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 DELVIN SUMO

BETWEEN

MACIAS

Claimant

and

MADESH

Defendant

Hearing : **4 February 2022**
Judgment : **8 February 2022**

JUDGMENT OF SCT JUDGE DELVIN SUMO

UPON the Claim Form being filed on 6 January 2022

AND UPON a Hearing having been listed before SCT Judge Delvin Sumo on 4 February 2022 with the Claimant and the Defendant's representative in attendance

AND UPON reviewing all documents submitted on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 6,635.53 being the total sum of the Claimant's entitlements.

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

3. The Defendant shall pay the Claimant the DIFC Courts' filing fee in the sum of AED 367.50.

Issued by:
Ayesha Bin Kalban
SCT Deputy Registrar
Date of Issue: 8 February 2022
At: 2pm

THE REASONS

The Parties

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

2. The Defendant is Madesh (the "Defendant"), a company located in the DIFC, Dubai, UAE.

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 3 March 2019 (the "Employment Contract").

4. On 6 January 2022, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming his end of service entitlements in the sum of AED 9,400.33 as well as the cancellation of his employment visa.

5. On 24 January 2022, the Defendant filed an Acknowledgment of Service setting out its intention to defend all of the Claim.

6. The matter was called for a Consultation before SCT Judge Ayman Mahmoud Saey on 28 January 2022. Although both of the parties were in attendance, they failed to reach a settlement.

7. In accordance with the rules and the procedures of the SCT, the matter was referred to me for determination, pursuant to a hearing held on 4 February 2022 (the "Hearing"). After reviewing all documents and evidence submitted on the Court file, I give my judgment below.

The Claim

8. The Claimant's case is that he was employed with the Defendant as a bartender from 10 March 2019. The Claimant submits that he resigned from his employment and states that his last working day was on 24 November 2021. The Claimant further submits that he did not receive his end of service entitlements as owed to him pursuant to the DIFC Employment Law. At the Hearing, the Claimant submits that, as per his Employment Contract, he is entitled to the sum of AED 9,400.33 which consists of the following:

(a) End of service gratuity in the sum of AED 7,567; and

(b) Payment in lieu of 10 days of accrued but untaken vacation leave in the sum of AED 1,833.33.

The Defence

9. The Defendant did not contest the Claimant's entitlements as per the Employment Contract but argued that due to the outbreak of Covid-19 which has affected the business and the financial position of the Defendant, it did not take into consideration part of the Claimant's employment period for the calculation of the end of service gratuity.

10. The Defendant refers to a letter dated 15 April 2020 which states the following:

"For the safety of our workforce and to keep as best as we can our talented and skilled people, we are implementing unpaid leave until 15th September 2020.

During that period, you will not be entitled to any salary or benefits whatsoever whether pursuant to your contract of employment or to the applicable laws other than the medical insurance, your residency visa and housing allowance for month of April 2020. Moreover, the leave period will not count towards your ser-vice period for the purposes of calculating any end of service gratuity payment".

11. At the Hearing, the Defendant further submitted that the Claimant was not entitled to bring any claim against the Defendant in relation to his end of service entitlements in accordance with a form that was signed by the Claimant, referred to below:

"..release and forever discharge Madesh.. and I covenant not to sue, bring any pro-ceedings, challenge, or contest the termination of my employment with the Company and waive any and all claims, causes of facts, rights, and/or remedies (if any) of any kind that I might have against the Company arising out of leading to the termination of my employment with the Company, including but not limited to any Claims that I might have under my employment contract, DIFC Laws, UAE Laws".

12. The Defendant submits that the Claimant is therefore entitled to AED 964.02 for the end of service gratuity and AED 1,833.33 as payment in lieu of 10 days of accrued but untaken vacation leave.

Discussion

Jurisdiction

13. The DIFC Courts and the SCT have jurisdiction over this case as it relates to employment within the DIFC and the claim value in question is less than AED 500,000.

14. This dispute is governed by DIFC Law No. 2 of 2019 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

Findings

15. The Employment Contract dated 3 March 2019 sets out that the Claimant shall be employed as a bartender for the Defendant with the start date of 10 March 2019. The Claimant submitted his resignation letter dated 1 November 2021 and at the Hearing, parties agreed that the last working day of the Claimant was 24 November 2021. The parties further agreed that the Claimant is entitled to payment in lieu of 10 days of accrued but untaken vacation leave.

16. The Presidential Directive No. (4) of 2020 in Respect of COVID-19 Emergency Measures issued by the DIFC Authority (the "Directive") allowed for employers to impose certain emergency measures during the Emergency Period, however, the core benefits (such as the end of service gratuity) would continue to accrue during the emergency period. Although the Claimant had been placed on unpaid leave by the Claimant from 15 April 2020 until 15 September 2020, I find that this period of time must be factored into the Claimant's tenure with the Defendant. Therefore, the Claimant is entitled to his end of service gratuity as sought in his Claim, regardless of the unpaid leave imposed by the Defendant during the Emergency Period.

17. Article 19 of the DIFC Employment Law stipulates the following:

"(1) An Employer shall pay to an Employee, within fourteen (14) days after the Termination Date:

(a) all Remuneration.

(b) where applicable, any Gratuity Payment that accrued prior to the Qualifying Scheme Commencement Date under Article 66(1) not transferred to a Quali-fying Scheme under Article 66(6)

(c) . ;"

18. Article 66 of the DIFC Employment Law states, where relevant, that:

"(1) An Employee who is not required to be registered with the GPSSA under Article 65(`), and who completes continuous employment of at least one (1) year with their employer, before or after the Qualifying Scheme Commencement Date is entitled to a Gratuity Payment for any

period of service prior to the Qualifying Scheme Commencement Date on the termination of their employment. .

(2) An Employee's Gratuity Payment shall be calculated as follows:

(a) an amount equal to twenty one (21) days of the Employee's Basic Wage for each year of the first five (5) years of service prior to the Qualifying Scheme Commencement Date; and

(b) an amount equal to thirty (30) days for the Employee's Basic Wage for each additional year of service prior to the Qualifying Scheme Commencement Date. .

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(7) From the Qualifying Scheme Commencement Date an Employer shall, on a monthly basis, pay to a Qualifying Scheme, for the benefit of each Employee who is not an Exempted Employee, an amount equal to as least the Core Benefits, which shall be calculated as follows:

(a) five point eight three percent (5.83%) of an Employee's Monthly Basic Wage for the first (5) years of an Employee's service, inclusive of any period of employment of Secondment served to prior to the Qualifying Scheme Commencement Date; and

(b) eight point three three percent (8.33%) of an Employee's Monthly Basic Wage for each additional year of service.

19. The abovementioned clauses provide that an employer is required pay to an employee, within 14 days of the employee's termination date, a gratuity payment, in addition to amounts equal to the core benefits set out by the DIFC Employment Law, such amounts to be paid into a qualifying scheme (the "Qualifying Scheme"). The gratuity payment to be paid must be for any period of service prior to the Qualifying Scheme Commencement Date, which is defined in the Law to be 1 February 2020. Therefore, I find that the Claimant is entitled to his gratuity payment, as accrued until 31 January 2020, calculated below.

20. The Claimant's basic wage is AED 4,000, and the gratuity payment is to be calculated against the period of service from the Claimant's first working day with the Defendant until 31 January 2020. The Claimant worked from 10 March 2019, meaning the period of service to be calculated for gratuity is 10 months and 21 days.

21. The gratuity shall be calculated based on the employee's basic wage in accordance with Article 66 of the DIFC Employment Law:

(a) AED 4,000 basic wage x 12 months / 365 days = AED 131.51 (Daily Rate)

(b) Gratuity for 10 months = 21 days / 12 = 1.75 per day for each month x 10 months = 17.50 days x AED 131.51 = AED 2,301.43.

(c) Gratuity for 21 days = 1.75 days / 30 = 0.06 per day x 21 days = 1.26 days x AED 131.51 = AED 165.70.

22. In accordance with the above, the Claimant is entitled to AED 2,467.13 for gratuity payment from 10 March 2019 until 31 January 2020.

23. Pursuant to Article 66 (7) of the DIFC Law No. 4 of 2020 Employment Law Amendment Law (the "Amended Employment Law"), as of 1 February 2020, an employer is required, on a monthly basis, to pay to an employee with a registered Qualifying Scheme's account, contributions in amounts set out within the scheme.

24. The parties confirmed that the Claimant has been enrolled into the Qualifying Scheme in accordance with the Amended Employment Law and that contributions have been made from 1 August 2020 until the termination date of the Claimant. In light of this, I order that the Defendant pay to the Claimant an amount equal to the minimum benefits set out by the DIFC Employment Law, which would reflect the contributions that the Defendant would have paid into the Qualifying Scheme had it complied with the requirements of the DIFC Employment Law and the Qualifying Scheme Commencement Date.

25. The Claimant would be entitled to contributions for the period between 1 February 2020 to 31 July 2021, being the date that the Claimant was enrolled in the Qualifying Scheme and the Defendant started making contributions towards it. The Claimant's monthly basic wage is AED 4,000 / 100 x 5.83% (being the minimum contribution amount defined by the Employment Law) = AED 233.20 per month x 6 months = AED 1,399.20.

26. Therefore, in accordance with the above, the Claimant's entitlement with regards to contributions that should have been made by the Defendant to a Qualifying Scheme until 31 July 2021 is AED 1,399.20.

27. Article 28 (1) of the DIFC Employment Law states that, where an employee's employment is terminated, the employer shall pay the employee an amount in lieu of vacation leave accrued but not taken up to and including the termination date using the employee's daily wage in accordance with Article 28 (3), which reads as follows:

"Compensation in lieu of Vacation Leave, or any amount owed by the Employee in respect of excess Vacation Leave taken, shall be calculated using the Employee's Daily Wage at the Termination Date".

28. The parties agree that the Claimant has accrued 10 vacation leave days. Based on the monthly salary of AED 6,000, the Claimant's daily wage is AED 276.92 (6,000 x 12 / 260 = daily wage). Therefore, I find that the Claimant is entitled to the sum of AED 2,769.20 (AED 276.92 x 10 days) for 10 days of accrued but untaken vacation leave.

Conclusion

29. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 6,635.53 being the total sum of the Claimant's entitlements.

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

31. The Defendant shall pay the Claimant the Court fee in the sum of AED 367.50.