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

JOSEY

Claimant

and

JEROME

Defendant

Hearing:**08 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 9,494.50 in relation to the below:

a. April, May and June Service Charge;

b. May and June tips;

c. Annual leave for 16 days;

d. Public Holidays; 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 wage of AED 131.50 from 23 August 2019 until the date of full payment.

3. The Claimant's other claims and 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 449.89.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 12 September 2019

At: 3pm

THE REASONS

The Parties

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

7. The Defendant is Jerome (the Defendant), a company registered in the DIFC located in 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 6 November 2018 (the Employment Contract).

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

10. On 14 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 19,619.00. in which the Claimant received the sum of AED 13,000 in cash at the consultation.

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 in the sum of AED 16,913.21.

13. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 31 July 2019 and 18 August 2019 but were unable to reach a settlement.

14. Both parties attended the Hearing before me on 8 September 2019.

The Claim

15. The Claimant's case is that he was employed with the Defendant as a `Waiter' from 6 November 2018 to 25 June 2019 the date the Defendant decided to terminate the Claimant's employment, following which his last working day was 25 June 2019.

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

a. April, May and June service charge in the sum of AED 1,140.00.

b. May and June Salary in the sum of AED 7,333.00.

c. May and June Tips in the sum of AED 2,000.00

d. Overtime for 144 hours in 52 days in the sum of AED 1,992.00.

d. 30 days' notice in the sum of AED 4,000.00.

e. Annual leave for 16 days in the sum of AED 3154.00.

f. Penalties under Article 18 of the DIFC Employment Law from 10 July 2019 to 22 August 2019 in the sum of AED 7,304.00.

g. Airline Ticket Entitlement in the sum of AED 3,024.74.

h. Public Holidays in the sum of AED 584.47.

17. The Claimant confirmed that he has received the sum of AED 13,000.00 in cash at the consultation which was for his salaries and notice period.

The Defence and Counterclaim

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

19. The Defendant failed to file a written defence. At the hearing, the Defendant confirmed that he had paid the Claimant the sum of AED 13,000.00 in cash that covers his salaries and failed to provide any calculations or defence in regard to the Claimant's other claims.

20. The Defendant filed a counterclaim claiming the sum of AED 50,000 in damages as a result of the 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 confirmed that he has received the sum of AED 13,000.00 from the Defendant in cash as payment for his salaries and notice period. However, his Salary and notice were only 11,333.00, therefore, I will offset the sum of AED 1,667.00 from the Claimant's entitlements below.

23. The Claimant filed a claim, claiming the sum of AED 16,913.21 which includes:

a. April, May and June Service Charge in the sum of AED 1,140.00.

b. May and June Tips in the sum of AED 2,000.00.

c. Overtime for 144 hours in 52 days in the sum of AED 1,992.00.

d. Annual leave for 16 days in the sum of AED 3154.00.

e. Penalties under Article 18 of the DIFC Employment Law from 10 July 2019 to 22 August 2019 in the sum of AED 7,304.00.

f. Airline Ticket Entitlement in the sum of AED 3,024.74.

g. Public Holidays in the sum of AED 584.47.

24. 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.

April, May and June Service Charge and May and June Tips

25. The Claimant argues that he is entitled to April, May and June service charges in the sum of AED 380 per month and tips in the sum of AED 2,000 for May and June as per his Employment Contract. 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 1,300/-

ii. Transportation: AED 200/-

iii. Other Allowances: N/A

26. With regards to the Service Charge and tips, 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. The Defendant also argues that the tips don't accrue to the sum of AED 1,000 per month, but again failed to provide any evidence that reflects the Service Charge and tips.

27. Therefore, I find that the Defendant was given the opportunity on numerous occasions to provide the company policy information and calculation, and yet failed to do so.

28. As such, I find that the Claimant is entitled pursuant to his Employment Contract to the Service charges for April, May and June in the sum of AED 1,140.00 and also entitled to Tips for May and June in the sum of AED 2,000.00.

Overtime for 144 hours in 52 days

29. The Claimant claims the sum of AED 1,992.00 for his alleged overtime of 144 hours in 52 days, but at the Hearing the Claimant recalculated his figure and introduced the figure of AED 7,966.00.

30. At the Hearing the Claimant argued that the Defendant verbally agreed to pay the Claimant overtime. However, in response the Defendant argued that this was not agreed and there is nothing in writing submitted on the Court file to establish whether or not the Claimant is entitled to overtime.

31. Assuming that there was evidence to establish that the Claimant is entitled to overtime, the calculations presented by the Claimant at the Hearing is exaggerated. The Claimant's monthly salary was AED 4,000 x 12 months= AED 48,000/365= 131.50 per day/12 hours= AED 10.95 per hour x 144 hours= AED 1,576.80.

32. In the case, that there is no sufficient evidence to determine whether the Claimant is entitled to overtime, I shall dismiss the Claimant's claim of overtime.

16 days' annual leave

33. The Claimant argues that he is entitled to 16 days annual leave accrued but untaken in the sum of AED 3,154.00.

34. 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."

35. Article 16(1)(h) of the DIFC Employment Law as mentioned in paragraph 19 above stipulates the following: "The dates of the vacation leave taken by the employee, the amounts paid by the employer and the days and amounts owing; and."

36. The Claimant claimed 16 days annual leave accrued but untaken in the sum of AED 3,154.00. Pursuant to Article 16(1)(h) of the DIFC Employment Law the Defendant has to keep in record the dates of the vacation leave taken by the employee and the amounts paid by the employer and the days and amounts owing. However, the Defendant failed to provide any records of the Claimant's annual leave and did not even dispute the Claimant's claim.

37. I have not been provided with evidence of how the Claimant reached the calculation of AED 3,154.00. Therefore, I will recalculate based on the Claimant's daily wage of AED 131.50 as calculated above in paragraph 26. The calculation will be as follows:

16 days annual leave x AED 131.50 = AED 2,104.00.

38. Therefore, I find that the Claimant is entitled 16 days annual leave accrued but untaken in the sum of AED 2,104.00.

Public Holidays

39. The Claimant also argues that he is entitled to Public Holidays in the sum of AED 584.47.

40. Article 16(1)(g) stipulates that: "The date of the national holidays taken by the employee; the amounts paid by the employer;

41. The Claimant argues that he had worked on 3 days public holiday dated 3,4 and 5 June 2019. On the other hand, the Defendant failed to provide any records of the dates of the public holidays.

42. However, the calculations made by the Claimant are not correct and the public holiday should be calculated based on the Claimant's daily wage, which is AED 131.50 x 3 Public holidays = AED 394.50

43. Therefore, I find that the Claimant is entitled to AED 394.50 for working on a 3 days Public holiday.

Air Ticket

44. The Claimant claimed Air Ticket to his home country in the sum of AED 3,024.74.

45. Clause 14 of the Employment Contract states that: "upon completion of 24 (twenty four) months of uninterrupted service with the company, the Employee will be entitled to 1 (one) round-trip economy ticket and in each subsequent period of 24 (twenty four) months, to the nearest international airport destination in your home country (South Africa) to coincide with the employee's annual leave. The amount for the ticket, which will set on a yearly basis, will be transferred to the employee on his/her anniversary month."

46. The Claimant argues that he is entitled to a return ticket to his home country on the basis that the Defendant terminated his Employment.

47. Pursuant to clause 14 of the Employment Contract, the Claimant did not complete 24 months uninterrupted service with the Company. Furthermore, the Employment Law does not include a clause which states that upon termination the Employee would be entitled to an Air ticket to his home Country.

48. Therefore, I find that the Claimant's claim for Air Ticket in the sum of AED 3,024.74 shall be dismissed.

Penalties under Article 18 of the DIFC Employment Law

49. 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 7,304.00.

50. 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.
>
> (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 a penalty equivalent to the last daily wage for each day the employer is in arrears."

51. The Claimant was an employee of the Defendant from 6 November 2018 to 25 June 2019 the date he was terminated. Since then the Defendant failed to pay the Claimant his Final Settlement dues which led Article 18 to be triggered.

52. 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 131.50 daily wage = AED 5,523. However, pursuant to Article 18(2) the Defendant shall continue to pay the Claimant a penalty equivalent to a daily wage of AED 131.50 until the date of full payment.

Cancellation of Employment Visa

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

Counterclaim

54. The Defendant filed a counterclaim claiming the sum of AED 50,000.00 in damages as a result of the strike.

55. 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.

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

Conclusion

57. The Claimant confirmed that he has received the sum of AED 13,000.00 from the Defendant in cash as payment for his salaries and notice period. However, his Salary and notice were only 11,333.00, therefore, I will offset the sum of AED 1,667.00 from the Claimant's entitlements below.

58. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 11,161.50 - AED 1,667.00= AED 9,494.50 in relation to the below:

a. April, May and June Service Charge;

b. May and June tips;

c. Annual leave for 16 days;

d. Public Holidays; and

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

59. The Defendant shall continue to pay the Claimant penalties under Article 18 of the DIFC Employment Law at a daily rate of AED 131.50 from 23 August 2019 until the date of full payment.

60. The Claimant's other claims and the Defendant's counterclaim shall be dismissed.

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

62. The Defendant shall pay the Claimant the Court fees in the sum of AED 449.89.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 12 September 2019

At: 3pm