Claim No: SCT 167/2016

SCT 169/2016

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 MARIAM DEEN

BETWEEN

GISSELLE

Claimant

v

GORDON DIFC

Defendant

Hearing: **3 November 2016**

Judgment: **7 November 2016**

JUDGMENT OF SCT JUDGE MARIAM DEEN

UPON the Claim Form in SCT 167/2016 being filed by the Claimant on 17 October 2016 (the "Claim");

UPON the Claim Form in SCT 169/2016 being filed by the Defendant on 23 October 2016 (the "Counterclaim");

UPON the parties being called on 23 October 2016 for a Consultation regarding the Claim with SCT Officer Ayesha Bin Kalban, with the Claimant and the Defendant's representative attending in person;

UPON the parties being called on 2 November 2016 for a Consultation regarding the Counterclaim with SCT Officer Ayesha Bin Kalban, with the Claimant and the Defendant's representative attending in person;

UPON the parties not having reached settlement with respect to the Claim or Counterclaim;

UPON a Hearing having been scheduled before SCT Judge Mariam Deen on 3 November 2016 at 10am, with the Claimant participating via telephone and the Defendant's representative attending in person;

AND UPON reviewing all documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1.The Defendant shall pay the Claimant a final settlement of AED 887.67 owed by the Defendant for unpaid salary;

2. The Defendant shall pay the Claimant AED 5,523.28 as a penalty pursuant to Article 18(2) of DIFC Employment Law and an additional AED 98.63 per day from the date of this Judgment, until payment is made;

3. The Defendant shall reimburse the Claimant's Court fee in the amount of AED 367.50; and

4. The Defendant's Counterclaim is dismissed.

THE REASONS

Parties

5.Gisselle (hereafter the "Claimant") is an individual formerly employed as a hostess at Restaurant LLC, trading as Gordon DIFC, under an employment contract dated 3 May 2016.

6. Gordon DIFC (hereafter the "Defendant") is a subsidiary of Restaurant LLC located within the DIFC, formerly employing the Claimant.

Background and the Preceding History

7. On 17 October 2016, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for the return of her passport and salary allegedly owed to her following her resignation from employment with the Defendant, in addition to reimbursement of the Court fee.

8. On 23 October 2016, the Defendant filed a claim with the SCT for AED 3,000 as reimbursement of the cost of recruiting and training the Claimant pursuant to Clause 13.b of the employment contract, as she resigned prior to the completion of 12 months of employment with the Defendant.

9. The parties were called for a Consultation relating to the Claim, with SCT Officer Ayesha Bin Kalban on 23 October 2016, and for a Consultation relating to the Counterclaim on 2 November 2016 with SCT Officer Ayesha Bin Kalban, however, a settlement could not be reached in either.

10. A Hearing was scheduled before me on 3 November 2016, with the Defendant's representative in attendance and the Claimant participating via telephone. SCT 167/2016 and SCT 169/2016; the Claim and Counterclaim respectively, were consolidated and I ordered that they be dealt with jointly at the Hearing. I heard submissions from both parties, following which the case was reserved for judgment.

The Claim

11. The Claimant's case is that she was employed by the Defendant as a restaurant hostess pursuant to a contract of employment dated 3 May 2016, which states her joining date as being 20 May 2016. Following her resignation, the Claimant completed her last day of employment on 30 August 2016 and in her Claim Form asserts that she has not been paid for 8 working days and that this salary is owed to her, together with the cost of the Court fee. In the Hearing the parties helpfully agreed that it was in fact 9 working days, which directly preceded the Claimant's last day of 30 August 2016, that the Claimant had not been paid for.

12. In the Hearing, the Claimant amended her Claim to include the application of Article 18 of DIFC Employment Law, requiring an employer to pay all wages owing to an employee within 14 days of termination of the employment, failing which the employer shall become liable to pay the employee a penalty equivalent to the last daily wage for each day the employer is in arrears.

13. It was also clarified in the Hearing that the Claimant's passport had been returned to her and was no longer an issue in the case.

The Counterclaim

14. The Defendant did not put forward a defence to the Claim, instead it acknowledged that the Claimant has not been paid for her last 9 days of work and sought for AED 3,000 to be deducted from the amount owed to the Claimant pursuant to Clause 13.b of the employment contract, which provides for training and recruitment costs to be reimbursed to the Defendant if the Claimant resigns before completing 12 months of employment.

15. The Defendant submitted that the training took place between 20 May 2016 to 1 June 2016 with the Claimant receiving a full salary and food during that time. It was also asserted that it was clear in the employment contract that the Claimant would be liable to pay AED 3,000 to the Defendant in the event that she resigned before completing 12 months of service; the Defendant asserts that the Claimant willingly entered into the employment contract and should be bound by Clause 13.b.

16. In response to the Counterclaim the Claimant submitted that the training was conducted by her former manager and was more of an induction or orientation than training. In the Hearing she submitted that she gained no additional expertise as a result of the training as she already had experience in hospitality and she requested evidence of the cost of the training and some corresponding certification if she was expected to pay for it.

Discussion

The Claim

17. The Claim is undisputed and both parties agreed in the Hearing that the Claimant was entitled to 9 days' wages. The Claimant's monthly salary was AED 3,000; accordingly, her daily salary can be calculated as follows:

(3,000 x 12) / 365 = AED 98.63

Therefore, I am satisfied that the Claimant is entitled to receive AED 887.67 (9 x 98.63) as unpaid wages owed to her.

The Counterclaim

18. In relation to the Counterclaim, DIFC Employment Law governs this dispute and Article 19 provides the following:

"**No unauthorized deductions**

An employer shall not deduct from an employee's wages or accept payment from an employee, unless:

(a) the deduction or payment is required or authorised under a statutory provision or the employee's contract of employment;

(b) the employee has previously agreed in writing to the deduction or payment;

(c) the deduction or payment is a reimbursement for an overpayment of wages or expenses; or

(d) the deduction or payment has been ordered by the Court."

19. Therefore, employers and employees may contractually agree for payments or deductions to be made in certain circumstances, such as in this case, where the Claimant fails to complete a minimum period of employment. However, Article 20 of DIFC Employment Law specifically prohibits employers from seeking payments relating to the recruitment of employees, as follows:

"**No charge for hiring or providing information**

(1) A person shall not request, charge or receive, directly or indirectly, from a person seeking employment a payment for:

(a) employing or obtaining employment for the person seeking employment; or

(b) providing information about employers seeking employees.

(2) A person does not contravene this section by requesting, charging or receiving payment for any form of advertisement from the person who placed the advertisement.

(3) A payment received by a person in contravention of this section is deemed to be wages owing or a debt due to and this Law applies to the recovery of the payment."

20. In the Hearing, the Defendant sought to clarify that there had been no costs in recruiting the Claimant and no part of the AED 3,000 being sought related to costs for hiring her. However, no additional evidence supporting the actual costs of the training could be provided by the Defendant.

21. Clause 13.b of the employment contract states:

"Should you resign during your before completion of 12 months of service with the Restaurant, you will be required to pay an amount in recruitment and training fees of AED 3,000.00 in addition to reimbursing to the Restaurant all costs pertaining to bringing you to Dubai including but not limited to, recruitment agency fees, joining ticket, repatriation costs and associated costs with the Restaurant this amount will be reduced on a prorate basis over a period of 24 months on a sliding scale of one twenty-fourth per month from the joining date."

22. I found the wording of the employment contract to clearly attribute the sum of AED 3,000 to `recruitment and training fees' and requested further evidence from the Defendant to breakdown what the actual training fees were. In the Hearing, the Defendant's representative conceded that there was no evidence to support the cost of the Claimant's training, although it was submitted that the training was over a 10-day period, during which accommodation and food was provided. In the absence of evidence to specify what part of the AED 3,000 corresponded to recruitment and what part corresponded to the Claimant's training, I defer to the wording of the employment contract which groups the `recruitment and training fees' together. The Court is prohibited from awarding any of this amount by Article 20 of DIFC Employment Law, which prevents the Defendant from recovering the cost of hiring or recruiting the Claimant from the Claimant.

Article 18 of the DIFC Employment Law

23. At the Hearing, the Claimant amended her Claim, seeking the penalty under Article 18 of DIFC Employment Law to be activated, it provides:

"(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."

24. The Defendant submitted that it had always been willing to pay the Claimant her owed wages but sought to deduct AED 3,000 from the amount by its Counterclaim, accordingly, by the Defendant's calculation the Claimant would have owed the Defendant AED 2,129. Irrespective of whether the Counterclaim succeeded or not, the Claimant was not paid within 14 days of her termination; therefore, in accordance with the DIFC Courts precedent set by the judgment of Justice Roger Giles in *Asif Hakim Adil v Frontline Development Partners Limited* (CFI-015-2014, 3 April 2016) and the judgment of H.E. Justice Ali Al Madhani in *Pierre-Eric Daniel Bernard Lys v Elesco Limited* (CFI-012-2014, 14 July 2016), the Claimant is entitled to Article 18 penalties running from 14 days after her official date of termination until the date payment is made. For the purposes of Article 18, the Claimant's date of termination was 30 August 2016, being her last day of employment.

25. Accordingly, the Defendant has been in arrears since 13 September 2016 (14 days following termination) and the penalty began to accrue at the daily rate of AED 98.63 from this date. Accordingly, as of the date of this Judgment, the penalty is owed for 56 days from 13 September until 7 November 2016, totaling AED 5,523.28 (56 x 98.63). The daily penalty of AED 98.63 will continue to accrue until the date of payment.

Conclusion

26. I find that the Defendant is liable to pay the Claimant's unpaid salary for 9 working days and an additional penalty for every day that it has been in arrears, pursuant to Article 18 of DIFC Employment Law. The Claimant's Court Fee is also to be reimbursed. The Defendant's Counterclaim is dismissed and there shall be no order for reimbursement of the Defendant's Court fee.

Issued by:

Mariam Deen

SCT Judge

Date of issue: 7 November 2016

At: 3 pm

