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 SCT JUDGE NASSIR AL NASSER

BETWEEN

JULIETA

Claimant

and

JAGGER RESTAURANT

Defendant

Hearing:**09 September 2019**

Judgment:**12 September 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant's Representative;

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 sum of AED 24,410.88 in relation to the below:

a. Unpaid salary during a period from dates in April, May and June;

b. April Service Charge;

c. 30 days' notice;

d. Gratuity; and

e. Penalties under Article 18 of the DIFC Employment Law from 10 July 2019 to 22 August 2019.

2. The Defendant shall continue to pay the Claimant penalties under Article 18 of the DIFC Employment Law at a daily rate of AED 164.38 from 23 August 2019 until the date of full payment.

3. The Defendant's counterclaim shall be dismissed.

4. The Defendant shall cancel the Claimant's employment visa.

5. The Defendant shall pay the Claimant the Court fees in the sum of AED 488.21.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 12 September 2019

At: 3pm

THE REASONS

The Parties

6. The Claimant is Julieta (the Claimant), an individual filing a claim against the Defendant regarding his employment at the Defendant company.

7. The Defendant is Jagger Restaurant (the Defendant), a company registered in the DIFC located Emirates Financial Tower, DIFC, Dubai.

Background and the Preceding History

8. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an Employment Contract dated 15 November 2017 (the "Employment Contract") with a Joining date on 1 January 2018.

9. On 25 June 2019, the Claimant was terminated by the Defendant by way of an email.

10. On 17 July 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the SCT) for various employment claims in the sum of AED 21,203.25.

11. On 4 August 2019, the Defendant filed a counterclaim and claimed the sum of AED 50,000.

12. On 22 August 2019, the Claimant amended his claim and included Article 18 of the DIFC Employment Law, and the total amount claimed reflected the sum of AED 28,536.25.

13. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 30 July 2019 and 18 August 2019 but were unable to reach a settlement.

14. Both parties attended the hearing before me on 9 September 2019.

The Claim

15. The Claimant's case is that he was employed with the Defendant as a `Waiter' from 1 January 2018 to 25 June 2019, the date upon which the Defendant decided to terminate the Claimant's employment, following which his last working day was 25 June 2019.

16. The Claimant, at the hearing, confirmed that he was on annual leave from 10 May 2019 to 24 June 2019. He also added that he had 15 calendar days leave remaining from 2018 and alleging that he is entitled to 30 calendar days leave for 2019 pursuant to the Employment Contract.

17. The Claimant alleges that he did not receive his Final Settlement, which are is follows:

a. Salaries for half of the month of April in the sum of AED 2,500.00.

b. May salary in the sum of AED 5,000.00.

c. June salary in the sum of AED 4,167.00.

d. 30 days' notice in the sum of AED 5,000.00.

e. Gratuity in the sum of AED 4156.25.

f. Service charge for April in the sum of AED 380.00 and May service charge.

g. Penalties under Article 18 of the DIFC Employment Law from 10 July 2019 to 22 August 2019 in the sum of AED 7,333.00.

The Defence and Counterclaim

18. The Defendant alleges that the Claimant formed a strike in the restaurant and along with other employees on 25 June 2019 stopped working, which led him to terminate the Employment Contract.

19. The Defendant failed to file a written defence. However, at the Hearing the Defendant alleged that he was forced to terminate the Claimant's employment due to his conduct.

20.The Defendant filed a counterclaim claiming the sum of AED 50,000 in damages as a result of the employee's strike.

Discussion

21. This dispute is governed by DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

22. The Claimant filed a claim, claiming the sum of AED 30,977.52 which includes:

a. Salaries of half of April in the sum of AED 2,500.00.

b. May Salary in the sum of AED 5,000.00.

c. June Salary in the sum of AED 4,167.00.

d. 30 days' notice in the sum of AED 5,000.00.

e. Gratuity in the sum of AED 4,156.25.

f. Service charge for April in the sum of AED 380.00 and May service charge.

g. Penalties under Article 18 of the DIFC Employment Law from 10 July 2019 to 22 August 2019 in the sum of AED 7,333.00.

23. Article 16(1) of the DIFC Employment Law stipulates the following:

"for each employee, an employer shall keep records of the following information:

(a) The employee's name, date of birth, occupation, telephone number and contact address (both residential and postal);

(b) The date employment began;

(c) The employee's wages (gross and net, where applicable), and the applicable pay period;

(d) The hours worked by the employee on each day, regardless of whether the employee is paid on an hourly or other basis;

(e) The benefits paid to the employee by the employer;

(f) Each deduction made from the employee's wage and the reason for it;

(g) The date of the national holidays taken by the employee; the amounts paid by the employer;

(h) The dates of the vacation leave taken by the employee, the amounts paid by the employer and the days and amounts owing; and

(i) Sick leave and other special leaves of absence.

Half of April, May and June Salary

24. The Claimant claimed that he was not paid half of April, the entirety of May and 25 days of June, thus unpaid salary in the sum of AED 11,667.00.

25. Clause 5 of the Employment Contract stipulates the following:

"Remuneration: Gross annual salary package will be AED 48,000/- (UAE Dirhams Forty Eight Thousand Only), part of which represents living Allowances (housing, transportation and other Allowances whenever applicable) based on a 12 month year and payable in equal monthly instalments free of any taxes, payable arrears until the last working day of the relevant month by direct deposit to a local bank account to be specified.

Total Monthly Salary Package: AED 4,000/- (UAE Dirhams Four Thousand Only)

a. Monthly basic Salary: AED 2,500/-

b. Service Charge and Tips: As per Company Policy.

c. Living Out Allowances:

i. Accommodation: AED 1,200/-

ii. Transportation: AED 300/-

iii. Other Allowances: N/A

26. The Claimant at the Hearing provided a document signed by the HR manager which states that effective from 1 February 2019 the Claimant's

position and salary would be as follows:

a. Designation: Head Waiter

b. Basic Salary: AED 3,000

c. Housing Allowance: AED 1,500

d. Transportation Allowance: AED 500.

27. At the Hearing the Defendant confirmed that the Claimant was not paid his half of April salary. However, in relation to May and June the Defendant argued that the Claimant was on leave and he exceeded his leave balance.

28. In response the Claimant argued that he had remaining 15 days balance from 2018 and that he is entitled to 30 days leave as per the Employment Contract. Clause 13 of the Employment Contract stipulates that: "in addition to United Arab Emirates Public Holidays (as declared for the private sector) the Employee will be entitled to 30 (thirty) calendar days of annual leave."

29. The Claimant provided a holiday application form signed and approved which reflects that he will be on paid leave from 10 May 2019 to 8 June 2019 and on unpaid leave from 9 June 2019 to 23 June 2019.

30. At the Hearing the Defendant confirmed that the Claimant was only paid half of April's salary and the remining was in the sum of AED 2,500. In relation to May 2019, the Claimant worked for 10 days as he started his holiday on 10 May 2019 and pursuant to the document provided, he was on paid leave from 10 May 2019 to 8 June 2019. Therefore, he is entitled to May 2019 Salary in the sum of AED 5,000.

31. In relation to June 2019, the Claimant was on paid leave up to 8 June 2019, and he resumed work on 24 and 25 June 2019 the date of his termination. Therefore, he is only entitled to 10 days salary for June 2019 in the sum of AED 1,643.38 calculated as following:

AED 5,000 x 12 months / 365 = 164.38 daily wage x 10 days = AED 1643.38

32. Therefore, I find that the Claimant is entitled to half of April, May and 10 days of June Salary in the sum of AED 9,143.38

April and May Service Charge

33. The Claimant argues that he is entitled to April and May service charges in the sum of AED 380 for April but failed to provide the calculation for May, as per the Employment Contract. Clause 5(e) of the Employment Contract.

34. As in regard to the Service Charge, the Defendant argues that this is paid pursuant to the Company policy, in which the Defendant was asked to present the Company policy and failed to do so.

35. Therefore, I find that the Defendant was given the opportunity on numerous occasions to provide the Company policy and calculation, in which he failed to do so.

36. As such, I find that pursuant to the Employment Contract, and Article 16(1)(e) of the DIFC Employment Law, the Claimant is entitled to service charges for April in the sum of AED 380.00. However, in relation to the service charge of May 2019, the Claimant only worked for 10 days and failed to provide the calculation in the claim form.

30 Days' Notice

37. The Claimant claimed 30 days' notice in the sum of AED 5,000 alleging that the Defendant terminated the Employment on 25 June 2019 by way of an email dated 26 June 2019.

38. At the hearing, the Defendant confirmed that the Claimant was terminated by way of an email.

39. Clause 18 of the Employment Contract which stipulates that: "After completion of the probation period, either Employee or the Company may terminate the employment by giving the other thirty (30) days written notice."

40. Therefore, I find that the Claimant is entitled to 30 days' notice in the sum of AED 5,000.00 pursuant to clause 18 of the Employment Contract.

Gratuity

41. The Claimant also argues that he is entitled to Gratuity in the sum of AED 4,156.25.

42. Article 62 of the DIFC Employment Law stipulates the following:

"(1) subject to Article 62(5) and (6), an employee who completes continuous employment of one (1) year or more is entitled to a gratuity payment at the termination of the employee's employment.

(2) the Gratuity payment shall be calculated as follows:

(a) twenty-one (21) days' basic wage for each year of the first five (5) years of service.

(b) thirty (30) days' basic wage for each additional year of service, provided that the total of the gratuity shall not exceed the wages of two (2) years of service.

43. The Claimant's joining date was on 1 January 2018 to 25 June 2019. Therefore, the Claimant worked for a period of 1 year and 5 months and 24 days, in which he is entitled to gratuity as per the DIFC Employment Law.

44. The gratuity shall be calculated as following:

> Gratuity for the year 2018 = AED 3,000 basic salary x 12 months / 365 days = AED 98.63 per day x 21 days = AED 2,071.23
>
> Gratuity for the period from January 2019 to May 2019 = 21 days / 12 months = 1.75 days per month x 5 months (Jan to May) = 8.75 days x AED 98.63 = AED 863
>
> Gratuity for the 10 days of June = 1.75 days / 30 = 0.05 per day x 10 days = 0.5 days x AED 98.63 = AED 49.31

45. Therefore, I find that the Claimant is entitled to gratuity in the sum of AED 2,983.54.

Penalties under Article 18 of the DIFC Employment Law

46. The Claimant claims penalties under Article 18 of the DIFC Employment Law from 10 July 2019 to 22 August 2019 in the sum of AED 7,333.00.

47. Article 18 of the DIFC Employment Law states that:

> "(1) An employer shall pay all wages and any other amount owing to an employee within fourteen (14) days after the employer or employee terminates the employment.
>
> If an employer fails to pay wages or any other amount owing to an employee in accordance with Article 18(1), the employer shall pay the employee a penalty equivalent to the last daily wage for each day the employer is in arrears."

48.The Claimant was an employee of the Defendant from 1 January 2018 to 25 June 2019 the date he was terminated. Since then the Defendant failed to pay the Claimant his Final Settlement dues within 14 days after the termination, it automatically triggers Article 18.

49. The Claimant claimed article 18 of the DIFC Employment Law from 10 July 2019 to 22 August 2019 which calculates to 42 days. Therefore, 42 days x 164.38 daily wage = AED 6,903.96. However, pursuant to Article 18(2) the Defendant shall continue to pay the Claimant a penalty equivalent to a daily wage of AED 164.38 until the date of full payment.

Cancellation of Employment Visa

50.Since the Employment Contract has been terminated, the Defendant shall pay the Claimant all his Final Settlement dues and cancel his Employment's visa.

Counterclaim

51. The Defendant filed a counterclaim claiming the sum of AED 50,000.00 in damages as a result of the employee's strike.

52. The Defendant provided the figures of the gross sale of the day of the strike and the day after which reflected a difference in the gross sale. However, I find that the evidence provided is not sufficient to establish whether the Defendant is entitled to damages and whether the strike was the cause of the difference in the gross sale.

53. Therefore, I dismiss the Defendant's claim of damages in the sum of AED 50,000.00 for lack of evidence.

Conclusion

54. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of **AED 24,410.88** in relation to the below:

> a. Unpaid salary as set out in paragraphs 24-32;
>
> b. April service charge;
>
> c. 30 days' notice;
>
> d. Gratuity; and
>
> e. Penalties under Article 18 of the DIFC Employment Law from 10 July 2019 to 22 August 2019.

55. The Defendant shall continue to pay the Claimant penalties under Article 18 of the DIFC Employment Law at a daily rate of AED 164.38 from 23 August 2019 until the date of full payment.

56. The Defendant's counterclaim is dismissed.

57. The Defendant shall cancel the Claimant's employment visa.

58. The Defendant shall pay the Claimant the Court fees in the sum of **AED 488.21**.



Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 12 September 2019

At: 3pm