Claim No. SCT 318/2018

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

IBIZA

Claimant

and

IMRE LIMITED

Defendant

Hearing:**15 November 2018**

Further Submissions:**20 November 2018**

Judgment:**25 November 2018**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant;

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 248,346.50 being the following:

(a) the unpaid salaries of February 2018, March 2018, April 2018 and August 2018 in the sum of AED 120,000;

(b) 10 days salary of September 2018 in the sum of AED 10,000;

(c) The end of service gratuity in the sum of AED 22,050;

(d) Annual Air Fare for the Claimant and his family in the sum of AED 4,950;

(e) Reimbursement 1 in the sum of AED 1,196.

(f) 13 days of untaken annual leave in the sum of AED 13,000;

(g) Reimbursement 2 in the sum of AED 16,151;

(h) Penalties under Article 18 of the DIFC Employment Law in the sum of AED 61,000 up to the date of this Judgment; and

(i) Penalties under Article 18 of the DIFC Employment Law shall continue to accrue pursuant to the Claimant's daily wage of AED 1,000 until the date of full payment.

2.All other claims shall be dismissed.

3. The Defendant shall pay the Claimant the Court fees in the sum of AED 4,926.93.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 25 November 2018

At: 10am

THE REASONS

The Parties

1. The Claimant is Ibiza (herein "the Claimant"), an individual filing a claim against the Defendant regarding his employment at the Defendant company.

2. The Defendant is Imre Limited (herein "the Defendant"), a company registered in the DIFC located at DIFC, Dubai.

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 30 January 2017 as a "Senior Manager Corporate Advisory" with a commencement date of employment on 1 March 2017. The Claimant's total salary was AED 30,000 which consists of 60% of basic wage in the sum of AED 18,000 and 40% for allowances in the sum of AED 12,000, 24 working days of leave per calendar year and a return ticket eligible to the Claimant and his family to his home country for each 12 months of employment.

4. On 7 October 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of AED 452,204.00 which consists of his unpaid salaries, 3 months' notice, end of service benefits, balance leave salary, annual air fare for year 2017, outstanding reimbursement and expenses claims, penalties under Article 18(2) of the DIFC Employment Law and the Court fees.

5. On 16 October 2018, the Defendant filed an Acknowledgment of Service intending to defend all of this claim.

6. The parties met for a Consultation with SCT Judge Ayesha Bin Kalban on 22 October 2018 but were unable to reach a settlement.

7. Both parties attended the hearing before me listed on 15 November 2018.

8. At the hearing the Defendant agreed on the following:

(a) The unpaid salaries of February 2018, March 2018, April 2018 and August 2018 in the sum of AED 120,000;

(b) 10 days' salary of September 2018 in the sum of AED 10,000;

(c) The end of service gratuity in the sum of AED 22,050;

(d) Annual air fare for the Claimant and his family in the sum of AED 4,950; and

(e) Reimbursement 1 in the sum of AED 1,196.

9. However, the Defendant disputed the following:

(a) 3 months' notice period in the sum of AED 90,000;

(b) 13 days of untaken annual leave in the sum of AED 13,000;

(c) Reimbursement 2 in the sum of AED 16,151; and

(d) Penalties under Article 18(2) of the DIFC Employment Law.

10. Therefore, the agreed list will be considered as a consent between the parties and shall be stated as such in my Conclusion below. However, in regard to the disputed list, I will decide each issue below.

The Claim

11. the Claimant alleges that the Defendant terminated his employment without notice. Adding that he is entitled to 3 months' notice pursuant to Clause 4.4(b) of the Employment Contract dated 30 January 2018, which states that:

"where your Employment has been continuous for six (6) month or more after the probation period, the notice period shall not be less than:

(b) Ninety (90) days if the period of continuous employment twelve (12) months or above."

12. The Claimant also claimed 13 days of untaken annual leave in the sum of AED 13,000. The Claimant referred to Clause 3.3 of the Employment Contract which states the following:

"you shall be entitled to 24 working days of leave per calendar year, in addition to public holidays of your host country."

13. The Claimant also claimed a reimbursement from the period of December 2017 to July 2018 in the sum of AED 16,151 for which the Claimant alleges that he had submitted the expenses form to the Defendant. The Claimant provided a letter from the Defendant dated 4 July 2018, signed by both the Claimant and the AGM HR, which confirms that the delayed salaries of AED 90,000 plus a reimbursement of AED 14,000, as mutually agreed, will be paid in two installments, namely, the first installment in the sum of AED 52,000 on 31 July 2018, and the second installment in the sum of AED 52,000 on 15 August 2018.

14. The Claimant also alleges that he is entitled to penalties under Article 18(2) of the DIFC Employment Law from the date the payment was delayed until the dated of actual payment.

The Defence

15. The Defendant alleges that the Claimant is not entitled to notice period pursuant to a letter dated 15 April 2018 signed by both the Claimant and the Defendant on 17 April 2018, which states that:

> "thus, you are given this letter in respect of your underperformance. You are expected to make some measurable improvements within the course of three (3) months.
>
> Should you fail to comply with the above, kindly consider this letter as a notice period that may lead to termination of your employment contract."

16. The Defendant also alleges that the Claimant is not entitled to his untaken annual leave in the sum of AED 13,000. The Defendant alleges that, from 1 March 2017 to 1 March 2018, the Claimant was entitled to 24 working days as per the Employment Contract, however, the Claimant utilized 5 days and the remaining 19 days were forfeited as the Defendant's policy is "*subject to Article 26(3), an employee is entitled to carry forward up to 5 working days of accrued but untaken vacation leave into next year for a maximum period of twelve (12) months after which any unused vacation leave shall expire.*"

17. As for the period of 1 March 2018 to 10 September 2018, the Defendant alleges that the Claimant was entitled to 12 working days. The Defendant alleges that the Claimant utilized 18 days of leave during 1 March 2018 to 10 September 2018, therefore, the Defendant calculated that the Claimant owes the Defendant 1 day.

18. In relation to the reimbursement in the sum of AED 16,151, the Defendant alleges that the expenses claims were either not submitted or submitted late and were unapproved by the line manager.

19. In relation to penalties under Article 18(2) of the DIFC Employment Law, at the hearing, the Defendant asserted that if the Claimant is entitled to Article 18(2) of the DIFC Employment Law, as per the Courts finding then they will be obliged to pay.

Discussion

20. This dispute is governed by the DIFC Employment 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.

3-Month Notice period

21. The Claimant argues that he is entitled to 3 months' notice period as per Clause 4.4(b) of the Employment Contract. However, the Defendant argues that the Claimant was given 3 months' notice as per the letter dated 15 April 2018, signed by both parties as an acceptance on 17 April 2018.

22. The Defendant also presented the termination letter dated 10 September 2018, which states that:

> "after having reviewed the outcome of your performance improvement plan, started on 17 April 2018 and ended on 17 July 2018 I regret to inform you that the performance are not yet meeting the standard required by our company.
>
> During the same meeting you also intended to resign from your position but then, you went on emergency leave from 2 August 2018 to 27 August 2018 and no resignation has been submitted.
>
> The Company has decided after you joined back to give you some additional time to prove yourself but until today there is no improvement in your commitment at work and no generation of new business.
>
> Your termination and last working day are effective today 10 September 2018 since the Company has given you already 3 months' notice before your improvement performance plan 17 April 2018 to 17 July 2018."

23. I am satisfied that the Claimant is not entitled to three months' notice pursuant to the letter dated 15 April 2018 signed by the Claimant on 17 April 2018.

Annual Leave

24. The Claimant argues that he is entitled to 13 days' annual leave accrued but untaken. However, the Defendant argues that the Claimant is not entitled to his untaken annual leave in the sum of AED 13,000. Furthermore, from 1 March 2017 to 1 March 2018, the Claimant was entitled to 24 working days as per the Employment Contract, however, the Claimant utilized 5 days and the remaining 19 days were forfeited as the Defendant's policy is "*subject to Article 26(3), an employee is entitled to carry forward up to 5 working days of accrued but untaken vacation leave into next year for a maximum period of twelve (12) months after which any unused vacation leave shall expire."*

25. As for the period of 1 March 2018 to 10 September 2018, the Defendant alleges that the Claimant was entitled to 12 working days. The Defendant alleges that the Claimant utilized 18 days of leave in during 1 March 2018 to 10 September 2018, therefore, the Defendant calculated that the Claimant owes the Defendant 1 day.

26. Article 10(1) of the DIFC Employment Law states that:

> "the requirement of this Law are minimum requirements and a provision in an agreement to waive any of those requirements, except where

expressly permitted under this Law, has no effect.

27. Therefore, pursuant to Article 27(2) of the DIFC Employment Law:

"An employee is entitled to carry forward his accrued but untaken vacation leave up to a maximum of twenty (20) working days into the next calendar year for a maximum period of twelve (12) months after which the unused leave shall expire."

28. I am not satisfied with the Defendant's argument and calculation. I find that the Claimant's remaining 19 days shall not be forfeited but shall be carried forward to 2018. Therefore, the Claimant's leave balance is 19 days from 2017/2018 + the 12 days from 1 March 2018 to 10 September 2018 = 31 working days - 18 days utilized in 2018 = 13 days untaken vacation leave.

29. Therefore, I find that the Claimant is entitled to a payment in lieu of vacation leave of 13 days in the sum of AED 13,000 (AED 30,000 monthly salary / 30 days = AED 1,000 daily wage).

Reimbursement

30. The Claimant argues that he had submitted the expenses form to the Defendant in the sum of AED 16,151. The Claimant also provided a letter from the Defendant dated 4 July 2018, signed by both the Claimant and the AGM HR which confirms that the delayed salaries of AED 90,000 plus a reimbursement of AED 14,000, as mutually agreed, will be paid in two installments, namely, the first installment in the sum of AED 52,000 on 31 July 2018, and the second installment in the sum of AED 52,000 on 15 August 2018.

31. The Defendant failed to show evidence that the agreed sum of AED 14,000 was reimbursed to the Claimant. In relation to the extra sum of AED 2,151, the Claimant provided all the expenses forms submitted to the Defendant from 31 December 2017 to 31 July 2018, which reflects the total amount of AED 16,151.

32. Therefore, I find that the Claimant is entitled to a reimbursement in the sum of AED 16,150.50

Penalties under Article 18 of the DIFC Employment Law

33. The Claimant's claimed penalties under Article 18 of the DIFC Employment Law, which states the following:

"18(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.

18(2) 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 penalty equivalent to the last daily wage for each day the employer is in arrears."

34. The Claimant's last working day was on 10 September 2018, following which the Defendant should have paid the Claimant his dues 14 days from the date of the Claimant's last working day, being, 24 September 2018. However, the Defendant failed to pay the Claimant his dues on time.

35. Therefore, I find that the Claimant is entitled to penalties under Article 18 of the DIFC Employment Law from 25 September 2018 up to 25 November 2018 in the sum of AED 61,000 (AED 30,000 monthly salary / 30 days = AED 1,000 daily wage).

36. The penalties shall continue to accrue from the date of this Judgment up to the date of full payment.

Conclusion

37. In light of the aforementioned, I find that the Defendant shall pay the Claimant the total sum of AED 248,346.50 being the claims agreed by the Defendant and the claims decided by the Courts.

38. The Defendant agreed on the Claimant's following claims:

(a) The unpaid salaries of February 2018, March 2018, April 2018 and August 2018 in the sum of AED 120,000;

(b) 10 days' salary of September 2018 in the sum of AED 10,000;

(c) The end of service gratuity in the sum of AED 22,050;

(d) Annual air fare for the Claimant and his family in the sum of AED 4,950; and

(e) Reimbursement 1 in the sum of AED 1,196.

39. The claims decided by the Courts are the following:

(a) 13 days of untaken annual leave in the sum of AED 13,000;

(b) Reimbursement 2 in the sum of AED 16,151; and

(c) Penalties under Article 18 of the DIFC Employment Law in the sum of AED 61,000 up to the date of this Judgment.

(d) Penalties shall continue to accrue pursuant to the Claimant's daily wage of AED 1,000 until the date of full payment.

40. All other claims shall be dismissed.

41. The Defendant shall pay the Court fee to the Claimant in the sum of AED 4,926.93.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 25 November 2018

At: 10am