

Migni v Merrup [2023] DIFC SCT 089

MAY 03, 2023 SCT - JUDGMENTS AND ORDERS

Claim No. SCT 089/2023

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammed Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS
BEFORE H.E. JUSTICE MAHA ALMHEIRI

BETWEEN

MIGNI

Claimant

and

MERRUP

Defendant

Hearing : **6 April 2023**
Further Submissions : **12 April 2023**
Judgment : **3 May 2023**

JUDGMENT OF H.E. JUSTICE MAHA ALMHEIRI

UPON this Claim being filed on 22 February 2023

AND UPON a hearing having been listed before H.E. Justice Maha Al Mheiri on 6 April 2023 with the Claimant and the Defendant's representative in attendance

AND UPON reading the submissions and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the amount of AED 1,984.54.

2. The Defendant shall proceed to cancel the Claimant's employment visa immediately and return his original passport.
3. The Claimant shall return the Defendant's property within his possession, namely, 1 shirt, 1 pair of safety shoes, 2 aprons and 1 pair of trousers.
4. The Defendant shall pay the Claimant the DIFC Courts' filing fee in the amount of AED 367.50.

Issued by:

Hayley Norton

Assistant Registrar

Date of issue: 3 May 2023

At: 2pm

THE REASONS

The Parties

1. The Claimant is Migni (the "Claimant"), an individual filing a claim regarding his employment at the Defendant company.
2. The Defendant is the Merrup (the "Defendant"), a company registered in the DIFC.

Background and the Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an employment contract dated 22 May 2022 (the "Employment Contract"). The Claimant was employed in the position of Sales Associate with a monthly salary of AED 2,500.
4. On 8 December 2022, the Claimant submitted his resignation letter to the Defendant, with the intention to serve a 1-month notice period (the "Resignation Letter"). On 15 December 2022, the Defendant sat down with the Claimant for a meeting to discuss his resignation, which resulted in the Claimant withdrawing his resignation letter.
5. Following which he received a letter from the Defendant on 5 January 2023, entitled "Violation of Confidentiality agreement dated 05/01/2023", the contents of that letter being that the Claimant shared confidential information with the Defendant's competitor resulting in a disciplinary meeting being conducted on 6 January 2023 to discuss the matter. Following this meeting, the Claimant was placed on a 2-month warning period.
6. On 9 January 2023, the Claimant informed the Defendant through WhatsApp that he will not be attending work and that he served his notice period in accordance with the Resignation Letter. In reply, the Defendant informed the Claimant that he withdrew the Resignation Letter and he has two weeks to come to work or they will report him to Government Services as absconding.

7. On 22 February 2023, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking the following relief in the amount of AED 2,723.04:

- (a) Payment in lieu of 16.6 days of annual leave in the amount of AED 1,915.38;
- (b) Payment in lieu of 1 sick day in the amount of AED 115.38;
- (c) Payment for 4 public holidays in 2022 in the amount of AED 230.76;
- (d) Return of his original passport; and
- (e) Cancellation of his visa.

8. On 8 March 2023, the Defendant filed its defence with counterclaim (the "Counterclaim") and is counterclaiming the following from the Claimant:

- (a) Resignation without serving his 3-month notice period in the amount of AED 7,500;
- (b) Damages for breach of the non-compete clause in his Employment Contract;
- (c) Failure to return company's belongings; and
- (d) Damages for economic losses.

9. On 6 March 2023, the parties attended a consultation before SCT Judge Delvin Sumo, however, they were unable to reach a settlement.

10. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a hearing held on 6 April 2023 (the "Hearing").

Discussion

11. This dispute is governed by the Employment Law Amendment Law DIFC Law No. 4 of 2021 (the "DIFC Employment Law") in conjunction with the Employment Contract.

12. I shall set out below each of the Claimant's claims, the Defendant's defence and Counterclaim, and accordingly, the Court's reasoning and finding.

Accrued but untaken annual leave

13. The Claimant claims an amount of AED 1,915.38 which reflects the amount accrued against his 16.6 days of untaken annual leave for 2022 to 2023. The Claimant submits that he has not taken any annual leave during his employment period. The Claimant therefore claims payment in lieu of the 16.6 days of annual leave.

14. The accrual of annual leave is carried out gradually throughout the year, and upon the resignation or termination of an employment relationship, any amounts owed would be pro-rated against the amount of time passed during the course of that year.

15. The Claimant is entitled to 21 days of annual leave per annum according to his Employment Contract, which he is entitled to avail once he completes 1 year of employment with the Defendant.

16. The Defendant submits that the Claimant has worked until 7 January 2023, by submitting the biometric log-in for the Claimant. As such, the Claimant's last working day was 7 January 2023, which resulted in the Claimant accumulating 13.21 days prorated until his last working day.

17. I have determined that the Claimant had accrued 13.2 days of annual leave at the time of his resignation. The Claimant must be paid in lieu of these leave days, the amount of AED 1,523.02 (AED 2,500 monthly salary x 12 / 260 days in a year x 13.2 = 1,523.02).

Public holiday

18. The Claimant submits that he is entitled to the sum of AED 461.52 for the public holidays that he worked at the Defendant which amounts to 4 days.

19. The Defendant rejects this claim on the basis that the Claimant is not entitled to these days as the holidays align with the government sector.

Article 32(2) of the DIFC Employment Law reads as follows:

“An Employer shall pay an Employee their Daily wage for each Public Holiday”.

20. Article 16(1)(f) of the DIFC Employment Law imposes an obligation on an employer to maintain such a record of such days and states as follows:

“An Employer shall keep records of the following information:

the dates of the Public Holidays taken by the Employee and the Daily Wages paid by the Employer in respect thereof;”

21. The Defendant failed to provide the records of the public holidays that the business was closed, which would have assisted the Court to understand the days that the Claimant was not working. Due to the lack of evidence submitted by the Defendant, I shall rely on the Claimant's submissions on the number of days that he has worked.

22. The Claimant requests payment for the 4 public holidays that he worked in the amount of AED 461.52, which is calculated according to the DIFC Employment Law. As such, the Claimant is entitled to AED 461.52 (AED 2,500 monthly salary x 12 / 260 days in a year x 4 = 461.52).

23. Therefore, I shall grant the Claimant's claim in respect of the 4 public holidays in the amount of 461.52.

Reimbursement of unpaid sick day

24. The Claimant submits that he is entitled to be paid 1 day of sick leave that the Defendant considered unpaid leave in the amount of AED 115.38. The Claimant however failed to provide any evidence to support this submission. As such I shall dismiss this claim for lack of evidence.

Counterclaim

Payment in lieu of notice period

25. As set out above, the Claimant's position is that he has served a one-month notice period, making his last working day 8 January 2023, while the Defendant's position is that the Claimant's last working day was 7 January 2023; taking the view that the Claimant had failed to serve a 3-month notice period in accordance with the Employment Contract.

26. The Claimant messaged the Defendant on 8 January 2023, stating that it is his last working day and that he served his one-month notice according to the resignation letter that he submitted.

27. The Defendant submits that the Claimant has breached the Employment Contract by not providing a notice period according to his Employment Contract. The Defendant submits that it requested the Claimant to continue working and if he fails to do so, he will have reported him as having absconded. The Defendant's HR Department repeatedly asked him to serve his notice period, but the request was ignored. The Defendant requests the amount of AED 7,500 for the uncompleted 3-month notice period.

28. Termination under the Claimant's Employment Contract states as follows:

"Termination

By the Employee

You may terminate the contract by giving the company 3 (three) months in advance written notice."

29. The Defendant argues that the Claimant submits that he completed the one-month notice period, but this statement is incorrect as he withdrew his resignation one week after giving his resignation.

30. The parties submitted screenshots from WhatsApp conversations between them, which concludes that although the Claimant did communicate that 8 January is his last day, he was questioning how many days more he should serve notice before the Defendant will cancel his visa. The Claimant also expressed in the hearing before me that he is willing to go back to work to serve the remainder of the notice period which the Defendant denied, submitting that the Claimant might damage the goods received by the Defendant's clients, and he cannot trust the Claimant anymore.

31. I find that the Claimant's last working day is 7 January 2023, and that he was willing to serve the other two months, but the Defendant refused his offer. As such, the Defendant's claim for the amount of AED 7,500 in compensation for the notice period is denied.

Breach of non-compete clause in his Employment Contract

32. The Defendant submits that the Claimant has breached the Employment Contract by sharing the Defendant's HR Department's number with the HR Department of Mono Laundry and Dry-Cleaning. The Defendant contends that the HR Department for Mono Laundry and Dry-Cleaning informed the Defendant that the Claimant will join them.

33. On 6 January 2023, the Claimant was confronted about the news and the fact that the Claimant shared the HR Department's number with a competitor with no reason and when presenting him with the evidence, he acknowledged and confessed that he was contacted by previous employees to join Mono Laundry and Dry-Cleaning, and the HR Department of Mono Laundry and Dry-Cleaning. The Defendant argues that the Claimant was going there during his days off to share the Defendant's internal information. The Defendant also requested that the Claimant sign a written statement confirming that he shared information with the competitor. In addition, the Defendant submits that the Claimant's Employment Contract states that he is not permitted to work for any competitor within Dubai, Abu Dhabi and RAK for a period of 1 year after leaving the Defendant.

34. Although the Defendant provided the written statement from the Claimant, the Claimant submits that the Defendant requested the Claimant to sign documents and he did so not knowing what he was signing. I have observed the Claimant's spoken English at the Hearing and I am convinced that the Claimant's command of the English language is limited to the extent that he required a translator to explain his case. The Claimant is still under the Defendant's visa and not working for any competitor.

35. The Defendant failed to provide any evidence to demonstrate any breach in the non-compete clause other than the statement signed by the Claimant. The burden of proof has not been met by the Defendant. Accordingly, I dismiss the Defendant's Claim for breach of Contract.

Failure to return company's belongings

36. The Defendant submits that the Claimant failed to return the companies' belongings, as per the company policy, employees are required to return all company equipment upon leaving the company. All the Defendant's employees are provided with the following:

- (a) 3 shirts;
- (b) Safety shoes;
- (c) 2 aprons; and
- (d) 1 pair of trousers

37. In reply, the Claimant argues that he only received 1 shirt and was promised to be handed 2 more.

38. The Defendant failed to demonstrate that the Claimant received 2 extra shirts other than the 1 that the Claimant states that he received. The Claimant is ordered to return all the company's belongings that are within his possession to the Defendant namely, 1 shirt, safety shoes, 2 aprons and 1 pair of trousers.

Compensation for Economic Losses

39. The Defendant submits that the Claimant has caused economic losses to the Defendant because of his abrupt absence from work without any notice.

40. Based on the employer-employee relationship, the Defendant relies on the Claimant and as a result the Defendant claims to have suffered a loss from around AED 500 – AED 1,000 daily. The Defendant argues that by going to the competitor, the Claimant shared his knowledge that he developed from the Defendant with the competition which resulted in the Defendant's customers leaving to Mono Laundry, their competition.

41. The Defendant seeks payment from the Claimant in the amount of AED 10,0000 as compensation for the alleged economic loss that had fallen upon the Defendant and as a result of the Claimant's actions.

42. The Defendant did not meet the burden to demonstrate that it has suffered undue damage at the hands of the Claimant. The Defendant failed to provide any prove of the economic loss that they suffered. I do not find it appropriate to order any damages to be paid to the Defendant as it is my view that the Defendant failed to provide evidence to demonstrate the damages that it has been subjected to by the Claimant.

43. Accordingly, I dismiss the Defendant's claim for damages as a result of economic loss.

Conclusion

44. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 1,984.54.

45. The Claimant shall return the Defendant's property within his possession, namely, 1 shirt, 1 pair of safety shoes, 2 aprons and 1 pair of trousers.

46. The Defendant's counterclaim shall be dismissed.

47. I am of the view that, as the Claimant has been successful in his claims, he is entitled to recover the court fee applicable to the filing of this case. The Defendant shall therefore pay to the Claimant the amount of AED 367.50 for the Court fee.