

Dagmar v Dahlia [2013] DIFC SCT 022

JUNE 12, 2013 SCT - JUDGMENTS AND ORDERS

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, [Ruler](#) of Dubai

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS

BEFORE SCT [JUDGE SHAMLAN AL SAWALEHI](#)

Between

DAGMAR

Claimant

v

DAHLIA

Defendant

Hearing: 26 May 2013

Judgment: 11 June 2013

JUDGMENT OF SCT JUDGE SHAMLAN AL SAWALEHI

UPON hearing the Claimant and the Defendant

AND UPON reading the submissions and evidence filed and recorded on the [Court](#) file

IT IS ORDERED THAT:

1. The Claim be dismissed

The reasons:

Parties

1. The Claimant is Dagmar
2. The Defendant is Dahlia, [DIFC](#)

Background and the preceding history

1. The Claimant alleged that she had been employed by the Defendant Company from 15 April 2012 until 04 April 2013.
2. The Claimant requested that the Defendant pay her that which she was entitled to under her Employment Contract and compensation for unfair termination, discrimination and harassment. The Defendant had refused to pay the Claimant, which had led the Claimant to file this case before the Court.
3. No settlement was reached by the parties at the end of the consultation and, consequently, the case was sent for adjudication. On 26 May 2013 I heard both parties' submissions.

Particulars and defence

4. In her Particulars of Claim and during the hearing, the Claimant argued that her Employment Contract had been terminated, but she had not received her dues and benefits within 14 days following the end of her Employment Contract, in accordance with Article 18(1) of the Employment Amendment Law No.3 of 2012 of DIFC Law No.4 of 2005.
5. In particular the Claimant argued that she had never received a written contract nor a job description, however as per her employment visa, which was provided by the Defendant, her period of employment should be considered to have been from 11 April 2012 until 10 April 2015. Therefore, the Claimant claimed compensation for unpaid basic salary from 5 April 2013 to 10 April 2015 (the date of her employment visa had expired), end of service gratuity and compensation for unfair termination.
6. The Claimant further argued that the Defendant had not provided her with a healthy and harassment-free work environment, and that during her employment she had been abused both as a female and as a hard worker, as she had been instructed to work regardless of time and physical ability without overtime payment, and she was being ordered to work in a variety of roles such as sales, marketing, office management, PA, etc. Therefore, the Claimant claims compensation based on personal and emotional damage and working beyond working hours, discrimination and sexual harassment conducted by the Defendant's employee, Dahlia, who was her line manager at her working place.
7. In its defence and during the hearing firstly, the Defendant argued that there is no basis neither in the Claimant's employment contract nor in any Articles of the DIFC Employment Law for compensation of basic Salary until the Claimant's employment visa has expired. Secondly, as regards compensation for end of service gratuity the Defendant argued that the Claimant, at the time of termination, had completed fewer than 12 months service and she was therefore not entitled to gratuity payment. Thirdly, as regards compensation for unfair termination, the Defendant argued that the Claimant is not entitled to that compensation as there is no concept of such remedy in the DIFC Case-Law. Fourthly, as regards the

Claimant's claimed compensation for harassment and abuse the Defendant argued that there allegations were disingenuous and misconceived.

Finding

8. As I understood, the Claimant had based this claim for compensation on the Employment Contract in the first part, and on the liability of employers for employees' conduct as provided by the DIFC Employment Law in the second part.

9. I have examined the documents filed by the Defendant named "Statement of terms of employment" to approve the validity of the Claimant's employment contract, and I have noticed the following:

- a) The Claimant's name was referred to in this document as the Employee's name and the Defendant's name as the Employer;
- b) The document was signed by "JUNE THORPE" as the Chief Operating Officer of Dahlia on 24 April 2012;

- c) The same document has another unnamed signature dated 28 April 2012, but has a paragraph on the top of it which reads as follows:

"I hereby acknowledge receipt of a copy of the above statement and confirm my agreement to its terms as constituting (with the Confidentiality Agreement) my contract of employment"

10. On the above evidence, I am of the view that an employment contract was affirmed between the Claimant and the Defendant, and this contract is the basis of any legal or contractual obligations and rights between the parties and any Compensation claims must have a reference to its terms.

11. I have reviewed the employment contract as well as the DIFC Employment Law and I have found that the evidence submitted by the Claimant as regards the first part of the claim is neither sufficient nor reasonable to establish that the Defendant is contractually or legally liable to pay any compensation based on the employment contract in relation to that which the Claimant had claimed for in paragraph 5 of this Order, therefore I agree with the Defendant's argument as mentioned in paragraph 7 of this Order.

12. Now I should turn to the Claimant's second part of her compensation claim for discrimination and harassment allegations as detailed in paragraph 7 of this Order.

13. I should mention that the DIFC does not have its own Discrimination Act as in the case in different common law jurisdictions or it has Evidence Law. However, Article 50 of the [DIFC Courts Law No.10 of 2004](#) and Article 58.1 of the DIFC Amendment Employment Law No.3 of 2012 read as follows:

"(Article 50) where proceedings are instituted in the DIFC Courts, the rules of evidence to be applied in the proceedings will be the rules that (a) are prescribed by the DIFC Law; or (b) are applied in the courts of England and Wales; or (c) the DIFC Courts considers appropriate to be applied in the circumstances"

"(Article 58.1) An employer must not discriminate against an employee regarding employment or any term or condition of employment on the grounds of the employee's: (a) Sex; (b) marital status; (c) race; (d) nationality; (e) religion; and / or (f) mental or physical disability"

14. Although the amount claimed by the Claimant exceeds AED 200,000. All parties have elected in writing that it be heard by the Small Claims Tribunal "SCT" as provided for Part 53 of the Rules of the DIFC Courts "RDC"

15. Article 53.5(6) of the RDC provides that Rules 29.9 to 29.11 shall apply to small claims unless the SCT Judge orders otherwise, which means that all other provisions of Part 29 of the RDC would not apply unless directed by the SCT Judge.

16. As I had directed before the hearing, the Defendant had filed statements of witnesses of fact made by (1) Dahlia (Managing Director for the Defendant in the DIFC) and (2) Dahlia (Head of Human Resources for the Defendant and the Defendant's representative in these proceedings). Both statements were signed and dated 21 May 2013. The Claimant had filed a statement of witness of fact made by Dagmar (the Claimant herself) that was signed and dated 16 May 2013.

17. On 22 May 2013, the Claimant filed a reply to the Defendant's witness statements, the Defendant also filed a reply to the Claimant's witness statement.

18. I have examined at first the witness statement evidence given by xxxx who stated the following at paragraphs:

"(10) Dagmar did not raise any issue of harassment or inappropriate conduct by Dahlia either prior to or immediately following the resignations of 26 November 2012 and 11 December 2012, or at any stage during this period. However, Dagmar did raise issues relating to Dahlia's office hours and expenses during December 2012"

"(14) Dagmar contacted me by email on 5th February 2013 mentioning inappropriate workplace behavior, verbal harassment and offensive language. This was the first I had heard of any of the allegations that Dagmar had been making against Dahlia since December 2012. In this email she also said that she did not wish to raise a formal complaint"

"(16) Dagmar requested that I hold the interview on 18th February so I telephoned her on that date. During the call Dagmar was emotional and often incoherent. Initially she said that Dahlia was always trying to touch her and asking her out, on questioning, however, she then said that there was just one incident, and that she had made a recording of it. Dagmar said she felt that was unprofessional. I informed Dagmar that if she wanted me to investigate the matter, I would be pleased to do so. However, Dagmar expressly asked me to keep the matter discussed confidential and to not investigate the issues any further"

19. Furthermore, I have examined the witness statement in reply made by Ms June Thorpe, she stated the following, at paragraphs:

"(4) The informal complaint regarding Dahlia was first raised by Dahlia on 5 February 2013, which was over a month after the recording was made in December 2012. I did not "promise" Dahlia that I would investigate her complaint. In particular, Dahlia was absolutely insistent that I must keep the details of her complaint confidential and in particular, I should not mention them to Dahlia. I explained to Dagmar that I could not investigate her allegation without questioning Dahlia and I could not question Dahlia without him deducing that Dagmar had made a complaint. I advised Dagmar that she should raise a formal open complaint and I could then investigate it in accordance with the appropriate Dahlia".

"(6) Dahlia did not send various inappropriate links or emails to Dagmar ...Dagmar was covered by medical insurance while working for Dahlia contrary to her allegation"

"(10) Dagmar sent an email on 03 March 2013 raising complaints against Dahlia. However, this was after Dahlia had met Dagmar on 28 February 2013 saying that he believed the employment relationship should be terminated. I have since investigated Dagmar complaints, which included interviewing Dahlia. Following my investigation, I did not uphold any of Dagmar complaints".

20. Then, I have gone on to examine the witness statement evidence made by Dahlia, he stated, at paragraphs:

"(25) During mid-December, Dagmar and I went for Christmas lunch, during which I now understand she recorded part of our conversation. Although during the Christmas lunch, Dagmar and I engaged in a non-professional conversation, our conversations were at all-time two-way conversations which we were both comfortable contributing to and engaging in. It should be noted that at this time, Dagmar had resigned from Dahlia and so any claims that she feared losing her job are misleading and untrue"

"(46) On 30 April 2013, I was contacted by the Bur Dubai Police station and asked to visit them immediately. At the police station, I was informed that Dagmar had threatened to file a criminal case against me in relation to a missing vase and a complaint of harassment. I believed that Dagmar had taken all of her belongings from the office on 10 March 2013 when accompanied by Dahlia".

21. Finally, I have examined the witness statement in reply by Dahlia, he stated, at paragraphs:

"(8) This allegation is incorrect and misleading. I did not disturb Dagmar with unprofessional or inappropriate behaviour or jokes whatsoever. I have been managing people for over 10 years and have never received any complaints whatsoever regarding my management style".

"(9) I have never insulted, harassed or approached Dagmar. I am disappointed and appalled by the allegations raised by Dagmar. I am a happy married man with a family. I had no desire, intention or reason to harass Dagmar or any other individual whatsoever".

"(25) During the discussion with the police officer, I witnessed Dagmar telling the police office that she intended to obtain an undertaking to support her labour and employment claims against Dahlia. I agreed to sign an undertaking which confirmed I would have no contact or dealings with Dagmar in the future to avoid the stress and cost of defending myself against a criminal complaint. I have a family to support and I cannot risk being subject to any such claim. For the avoidance of doubt, the document which I signed does not have any reference to harassment ever taking place in the past or the future".

22. I rely on the above statements and it seems to me on the face of it that the Claimant had some difficulty to continue working at the Defendant workplace for personal reasons that had nothing to do with any act of the Defendant's company or its employee that might be related to discrimination or harassment.

23. In addition to the above statements and having reviewed Part 9 of the Amendment Employment Law No.3 of 2012, I did not find reasonable grounds to suggest that the Claimant was treated less favorably than others would be treated in the same circumstances on one of the prohibited grounds in article 58(1) as I have mentioned above, or that she was subjected to unwanted treatment or conduct which had the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive workplace.

Therefore all alleged conduct on the part of the Defendant's company or its employee cannot be classified

or amount to discrimination as defined in Article 58.2 of this Law.

24. Furthermore, I have found that the evidence submitted by the Claimant as regards the second part of the claim in support of her argument concerning alleged discrimination and harassment is neither sufficient nor reasonable to establish liability of employers, as is required by Article 51(1) of the Amendment Employment Law No.3 of 2012, which reads as follows:

"Subject to Article 51(2), an employer is liable for any act of an employee done in the course of employment".

25. In the light of the reasons and circumstances set out above, I am of the view that the Claimant did not make a successful submission and I decide that the Claimant's claim for compensation on the first and second parts should be dismissed.

Shamlan Al Sawalehi

Small Claims Tribunal Judge

Date of Issue: 12 June 2013

At: 12 pm.