Mr Kvalseth and another manager had agreed on a development plan to help her to be ready for promotion to director. The Claimant says that in a meeting at which Ms Al-

Kuwari the Group Chief Human Resources Officer, was present, he indicated that she considered her eligible for promotion. The 3 March 2020 email from Mr Kvalseth also reflects that the development plan included work on functional skills such as commercial due diligence and behaviour skills (leadership etc). It reported that they agreed that she met the objective of the development plan and they agreed that she was ready for promotion to a director position.

58. Ms Al-Kuwari gave evidence before us that what the Claimant had been told by Mr Kvalseth was that if she continued to develop in line with her development plan she would be promoted. She denied that she had told the Claimant that this was a promise, but said that she had written to the Claimant to say that she understood her frustration with the delay, and to seek to help her consider suitable opportunities for which she could apply. At the Claimant's request, she had written to Mr Kalvseth and the Human Resources Department after she had left this team inviting feedback about why the Claimant had not been promoted, and had received feedback that the development goals had not yet been met so the Claimant was not yet ready for promotion (we saw no evidence of this feedback, and it does not appear to tally with the statement in Mr Kvalseth's assessment set out in the email of 3 March 2020 that she had met the development goals).

59. The Claimant made further enquiries about promotions, but we heard evidence, which we accepted, that during the Pandemic, all plans for promotion and so forth were put on hold. However, in 2020, Ms Al-Kuwari suggested to the Claimant that she might consider a transfer to another department, which ultimately took place.

<u>The move to the Strategy Department</u>

60. In February 2020, the Claimant was moved sideways from the Commercial Department to the Strategy Department, again in an assistant director role. The parties disagreed about the reasons for this sideways move. The Defendant says that this was because she continued to have tense relationships with colleagues

and to enable her to make a fresh start; the Claimant saw this as an opportunity to learn new skills.

61. In June 2020, the Claimant received an evaluation score of 3 in her mid-year review, which was an average score, but lower than what she had received in previous years. Her new line manager in the Strategy Department, Mr Mark Darwood, spoke with her about this, and according to the Defendant, explained to her in detail what had led to this evaluation. However, the Claimant did not accept that there was any fault or diminution in her performance, and said she should have been promoted to executive director in the Strategy Department. She said this was a promise or an entitlement, relying on the evaluation of Mr Kalvsveth, her former manager in the Commercial Department, and the alleged promise of promotion within a year (a promise which the Defendant, through Ms Al-Kuwari, denies was made).

62. The relationship between the Claimant and her new line manager Mr Darwood, was a tense one. He saw her as complaining about colleagues' incompetence and refusing to abide by his instructions; she saw him as harassing and bullying her. The Defendant claimed, though without supplying documents or details, that Mr Darwood had put in a grievance against the Claimant to the Human Resources department. She also put in a grievance against him. It is not clear whether there was any formal grievance from Mr Darwood; or if so in which order this occurred, and the Claimant gave evidence that she was unaware of any grievance from Mr Darwood (this would have been clear if the directions, requiring a chronology and disclosure of all documents relied upon, had been complied with). In any event, we did see evidence that the Human Resources Department tried to mediate and put in place an action plan to develop the Claimant's inter-personal skills. The Defendant's case was that this did not succeed.

63. Again, there was a dispute here about what occurred. The Claimant said she spoke to the Human Resources Department making allegations about her line

manager's behaviour towards her, but that these were not properly pursued; and she also said that she was unaware of any complaint about her from Mr Darwood.

64. Because there was inadequate documentation of the process, it is not entirely clear whether the Defendant was dealing with separate complaints separately. So far as we could ascertain, it appeared that there had been an attempt at informal mediation, and that the Defendant believed that the initial tensions between the Claimant and Mr Dawood were resolved by a reconciliation process arranged by Ms Cristina Roxana Dobrota on 27 June 2020. However, it appears that the Claimant did not regard matters as having been properly resolved. The Claimant said she had made a further complaint, but the Defendant said she did not respond to an email from Ms Christina Roxana Dobrota dated 13 August 2020 asking her to submit evidence to support her allegations in this respect. Again, we saw inadequate documentary evidence to be able to reach a firm conclusion in this respect.

65. However, on 1 April 2021, the Claimant lodged two further grievances to the 'Ooreedo Group Grievance' email address. The first concerned what she described as unfair and discriminatory treatment for more than a year from her line manager Mr Darwood. The second was a complaint about what she said was an unfair evaluation from him, which she believed was the basis upon which she had not been promoted. She set out each grievance separately.

66. On 8 April 2021, the Claimant also sent an email to Ms Al-Kuwari asking for assistance in obtaining what she regarded as a well-deserved promotion.

67. As to the Claimant's first grievance that she had been treated unfairly by not being promoted and as a result of having asked for promotion, the attachments were in the form of slides demonstrating how, in her view, she met the Key Performance Indicators which would have justified a promotion.

68. The Claimant's case on this issue, which was denied by the Defendant, was that, as a result of her insistence that she ought to be promoted, her manager Mr

Darwood started to harass her and to create a hostile work environment. In her pleading, she said that she was treated inhumanely, bullied, shouted at, and treated in a racist manner. However, she said continued to work for the Defendant, because this was her sole source of income. She continued to press her eligibility for promotion.

69. Her second grievance was about her allegation that she was bullied and discriminated against by Mr Darwood. It was supported by slides headed "*Evidence for my line manager Mark Henry [ie, Mr Darwood], bullying, discrimination in the workplace*". These slides were quite hard to read, but the allegations were as follows:

i. Mr Darwood kept threatening her and saying he would give her a lower score on this mid-year review. She alleged he had completed her mid-year review but kept it open in order to keep bullying her and threatening her. In December 2020, she said, he had said that her KPIs were "*on track*", but then evaluated her as a 3. She asked why HR had allowed him exceptionally among Chief Executive Officers not to submit the mid-year review notes.

ii. Mr Darwood discriminated against her in strategy workshops by marking her attendance as optional at the meeting (which it appears she did attend); and failing to give her credit for working over a holiday to share 'MoM actions' for an evaluation score-card, sharing it only with the Head of Strategy and not with other Chief Executive Officers.

iii. "*Mark through anger at me whenever he see me communicate with OG functions, participate with OpCo. Below evidences that he don't want me to participate*": however, the documents displayed on the slide did not contain any evidence of any anger or other adverse reaction from Mr Darwood.

iv. A complaint about a lack of respect in Mr Darwood's dealings with the budget. According to the Claimant, she handled the departmental budget until mid-August 2020, when it was removed from her following her complaint of overwork. Mr Darwood asked her again about the budget in January 2021,

which she regarded as lack of respect for her work. To support this allegation, she exhibited an email from him on 23 September 2020 saying that it was unfortunate that the Claimant had not attended a meeting which she had requested about perceived workload complaints, which appeared to suggest that she should stop working on the departmental budget, and should send across material she had covered in a previous meeting to someone called Maha Zagloul. However, on 12 January 2021, he emailed the Claimant and Ms Zagloul to say (to the Claimant) that he would not authorise a renewal contract of some kind until he had understanding of what was going on with spend and budget; and asking Ms Zagloul to get to the bottom of the budget overspend and to make sure they actually had a sufficient amount to cover the full amount of this contract.

v. The Claimant raised a complaint with Ms Zagloul about unpaid vendors who had asked the Claimant why they had not been paid since July 2020, when Ms Zagloul joined the department. Ms Zagloul did not answer saying she worked for Mr Darwood not the Claimant. The Claimant's grievance alleged that this was because she had seen Mr Darwood treat the Claimant badly so she did the same.

vi. An allegation that Mr Darwood kept the likeable work for someone called Duha, "*treat me and throw anger at me whenever I discuss Braveheart*", and an allegation that Mr Darwood:

> *discriminate and do what benefit him instead benefit of OG, specially when I raised first time to HR about him, he become more aggressive and try to keep all good work for him and Doha and eliminate me.*

There was some more detail about allegedly more favourable treatment towards Duha and allegations that (unspecified members of) the team had witnessed this. This aspect of the complaint had a footer: "*my message: until when I have to treat it with unfair and no respect?*"

vii. "*Mark on daily bullying me – Evidence*": however, the evidence provided was an allegation that Mr Darwood had shouted at someone else (called Sweekar) from another company, and had cancelled an external meeting until he was clear on the authority of the person with whom the meeting had been arranged (someone called John Hull) to speak with him. The "*evidence*" was an email from Mr Hull to Mr Harwood explaining his authority to represent his company in discussions with the Defendant.

viii. The grievance slides concluded with a slide which said "*Finally, as HR aware, my promotion stop due to COVID-19, and I wish HR to help me and supported me and could fix it if that possible*"; and with a final slide showing emails of unsolicited and very positive feedback from a number of people over a number of dates in 2020 and 2021.

70. As can be seen from above, there was much overlap between the two apparently separate grievances. It was really quite difficult to distinguish between the two. However, the allegations made were not identical. The Claimant's case is that her second grievance, concerning discrimination, was simply never addressed. Nonetheless, on 8 April 2021, Ms Dobrota wrote to the Claimant expressing thanks for informing her of the name of her preferred coach for a 'chemistry' session, so it appears that the Human Resources Department did take steps to address the issues she raised (and – according to the Defendant – which Mr Darwood had also raised) around their relationship, albeit in an informal and mediated way. We note that no documents were provided by the Defendant to support their assertion that Mr Darwood had complained about the Claimant, or that the Claimant's earlier grievance about him had been withdrawn as alleged by the Defendant. We also note that there is no evidence of any formal attempts to address the Claimant's allegations of bullying and discrimination.

71. The Defendant says that, in an effort to remove the conflict between the Claimant and Mr Darwood, they assigned her a new line manager, Mr Rene Heinz Warner. It was significant that no witness was able to say precisely when this change of line manager took place, which matters when it came to who was responsible for her performance evaluation grades.

72. On 28 September 2021, the Claimant received a further mid-year review and performance evaluation which was very poor (though it did not, at least on the copy exhibited to us, contain a formal evaluation grade). The negative evaluation was about what was said to be the Claimant's understanding patterns and future direction of the business, including the network, the business model and what were described as poor "*soft skills in strategy*" and in general, including being quick to complain and to ascribe "*negative intent*" to colleagues. The summary at the end of this evaluation was as follows:

> *For Khadija to continue in her role substantial changes in both conduct, ability to become a team member and strategic skill set have to be initiated. As of now there is a substantial gap between what needs to be expected from an assistant director in Group Strategy – which is an elevated role – and actual delivery. Strategy as a function seems to be not a good fit to Khadija's skills and it should be reviewed if Ooredoo has better fit situations for both her and Ooredoo.*

73. Although no performance evaluation grade was attached to this 28 September 2021 review, the document said that a Performance Plan had been approved, which is reserved for performance at grade 2 or below. The Claimant described herself as "*shocked*" by the very poor level of evaluation in it, though she had previously received high evaluations from other managers. The Claimant said that she regarded both the mid-year evaluation from Mr Darwood and the end year evaluation from Mr Werner as unfair.

74. The Defendant's case is that whereas normally an employee with such a poor performance evaluation would have been asked to leave the company, they were keen to find an alternative solution in the Claimant's case, because of her many years of service, and we note that on 28 July 2021 she was offered consideration for a number of job vacancies at her existing assistant director grade. However, she rejected the vacant positions which were offered to her, insisting that she should have been offered a promotion.

75. On the same day as she was sent the Performance Plan, the Human Resources Manager Mr Firas Al-Masri, contacted the Claimant and verbally suggested that

she might consider leaving the Defendant's employment voluntarily. Mr Al-Masri's evidence was that this was because her mid-year review had been poor, which rendered her subject to performance management, and meant that it was likely she would be asked to leave the company in due course. So, the Defendant wanted to give her an opportunity to resign with an enhanced package rather than the likelihood of her employment ending due to poor performance. On the Claimant's account, she was given a very clear option of resigning or being dismissed, and a very short window for deciding what to do. She was told that if she resigned, she would receive QAR 496,500.00 plus three months of wages in lieu of notice, i.e. a total of QAR 734,122.00. Alternatively, it was said, she was likely to be dismissed and receive only QAR 496,500.00. She says that she was given only an hour to consider her options. The Claimant however indicated that she wished to remain employed by the Defendant, and so she asked for Mr Al-Masri to put the points he had made to her in writing.

76. On the morning of 6 October 2021, Mr Al-Masri emailed the Claimant setting out the exit package options which he had outlined to her. These were her notice period salary; leave encashment; and a pro-rated LTI Plan payment (the LTI figures being estimates); and an option of three extra months of salary.

77. On the same day, the Claimant received an email from a Ms Vinita Koshy outlining the terms of a role as Chief Technology Officer in the Maldives, which the Claimant understood amounted to this role being offered to her, or at any event being held out as a role for which she was suitable. She said that this illustrated that the "*poor performance"* evaluations were not genuine, as the Defendant was acting inconsistently by offering her promotions at the same time as threatening to dismiss her (Ms Al-Kuwari gave evidence that this was not an offer of a role, merely roles which she might consider; Mr Al-Masri's evidence was that he was offering her an attractive financial option to leave as this looked to be a likely outcome in any event).

78. The Claimant said she felt sure that her employer wanted to get rid of her: she described a day – before she went off sick – when she had come to work and finding that her desk drawer had been emptied, and her personal possessions

strewn everywhere, which she found distressing and humiliating. She said that she found being at work stressful, this adversely affected her health, and so she stopped coming to work on 11 October 2021, and never returned.

79. She gave a number of explanations for why she had ceased coming to work.

80. The Claimant says firstly that the stress of this situation affected her health, and she started to suffer from Irritable Bowel Syndrome, which caused her to stay away from work. We accept that the stress she endured could cause the Claimant to suffer from serious ill health. However, we saw no evidence that she notified her employer that she was off work sick, or that she sought any medical attention, apart from a sicknote for "*IBS and severe dysmenorreah*" to support sick leave on 11 and 12 October 2021.

81. The second argument the Claimant raised was that during her period of absence, she was simply taking advantage of what she described as "*her right to work remotely*" as an employee who had not received the Covid-19 vaccination. The Claimant said that after her sick leave she "*continued to work remotely as instructed by the Defendant Company*", which she says was an entitlement of workers who did not have a Covid-19 vaccine.

82. We do not accept this explanation. We saw no instruction from the Defendant that the Claimant should work from home. The Defendant's case was there was no instruction or entitlement to work from home. Rather, there was an instruction, set out in the Defendant's Return-to-Work Order which was produced in evidence, that employees who were not fully vaccinated must present either a negative rapid antigen test, with the test having been taken in the 24 hours preceding entry, or a negative PCR test result with the test having been taken in the 72 hours preceding entry; that test results would be valid for one week and would need to be presented to site security staff on a daily basis to enable access; and finally – and critically – that

> *Employees and consultants who fail to produce a rapid antigen or PCR test* ***will not be permitted to access Ooredoo sites*** [highlighted red in the

original] *and any days of absence due to being denied access will be deducted from the annual leave balance. If the annual leave balance is exhausted, these days will be considered as unpaid leave.*

83. It was not possible fairly to read this as a general entitlement or instruction to non-vaccinated staff to work from home.

84. The third explanation which the Claimant gave, which struck us as the true one, was that she was upset at the indication from Mr Al-Masri that the Defendant would like her to leave and felt overwhelmed. She said that she did not come back to work because she thought that if she did, she would immediately be dismissed. She did not know what to do, felt hopeless and she stopped coming to work. But she did not explain these feelings to the Defendant, which obviously she should have tried to do.

85. The Defendant's case is that, following the expiry of her sick-notes on 11 and 12 October 2021, she was absent from work without prior notice to her manager, and that this absence continued until 8 December 2021. In evidence before us, Mr Al-Masri showed us emails and texts which he had sent the Claimant, asking her to contact him. We accept that she did not receive the emails (because she could not get work emails at home, and at some point – which was not specified – her work email was blocked).

86. The Defendant says that it blocked the Claimant's email account when, after her continued absence and failure to respond to correspondence, it assumed that she had left the Defendant's employment. This was understandable given the Claimant's long and unexplained absence, but does not match the later decision on 8 December 2021 to dismiss her (which is not the same as accepting an assumed resignation). The Defendant says this was to protect the confidentiality of the company's strategy information which might be held in her email account. Neither party was able to tell us the date upon which her email account was blocked.

87. However, we were shown texts dated 18 and 27 October 2021 from Mr Al-Masri to the Claimant, and saw no reason why she would not have received these. The first expressed concern about her, enquired about her wellbeing as she had not returned from sick leave, and asked her to let him know if she was OK. The second was a further enquiry, but also added that absence from work without legitimate cause is subject to disciplinary action. He concluded, "*Please respond urgently. Thank you*".

88. The Claimant says she did not answer the text messages because she was convinced that if she telephoned the office she would be instructed to resign again.

89. Mr Al-Masri sent a further text message on 11 November 2021 warning the Claimant that if she did not report to the office, the consequences would be serious. Mr Al-Masri said that this message was sent because they were worried about her and wanted to give her a chance to justify her absence. She did not respond.

90. On 8 December 2021, Ms Al-Kuwari, the Group Chief Human Resources Officer, sent an email to the Claimant, which read as follows:

> ***Sub: Separation from Ooredoo***
>
> *Dear Khadija,*
> *I regret to inform you that the management has decided to terminate your services due to your absence from work without a legitimate cause for more than seven consecutive days since October 17th 2021.*
>
> *This letter serves the purpose of confirming your separation from Ooredoo services with effective from November 1st 2021.*
>
> *We thank you for the contribution you made during your tenure with us and wishing you all the best in your future assignments.*

91. There was no explanation – in the letter or before us – for why the dates of 17 October and 1 November 2021 were chosen. A Final Payment document shows that all the Claimant was paid upon termination of her employment was for 22

days of her leave balance, being QAR 64,128.65. On 20 January 2022, she received an email from Mr Al-Masri to say that no three-month notice period was to be given and that "*LTI payment is not applicable*".

92. In evidence before us, Mr Al-Masri accepted that the Claimant's employment would "*probably*" have been terminated due to poor performance in any event, but in fact it was terminated because she simply stopped coming to work without explanation or reasonable excuse for more than 7 days, and stopped communicating with the Defendant.

The basis for the Claimant's claim

93. It was not easy to unpick the grounds for the Claimant's claim.

94. From the Claimant's "*Explanatory Note for the Grounds of Claim*", the claims made appear to be as follows:

i. **'Malicious fabrication' of Claimant's absence and unfair dismissal decision.**

It was suggested that the Claimant was absent from work because of either an instruction from or circumstances created by the Defendant, and it was not fair to dismiss her for this absence, in circumstances where at least some parts of the company considered her worth promoting and sending prospective job opportunities. This was a claim either to return to work or for wages for the period for which she was not permitted to work (this claim was framed under article 64 of the Qatar Labour Law, but we have found that this has no separate application to this case).

ii. **That the dismissal decision was in violation of the principle of equality.**

This claim seems to be based on article 34 of the Qatari Constitution that "*citizens shall be equal in terms of public rights and duties*", a principle

which it is said was violated by the Claimant's dismissal without regard for her rights or equality with the rest of the company's personnel in similar circumstances. It may also have been based on article 15 of the Regulation and the right to non-discrimination.

The Qatari Constitutional claim for general "*equality of rights and duties*" is not within our jurisdiction – see article 25A of the Regulation. Article 15 of the Regulation prohibits discrimination based on specific personal characteristics. We have considered the Claimant's allegation that Mr Darwood subjected her to race discrimination under Article 15 and we have approached this aspect of the case on that basis.

iii. **The dismissal was unfair and flawed by abuse of power.**

There is no statutory right not to be unfairly dismissed under the Regulation. There are certain penalties provided for in the schedule to the Regulation (described at paragraph 8 above) for failure to provide a contract with details of disciplinary procedures applied to the relevant workplace, and for failures to comply with the procedures. Whether or not to impose such penalties is a matter for the ESO and not this Court.

iv. **An apparent claim based on Egyptian law for access to the Claimant's files and annual reports.**

We have not considered this claim further because we do not understand how a claim based on Egyptian law or procedure can be enforced in this Court, whose jurisdiction is based on the law of the QFC.

QFC procedure is not the same as that in the Qatari State courts or others, such as the Egyptian court practice relied upon of appointing an independent assessor or accounting expert, as requested by the Claimant. There is an investigative procedure set out in Part 12 of the Regulation, but its use is not mandatory, and the Claimant elected not to pursue her complaint before the ESO, so we have considered her claims in accordance with QFC Law and procedure.

v. **A claim that the Claimant was eligible for an allowance in lieu of notice.**

A claim for pay in lieu of notice of two months, based on article 49 of the Qatar Labour Law, and compensation for not being notified of her dismissal. We do not consider we have jurisdiction to determine questions of the Qatar Labour Law, by virtue of article 25A of the Regulation. However, we have considered claims for pay in lieu of notice under the terms of the Contract and the Regulation.

vi. **An entitlement to an end of service gratuity.**

This was said to be an entitlement under the Qatar Labour Law of a Qatari citizen, within certain limits. Article 54 says that the amount must be not less than three weeks for every year of employment, except in circumstances set out in article 61 of the Qatar Labour Law. The Claimant claimed an entitlement to this sum for the 13 years, 1 month and 14 days she had worked for the Defendant.

Again, we do not consider that we have jurisdiction to consider this claim, and we have not been shown a basis for any such payment under the law of the QFC.

vii. **She also claimed money under a contractual LTI Plan.**

This was based on points accrued during the year end to 31 December 2021, and also based on incentive points awarded on the basis of good performance in 2019. We have explained our reasons for not considering this aspect of the claim further at paragraphs 38-43 above.

viii. **The Claimant sought the appointment of an accounting expert to ascertain the amount of damages payable to her.**

This appears to be a procedure based on Qatari state law. It is not normal procedure in the this Court, and we have felt able to determine damages without appointment of an expert.

ix. **The Claimant sought compensation for moral and material damages suffered as a result of non-promotion over 5 years, and 'continuous bullying and racist treatment by her line manager', a claim she said was based on article 199 of Civil Law No.22 of 2004.**

As we noted at paragraph 7 above, employment in the QFC is governed by the Regulation and any more favourable terms of the Contract. Qatari State law is excluded from operation by virtue of article 25(A) of the Regulation. Thus, we can only consider the Claimant's case insofar as it engages provisions of the Regulation or breach of rights conferred by her Contract.

However, this court has held that it has jurisdiction to grant damages for 'moral damage'/ injury to feelings in an appropriate case (in the case of *Arwa Zakaria Ahmed Abu Hamdieh v Qatar First Bank* [2022] QFC (F)7), which, (though currently under appeal) represents the current state of the law of this Court, and we have considered the Claimant's claim in application of that principle. In many jurisdictions, for example in the United Kingdom, it is established that courts can award damages for "*injury to feeling*" in cases of discrimination, and Qatari State law allows for payment of moral damages. We consider we have jurisdiction to award a proportionate sum for moral damage in circumstances where individuals have suffered stress and distress as a result of their unlawful treatment which goes beyond the merely financial or material.

Framing the complaints advanced before us

95. We have treated the law of the Regulation as a long-stop or minimum standards guarantee, and as a framework within which the Contract falls to be analysed. As discussed above, we have treated the Policy and other employment policies as being incorporated into the Claimant's Contract by reference, but found the benefits of LTI Policy not to be a contractual entitlement arising from the Contract. Other sources of law, for example Egyptian law, are applicable, if at all, only by way of analogy or as being of persuasive interpretative effect.

96. We have sought to frame the Claimant's complaints within the structure of her contractual entitlements under the Contract, and under the terms of the

Regulation. So framed, it seems to us that the Claimant's claims can be summarised as follows:

i. A claim that she was subjected to unlawful race discrimination contrary to article 15 of the Regulation, by not having been promoted between 2017 and her dismissal in 2021.

ii. A claim that she was subjected to unlawful race discrimination by having been subject to rude, aggressive and unfair treatment by Mr Darwood, her line manager in 2021.

iii. A claim that she was 'forced out' of the workplace and required to and/or permitted to work from home, so that there was no "*unauthorised absence*" justifying dismissing her and/or that the dismissal was procedurally unfair.

iv. A claim that she was not properly paid her notice period and should receive material and moral damages in respect of these alleged failures.

Discussion

The first two claims (i) and (ii): was the Claimant subject to unlawful discrimination?

Article 15 of the Regulation

97. Discrimination on grounds of race in the context of employment is unlawful in the QFC, by virtue of article 15 of the Regulation. Article 15(1) provides, so far as is material:

> *(1) Discrimination for the purposes of these Regulations means a distinction based on personal characteristics relating to … race … that has the effect of imposing burdens, obligations or disadvantages on a person not imposed upon other persons or that withholds or limits access to opportunities, benefits and advantages available to other persons under the Regulations …*

98. Article 15(2) provides, so far as is material, that an employer shall not:

(A) refuse to employ or refuse to continue to employ a person; or (B) discriminate against a person regarding employment or any term or condition of employment, because of that person's … race …

99. Article 15(5) provides that "*An employer must have policies and procedures implementing the requirements of this Article and must ensure they are known by their employees*".

100. The maximum financial penalty for a contravention of article 15 which the ESO could impose is $3,500.00.

The Court's approach to allegations of race discrimination

101. Since this is the first claim before this Court alleging breaches of article 15 of the Regulation, we have thought it useful to set out our approach to considering substantive allegations of discrimination under article 15(2).

102. There are two issues to be resolved to establish a claim of race discrimination under article 15(2). First, whether the specific facts amounting to adverse treatment or adverse effects alleged by a Claimant are made out. Second, whether the burdens, obligations or disadvantages, or opportunities, benefits and advantages withheld or limited were imposed or withheld (as the case may be) because of the Claimant's race.

103. At the first stage, the burden of proving facts from which the Court could conclude, in the absence of an adequate explanation, that an unlawful act of discrimination has been committed falls on the Claimant. If the Claimant fails to make out such facts, the claim fails.

104. However, as in other jurisdictions, the Court recognises that it is sometimes difficult for a person complaining of discrimination to point to a direct comparator in order to establish that race was a factor in any detriment which had been suffered. Thus, where apparently unexplained adverse treatment is established on the evidence, from which the Court could conclude, in the absence of an adequate explanation, that an unlawful act of discrimination has been committed, then the evidential burden shifts to the employer to explain the

reason(s) for its treatment of the Claimant and to satisfy the court that race (or another protected characteristic) played no part in those reasons. Unless the employer satisfies that burden, the claim succeeds. This is the approach taken by the United Kingdom Supreme Court: see *Hewage v Grampian Health Board* [2012] UKSC 37 at 25-32, upheld in *Royal Mail Group v Efobi* [2021] UKSC 33. Of course, that is a different jurisdiction applying a different rule, but we consider it a helpful way of approach discrimination claims in this jurisdiction.

105. Courts take upholding equality before the law seriously, and so if substantive and apparently unexplained unfair treatment is made out, they will scrutinise the employer's explanations for such treatment very closely. If an employer does not have, or apply, fair non-discrimination policies, it is possible that the Court will infer that unfair treatment of a person from a minority group in the workplace is also discriminatory treatment. Where an employer fails to call the decision-maker to give evidence in relation to a decision which is alleged to be discriminatory, there is a risk that the court may draw an inference from that failure that there is no satisfactory reason for the decision. But it is not automatic that the court will draw an adverse inference merely from the failure to have relevant policies, or to produce the relevant decision-maker to give evidence. What inferences it is appropriate to draw is a matter for a court on the evidence before it in any particular case.

106. Bullying and harassment, less favourable consideration or non-consideration for promotion and dismissal are all matters which, if made out by the claimant are capable of having an adverse effect of imposing burdens, obligations or disadvantage upon the claimant. If they are made out, the court may find that there has been unlawful discrimination, unless – the burden having shifted to it – the employer establishes to the court's satisfaction a different reason for the adverse treatment. We turn now to whether breaches of article 15 have been established in this case.

Absence of procedure

107. We start with article 15(5). Despite our directions, and the fact that it was plain that the Claimant was alleging that she was subject to unfair discrimination, the Defendant produced no evidence of any policies or procedures concerning any prohibition on discrimination. No witness, including those employed as human resources professionals, led any evidence that they were aware of any such policy. The only evidence which was led about non-discrimination was an oral assertion that the Defendant was a very diverse company, and that discrimination would not be tolerated. And although one of the Defendant's witnesses said that the Claimant's grievances, which included allegations of discrimination, had been addressed, the Defendant provided no written evidence to substantiate this assertion. Had the grievance been addressed, we would have expected written evidence to record this fact, given that the Defendant's own Policy said that disciplinary and grievance decisions would be recorded.

108. We find that the Defendant was in breach of this procedural requirement of the Regulation. As a very large employer, the Defendant ought to have had in place and made known to all its employees an equality and non-discrimination policy as required by article 15 of the Regulation. We regard the failure to have done so as a serious breach, and one which was damaging to the Claimant's sense of dignity and respect. We address this in our discussion of moral damage at paragraphs 136-137 below.

Allegations of race discrimination in breach of article 15(2)

109. However, as to the substantive discrimination claims, we are not satisfied on the evidence before us that the Claimant has made out her case.

Allegations of bullying and harassment

110. As to the allegations of bullying and harassment, the Claimant did not make out the factual basis for her claim. Her allegations of harassment, bullying and unfair treatment by Mr Darwood and Ms Zagloul were very broad and unspecific. No witnesses were called to corroborate her accounts that she had been harassed or

bullied in the way alleged. Her own sense of how she was treated was called into question by her accounts of earlier situations. For example, she said she had never had any problems with colleagues before Mr Darwood, save one unfair warning for being late. But the documents before us about the earlier incidents involving earlier managers showed that she had in fact been disciplined for rude and dismissive behaviour towards previous managers, and that she had made allegations of harassment/shouting against them too.

111. Moreover, the specific allegations advanced in her internal grievance were either inexplicably broad, or did not appear to be supported by the documents displayed in the slides supporting her grievance. It was difficult therefore to find bullying or harassment in the absence of oral evidence to support these allegations.

112. Taking each of the allegations of bullying specified in her grievance at paragraph 110 above:

i. There was no specific evidence of threats by Mr Darwood. No examples of actual threatening words were given. Although the score in the Claimant's first mid-year review was a 3 (one mark below the 4 she had received from her previous manager), it remained a satisfactory score. So, this was not inconsistent with the assertion that Mr Darwood had told that her KPIs were "*on track*".

ii. It was difficult, without any specific explanation, to understand why it was adverse treatment for Mr Darwood to mark the Claimant's attendance at a strategy workshop as "*optional*" (especially at a time when she was complaining about her workload).

iii. Her assertion that Mr Darwood expressed anger when he saw her communicate with Oreedoo Group functions was not borne out by the written evidence she put forward to support this in her grievance slide, and she gave no oral evidence to support this assertion. Moreover, her assessment of when others expressed

anger and when others do so was undermined by her accounts of earlier incidents, as explained above.

iv. Mr Darwood's request, in an email to the then manager of the departmental budget of 23 September 2020 for an explanation of how the figures within it arose did not appear to be bullying or harassment. For a manager to refuse to sign off a budget until he had answers to queries from both the current manager and the previous manager of the budget (i.e. the Claimant) did not strike us as unreasonable or unfair, or capable in itself of being evidence of lack of respect or bullying. A manager is entitled to ask for information from people who may have it by virtue of present or previous involvement in a budget process, and there was nothing discourteous or dismissive in the language of the email which was exhibited to support this assertion.

v. Similarly, the suggestion that Ms Zagloul had acted inappropriately by refusing to answer a query from the Claimant about an unpaid vendor was not evidence of harassment by or encouraged by Mr Darwood. Ms Zagloul was entitled to say that the Claimant should go through their (mutual) line manager to deal with customer complaints.

vi. The allegation about selecting someone called Duha for more likeable work was not supported by any documentary evidence, external witnesses or oral or written witness testimony from the Claimant.

vii. The more general assertion of, "*Mark on daily [basis] bullying me*" was not supported by the evidence provided, which was about an assertion of alleged bad treatment of someone else (called Sweekar); and the allegation appeared rather to be that the Claimant thought Mr Darwood had acted wrongly by refusing to hold a meeting with a representative of an external body called Mr Hull until he had an explanation of Mr Hull's authority. Whether or not this was the right action by Mr Darwood, it was not bullying or harassment of the Claimant, and again no further evidence was led to support this allegation.

Allegations of unfair treatment by not being considered, or not equally considered, for promotion

113. As to the assertion that she was treated unfairly by not being considered, or equally considered for promotion, the Claimant did not make out her case. It is true that her previous line manager, Mr Kvalseth, had concluded that her performance exceeded expectations and that she was ready for promotion. The Defendant's evidence that he had given this score subject to further improvements was not consistent with the contemporaneous documents, which said that she was "*now*" ready for promotion.

114. However, there was nothing in the fact that her score went from a 4 when she worked in the Commercial Department to a 3 (i.e. at expectations) when she moved to a new department which suggested she was being unfairly or adversely treated. Neither of these was a score which would have precluded promotion. But, as the Claimant herself acknowledged, promotions were put on hold during the Pandemic, which is part of the explanation why she was not promoted during 2020-2021.

115. We have more hesitation in relation to the further fall in her scores in the mid-year assessment by Mr Warner, an assessment which Mr Al-Masri said would probably have resulted in her dismissal. We do not quite understand why her performance and inter-personal relationships appeared to decline so quickly at this time, and there did not seem to be a formal performance score ascribed to her, though the descriptions of her performance described it as very poor. It is surprising that a large and reputable employer, in the face of so serious an allegation as that these scores were a result of race discrimination, should not put forward any witness to provide a satisfactory alternative explanation for its view that the Claimant's performance, after so many years of relatively satisfactory service, had suddenly declined so steeply. We note, for example, that Mr Warner said that the Claimant's relationships with colleagues and customers were very poor, but she had produced in her grievance slides many examples of emails, from a number of colleagues and customers, over a time, and in different contexts, praising her helpful attitude and performance.

116. However, we consider that the Defendant did advance two reasons which satisfied us as to why the Claimant was not promoted. The first was that the Pandemic put a hold on all promotions. The second was that, having decided she was being unfairly treated by Mr Darwood, the Claimant seemed to have had difficult interpersonal relationships with some team members in the Strategy Team (Mr Darwood, Mr Warner, Ms Zagloul) which were based on her hostile and confrontational manner towards them when she disagreed with them, and which were reflected in her scores. If there were no evidence of this other than the written assertions of Mr Warner, in the absence of any proper equality procedures or corroborative evidence, we might have found that this explanation was not properly made out. But we find that evidence, both from earlier roles and this role, suggests that the Claimant found it difficult to show respect for managers if she felt they were making mistakes or that she was being unfairly treated. We cannot find that there was no ostensibly fair reason for her failure to be promoted immediately when she came to the Strategy Department. The Claimant expressed the view that the assessments of her performance by Mr Darwood and Mr Warner were unfair, but there was no extraneous evidence to support her opinion.

Allegedly discriminatory dismissal

117. Finally, we find that the reason the Claimant was dismissed was not her race, but because she ceased coming to work and did not contact the Defendant to explain why not. Mr Al-Masri fairly accepted that she would probably have had her employment terminated in October 2021 (with payment of notice and her LTI Plan entitlement) as a result of her poor performance. If she had been dismissed for that reason, and if the decision about poor performance had been tainted by race discrimination, that might have infected the decision to terminate her employment. But that was not this case. We find that Mr Al-Masri was telling the truth when he said that the reason the Claimant was sent a letter of dismissal on 8 December 2021 was because she had simply stopped coming to work in October 2021, and had failed thereafter to respond to attempts to contact her.

118. So, we find that the reason for the Claimant's dismissal was her non-attendance without explanation for more than 7 days, and not her race. Nonetheless, we find there were a number of unsatisfactory aspects of the dismissal process, discussed below.

Conclusions on allegations of breaches of article 15(2)

119. We find that the Claimant's substantive allegations of race discrimination are not made out in the present case. The Claimant has not given any sufficiently specific and evidenced account of bullying or harassment to justify the drawing of any adverse inference against the Defendant. And in the case of non-promotion and dismissal, a sufficiently plausible non-racially motivated reason for the treatment in question has been advanced in evidence by the Defendant to satisfy us that the claims for race discrimination in this respect have not been made out.

120. Nonetheless, the allegations which the Claimant made in her grievance concerning bullying, harassment and discrimination were serious ones. We consider it unsatisfactory that the Defendant produced no evidence of any formal policies through which it would consider and address these allegations, and no evidence of any formal consideration of the detailed complaints made. We note that article 14 of the Regulation requires records of disciplinary procedures and processes to be kept, and this was not properly complied with on the fact of this case. We consider that especially where allegations of wrongful conduct are of conduct which breaches article 15 standards, it is important that there are proper procedures for conscientious consideration of such claims, and that there are clear records kept of the findings of such consideration. Otherwise, employees may feel that the duty to afford all employees fair and non-discriminatory treatment is not taken with proper and sufficient seriousness.

The third claim: allegation of unfair dismissal

121. The Claimant submits that she was forced out of the workplace and/or permitted to work from home, so that the ostensible reason for dismissal (unauthorised absence) was not made out. Further or alternatively, she alleges that the dismissal was procedurally unfair.

122. For the reasons set out in our findings of fact at paragraphs 81-83 above, we do not accept that the Claimant was permitted to work from home. Rather, we find that, because she felt humiliated at work, and because she was convinced that the Defendant wanted her to leave and so she would be "*forced out*", the Claimant started to suffer from stress and simply ceased to turn up for work. The Defendant tried to contact her at least three times by text, and also by telephone and email, and receiving no response, sent her a letter of dismissal on 8 December 2021.

123. We consider that dismissing someone for a long period of unauthorised absence, without explanation, was a reasonable response. We accept the Defendant's case that failure to come to work without lawful excuse for more than seven days was misconduct which could justify dismissal, whether under its own contract, the Policy or article 24 of the Regulation. We accept that this was a reason capable of justifying a dismissal in principle.

124. However, we do consider that the manner of her dismissal was unfair. There was no attempt to offer the Claimant a disciplinary hearing to hear her explanation for her absence before dismissing her for it. This was required in the contract and by an implied contractual duty of fair procedure. There was no explanation in the dismissal letter of why the period of allegedly unauthorised absence was said to start on 17 October 2021, or why – on 8 December 2021 – it was decided that the dismissal would be treated as effective from 1 November 2021. There was no assertion of misconduct in the letter, nor any explanation of why it had been decided to dismiss the Claimant without the three months' notice to which she would be entitled unless there was a fair finding of misconduct which was sufficiently serious to justify the penalty of dismissal without any notice at all.

125. Article 14 of the Regulation requires records to be kept of disciplinary proceedings, and article 17 requires the employer to give each employee a written employment contract which must contain the list of specified minimum information set out in article 17(1), including terms and conditions relating to sick leave and disciplinary rules.

126. Article 38 of the Regulation allows for at least 60 days of paid sick leave in any twelve-month period, and this is mirrored in clause 3 of the Contract and Policy (see paragraph 19 above), which override the less favourable provisions elsewhere in the Contract.

127. Had the Claimant contacted the Defendant about her absence and provided satisfactory sick notes, we find she would have been entitled to up to 60 days of paid sick leave.

128. However, that is not what happened. The Claimant was off with sick notes for two days, and then simply ceased to attend work or contact the Defendant. This provided a problem for the Defendant, which was left not knowing the reasons for her absence. She could have been very seriously ill (for example, she could have had a road accident), and if she lived alone, she might reasonably been unable to contact the Defendant to explain this. Had that been the case, she might have been entitled to an ongoing period of sick pay. But she may have simply failed to show up to work without authorisation, which, after seven days, would justify dismissal for failure to comply with a contractual requirement. If that was the case, then in accordance with her contractual disciplinary procedure, she ought to have been summoned to a formal disciplinary procedure, and given five days' notice of the hearing, unless her manager had concluded, in consultation with the Human Resources Department, that this was so serious a case that it was not appropriate not to use this procedure. But we think that such an exception to the procedure for a fair hearing was intended for cases where there was really no argument about whether or not dismissal was the only response (for example, a case where there had been a serious criminal finding of, say, theft or assault) and this was not such a case. In any event, the failure to follow any kind of fair disciplinary procedure was breach of article 14 of the Regulation, which is a

minimum standard and would override the "*exception*" provisions in the Contract.

129. So, we conclude that if the Defendant was considering dismissing the Claimant without notice, for serious misconduct, she was entitled to notice of that possible disciplinary finding and sanction; and was entitled to a fair disciplinary hearing before three senior employees of the Defendant of equal or greater seniority than the Claimant, at least one of whom should have been from its Legal Services Department, with at least five days' notice. And, at the hearing, she should have been given the opportunity to state her case and have her explanations, and mitigating circumstances taken into account. If she had availed herself of the opportunity for the hearing, the gravity of the misdemeanour and the appropriate penalty ought to have been determined by the panel after open and conscientious consideration of the case she made. In any event, a record should have been made and kept of the decision-making process: the reason why the Claimant's absence was treated as misconduct so serious as to justify dismissal without notice; the reason why the dates chosen were selected; and a record of the disciplinary penalty imposed. If, after such a procedure, the appropriate penalty was deemed to be dismissal without notice, then the Contract would have been terminated on the day of the hearing and the period of notice would have run from that date.

130. Unfortunately, none of this took place in this case. Although we were told about records of earlier disciplinary proceedings involving the Claimant, there was no suggestion that any disciplinary procedure was conducted in this case. Had there been any such decision or procedure, we would have expected to see a record of it as required by article 14 of the Regulations.

131. Accordingly, we find that the Defendant did not comply with article 14 of the Regulations, or its own contractual disciplinary procedures. Had it done so, it may well have decided to dismiss the Claimant anyway, for unauthorised and unexplained absence from work. But this would have been from the date of the hearing. We see no possible justification for treating the Claimant's employment as having been terminated over a month before the date of the letter of dismissal.

The fourth claim: the Claimant was not properly paid her notice period

132. We uphold this claim. The Defendant's dismissal letter of 8 December 2021 inexplicably and unfairly stated that the last day of the Claimant's employment was 17 October 2021. However, there was no fair basis for backdating her dismissal to a date earlier than the dismissal letter itself simply because she had been absent from work. The Defendant did not purport to accept a resignation by the Claimant on an earlier date: the letter of 8 December 2021 was described as a dismissal.

Material and moral damages for breaches

Breach of article 15(5)

133. As we have indicated above, we consider the failure of so large a QFC entity as the Defendant to comply with the procedural requirements of article 15(5) is an important and material breach, and we accepted that the Claimant genuinely felt wounded by the failure to take her claims seriously and to dismiss her without a fair hearing. On the other hand, we did not find that there was substantive discrimination on grounds of race.

Unfair dismissal and failure to pay notice

134. As described above, the Defendant was obliged under articles 8, 14 and 17 of the Regulation to have in place a contractual disciplinary procedure, with a disciplinary hearing on no less than five clear days' notice. So, we consider that on 8 December 2021 when the Defendant decided to dismiss the Claimant, the fair course would have been instead to give her notice of a disciplinary hearing, which could not have taken place earlier than 14 December 2021. Had the Defendant held such a fair hearing, we cannot be certain what the outcome would have been. Having heard the Claimant's case, the Defendant's panel may or may not have concluded that summary dismissal would have been an appropriate

response. It might have decided to give her a final warning and have reinstated her; or it might have decided instead to dismiss her on notice for poor performance. On the balance of probabilities, we consider that the most likely outcome had the Defendant held a fair hearing, is that this would have taken place on 14 December 2021; and had there been such a hearing, the Defendant would have dismissed the Claimant on three months' notice. In any event, the Defendant should have paid the Claimant until the date of dismissal, which we find would have been 14 December 2021.

135. We therefore conclude that in respect of material damage relating to this part of the claim, the Defendant should pay the Claimant:

i. the pay and other compensation which she would otherwise have received if she had been at work until 14 December 2021 (the date upon which she ought to have been offered a disciplinary hearing), including outstanding holiday pay. We calculate that these sums would have been QAR 153,565.00 pay, plus QAR 110,767.00 in respect of unpaid holiday pay; and

ii. a sum equivalent to three months' notice, which she ought to have been paid from 14 December 2021, namely QAR 230,347.00.

136. This is a total of QAR 494,679.00 in compensatory damages for loss of pay and other compensation to which we find the Claimant was entitled under her Contract. The Claimant is also entitled to interest on this sum at the rate of 5% per annum from 14 December 2021 until the date of payment.

Moral damages

137. We consider that the Defendant's failures, both to give proper consideration to the Claimant's grievances relating to discrimination, to comply with the requirements of the Contract, as required by article 17 of the Regulation, were a serious matter. That is particularly so for so large and well-resourced a QFC entity, and after the Claimant's long service. Dismissal without procedure and

without explanation caused the Claimant to suffer injury to feelings which justifies a payment of moral damages.

138. We consider that compensation for moral damages should not be so low as to suggest that these are an unimportant matter, but nor so high as to disproportionately compensate the Claimant. We would normally expect the scale of moral damage to be somewhere between QAR 5,000.00 for the least serious claims, to QAR 250,000.00 for the most serious claims, concerning serious and long-standing harassment or other moral harm. Bearing in mind that scale, and that the failings here were important, but procedural and not substantive, we award the Claimant a sum of QAR 15,000.00 in respect of moral damage arising from the Defendant's failures in this respect.

Total damages

139. Consequently, the total damages payable by the Defendant to the Claimant is QAR 509,679.00, with interest due on QAR 494,679.00 of that sum from 14 December 2021 to the date of payment.

Penal provisions of the Regulation

140. We note that several of the breaches we have identified, of articles 15, 17 and 23 of the Regulation, may attract financial penalties as set out in the Schedule to the Regulation. We direct that a copy of this judgment be sent by the Registrar to the ESO to enable it to consider what if any further enforcement action it wishes to take.

By the Court,

[signed]

Justice Helen Mountfield KC

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

Representation

The Claimant was represented by Fatima Al-Saidi of the Al-Saidi Law Firm (Doha).

The Defendant was represented by Dr. Reem Al Ansari of Dr. Reem Al Ansari Law Firm (Doha).