Claim No. SCT 301/2020 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 MAHA AL MEHAIRI BETWEEN LUDONI Claimant and LAUN CAF&#65533; AND RESTAURANT Defendant Hearing : 15 October 2020 Judgment :

Claim No. SCT 301/2020

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 MAHA AL MEHAIRI

BETWEEN

LUDONI

Claimant

and

LAUN CAF&#65533; AND RESTAURANT

Defendant

Hearing : **15 October 2020**
Judgment : **1 November 2020**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 30 August 2020

AND UPON the Defendant filing a Counterclaim filed on 14 September 2020

AND UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 13 and 15 October 2020, with the Claimant in attendance and the Defendant's representative failing to attend

AND UPON reading the submissions and evidence filed and recorded on the Court file

AND PURSUANT TO Rule 53.61 of the Rules of the DIFC Courts the ("RDC")

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 9,337.58.

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

3. The Claimant shall, by no later than 2pm on 3 November 2020, provide the Court with 3 quotations reflecting flight tickets to the Philippines.

4. The Defendant shall pay the Claimant the Court fees in the sum of AED 367.50.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 1 November 2020
At: 2pm

THE REASONS

The Parties

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

2. The Defendant is Laun Caf&#65533; and Restaurant, a company registered in the DIFC (the "Defendant").

The Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an employment contract dated 15 June 2018 (the "Employment Contract"). The Claimant was hired as an Assistant Cook with a monthly salary of AED 2,400 consisting of:

(a) Basic Salary in the amount of AED 1,000;

(b) Housing Allowance in the amount of AED 800;

(c) Transportation Allowance in the amount of AED 600; and

(d) Annual flight allowance in the form of a ticket.

4. On 23 February 2020, the Claimant took 15 days leave in lieu of untaken public holidays. The Claimant then proceeded to take 30 days' leave from his 2018 accrued leave, which was scheduled to commence on 10 March 2020.

5. On 26 March 2020, the Defendant terminated the Claimant's Employment Contract with immediate effect by way of an email sent to the Claimant.

"SUB: TERMINATION OF EMPLOYMENT CONTRACT

Dear Ludoni

We are very sorry to inform you that we are compelled to terminate your employment contract with Laun CAF AND RESTAURANT with immediate effect. Your performance has been below expectation and after several times of being cautioned you have not improved.

We believe this decision is mutually best for both the company and you as an individual, we wish you a very successful future ahead of you.

Best Regards

Laun MANAGEMENT"

6. The Defendant also sent an email to the Claimant setting out his final employment entitlements as follows:

"Hi Ludoni

You last attended to work on the 20th of February 2020 in DIFC, and you termination was on the 24th of March 2020, so from this you are not entitled to be paid for your holiday and pending off which you had 15 days pending of pending days and holiday. From 21 February up to 6 March you consumed all your pending days. From March 7 to 24 when you were terminated it is regarded as you were on leave already.

Gratuity (one year)(Basic Salary 1200 *1.67*21/3)	1402.80
Leave Salary (one year)	2400.00
March Salary (18 Days)	1393.55
New Visa costs	(3200)
Total payable	1996.00"

7. On 30 August 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming the total sum of AED 14,000 which consists of the following:

(a) Salary for 18 days worked in March 2020;

(b) Accrued but untaken annual leave for 30 days in the sum of AED 2,400;

(c) Payment in lieu of a one-month notice period in the sum of AED 2,400;

(d) End of Service gratuity;

(e) The cancellation of the Claimant's visa;

(f) Airfare;

(g) The Court fees applicable to the filing of this Claim.

8. On 9 September 2020, the Defendant responded to the claim by filing an Acknowledgment of Service setting out its intention to defend all of this Claim.

9. On 14 September 2020, the Defendant filed a Counterclaim in the amount of AED 3,720 for the amount that they paid for the Claimant's visa. The Defendant argues that the Claimant signed a 3-year employment contract with the Defendant and his employment visa was paid to reflect that period. When the Claimant went for medical screening, he was found to be having a medical condition, that resulted in him being fit to work but required him to undertake follow ups with the Dubai Health Authority ("DHA") in regards to his condition. The Claimant neglected the recommendations provided to him by the authorities and did not perform any follow-up examinations, and was issued a 1 year visa instead of the 3 years' visa that the Defendant applied for. The Defendant had to incur the cost of a obtaining a new visa after one year in the amount of AED 3,720, which it is claiming in the counterclaim filed.

10. The parties met for a Consultation before SCT Judge Hayley Norton on 30 September 2020 but the parties failed to settle the Claim.

11. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 15 October 2020 with the Claimant in attendance and the Defendant's representative absent although served with notice.

12. RDC 53.61 of the Rules of the DIFC Courts stipulates that "if a defendant does not attend the hearing and the claimant does attend the hearing, the SCT may decide the claim on basis of the evidence of the Claimant only".

Discussion

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

14. Before dealing with the Claimant's claims, the Court will first deal with the issue of the 1 month notice to establish the Claimant's last working day with the Defendant.

Notice Period

15. In relation to payment in lieu of notice, the Employment Contract stipulates that:

> "F) Resignation
>
> 1. .
>
> 2. The contract may be terminated by both parties upon ending 1 (one) months' notice to the other party. The employer may terminate the contract without sending 1 (one) months' notice; in case article (120) from the labor law is applicable.
>
> 3. ."

16. Article 62 of the DIFC Employment Law which sets out an employee's entitlement reads as follows:

> "62. Minimum notice periods
>
> (1) An Employer or an Employee may terminate an Employee's employment without cause in accordance with this Article.
>
> (2) Subject to Articles 62(3), 62(4), 62(6) and 63, the written notice required to be given by an Employer or Employee to terminate the Employee's employment shall not be less than:
>
> (a) seven (7) days, if the period of continuous employment of the Employee is less than three (3) months, including any period of Secondment;
>
> (b) thirty (30) days, if the period of continuous employment of the Employee is in excess of three (3) months but less than five (5) years, including any period of Secondment; or."

17. Although the Defendant did state in the termination letter that the Claimant is terminated for cause, the Defendant failed to provide any evidence to support this accusation. The Claimant was terminated in the middle of his annual leave with immediate effect. The Court rejects the Defendant's termination for cause and will consider the Claimant terminated according to Article 62 (1) above. Therefore, I am of the view that the Claimant's termination date is 26 March 2020, and that the Claimant is entitled to a one-month notice period, in accordance with the Employment Law. The Claimant is therefore entitled to payment in lieu of a notice period, in the sum of AED 2,400.

18. In light of the above finding, I have determined that the Claimant had been employed by the Defendant for the period between 15 June 2018 to 26 April 2020, making the duration of his employment 1 year, 10 months and 11 days.

Outstanding dues for the month of March 2020

19. The Claimant is seeking payment for the 18 days that he worked in March. The Defendant does not dispute this, as evidenced by the email sent to the Claimant setting out the Defendant's calculations of the Claimant's entitlements. As such, I find that the Claimant is entitled to his salary for the month of March in the sum of AED 1,993.77 (2,400 x 12 /260 = AED 110.77 x 18 days of the month of March = AED 1,993.77).

20. Accordingly, the Defendant is ordered to pay the Claimant the amount of AED 1,993.86 for his outstanding dues in relation to the days the Claimant worked during the month of March 2020.

Payment in lieu of accrued but untaken annual leave

21. The Claimant submits that he is entitled to 30 days of annual leave from 2019, which the Defendant does not dispute, as set out in the email whereby the Defendant provides the Claimant with its calculation on the Claimant's entitlements in the amount of AED 2,400.

22. Article 27 of the DIFC Employment Law sets out that:

> "Vacation Leave
>
> (a) Subject to Article 30, an Employee who has been employed for at least ninety (90) days is entitled to paid Vacation Leave of twenty (20) Work Days in each Vacation Leave Year.
>
> (b) An Employee is entitled to be paid their Daily Wage during Vacation Leave.
>
> (c) An Employee is entitled to carry forward up to five (5) Work Days of accrued but untaken Vacation Leave into the next Vacation Leave Year for a maximum period of twelve (12) months after which any unused Vacation Leave shall expire.
>
> (d) Vacation Leave is exclusive of Public Holidays to which an Employee is entitled.

(e) Unless otherwise agreed in writing by an Employee, and subject to Article 28(1), an Employee cannot receive payment in lieu of Vacation Leave.

(f) Unless otherwise agreed by an Employer, Vacation Leave cannot be converted to Sick Leave if an Employee is sick during any period of Vacation Leave.

Compensation in lieu of Vacation Leave

(1) 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 calculated in accordance with Article 28(3).

(2) In the event that the Employee has taken more Vacation Leave than has accrued at the Termination Date, the Employer shall be entitled to deduct an amount calculated in accordance with Article 28(3) from any payments due to the Employee on the Termination Date.

(3) 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."

23. As the Claimant confirmed that he did not take any leave in 2020, and the leave that he took in March 2020 is carried over from 2018 with the approval of the Defendant, the Court is satisfied that he is entitled to his accrued but untaken annual leave that accumulated in January 2020 to 26 April 2020. As such, the Claimant is entitled to payment in lieu of 9.58 days of vacation leave for the year 2020, as he was an employee of the Defendant until 26 April 2020. As such, I find that the Claimant shall be paid the amount of AED 1,061.18 (AED 2,400 x 12/260 = 110.77 x 9.58 = AED 1,061.18).

Airfare

24. The Claimant seeks airfare to his home country. The Claimant claims this pursuant to the Employment Contract, which reads as follows:

"One round- trip Ticket every 1 year upon completion of one year."

25. The Claimant has not quantified the amount he is seeking in regards to this claim, and the Defendant did not provide any submissions in relation to this matter, seeing as it failed to attend the Hearing.

26. The DIFC Employment Law is silent on an employee's entitlement to airfare. Such a benefit is common in employment relationships, and the general practice in this Court is to proceed with what is agreed upon by the parties in the agreement they have entered into. The Claimant confirmed that he did not avail of his ticket after completing 1-year employment.

27. In light of this, I find that the Claimant is entitled to his airfare in the manner set out in the Employment Contract. As provided above, the Claimant did not quantify this claim and therefore, the Claimant shall provide the Court with 3 quotations showing the pricing of a ticket to his country of repatriation, the Philippines, and accordingly the Court will decide on an amount to be paid to the Claimant in lieu of airfare.

End of Service Gratuity and Contributions to the Qualifying Scheme

28. The Claimant is entitled to his end of service gratuity until his last working day, which I have determined to be 26 April 2020.

29. 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:

(g) all Remuneration.

(h) where applicable, any Gratuity Payment that accrued prior to the Qualifying Scheme Commencement Date under Article 66(1) not transferred to a Qualifying Scheme under Article 66(6) ."

30. 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.

.

(3) For the purposes of Article 66(2):

(a)an Employee's Basic Wage shall not be less than fifty percent (50%) of the Employee's Annual Wage;

.

(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."

31. 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 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.

32. The Contract stipulates that the Claimant's basic wage is AED 1,000 and his monthly salary is AED 2,400. However, in accordance with Article 66(3) of the Employment Law, as mentioned above in Article 3, an employee's basic wage cannot be not be less than 50% of the employee's annual wage. Therefore, I find that the Defendant's distribution of the Claimant's wages has failed to meet the requirements set out in Article 66(3) and hereby order that the Claimant's basic wage be adjusted accordingly. In light of this finding, I determine forthwith that the Claimant's basic wage be 50% of his monthly and annual wage, in the amount of AED 1,200.

33. The gratuity payment owed to the Claimant 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 15 June 2018, meaning the period of service to be calculated for gratuity is 1 year and 230 days.

Gratuity = AED 1,200 basic wage x 12 months / 365 days = AED 39.45 per day x 21 days (for the 1 year) = AED 828.45

Gratuity for 230 days = 21 days per year/12 months = 1.75 per month / 30 days = 0.05 per day x 230 days = 11.5 days x AED 39.45 = AED 453.68

In accordance with the above, the Claimant is entitled to AED 1,282.13 for gratuity payment.

34. The parties have not provided any evidence to demonstrate that the Claimant has been enrolled into a qualifying scheme, nor has any evidence been provided to show that the Claimant would be exempted from being enrolled. 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. This is to be calculated as follows.

35. Taking into consideration the period of service undertaken by the Claimant prior to the commencement date of the Qualifying Scheme, the Claimant would be entitled to contributions for the period between 1 February 2020 to 26 April 2020, being the termination date I have determined previously in the course of this Judgment.

Between 1 February 2020 - 31 March 2020:

The Claimant's monthly basic wage is AED 1,200 x 5.83% (being the minimum contribution amount defined by the Employment Law) = AED 69.96 per month x 2 months = AED 139.92.

Between 1 April 2020 - 26 April 2020:

AED 40 (being the Claimant's daily basic wage) x 5.83% = AED 2.33 per day x 26 day = AED 60.58.

36. Therefore, in accordance with the above, the Claimant's entitlement in regards to contributions that should have been made by the Defendant to a qualifying scheme is AED 200.5.

37. The Claimant seeks to recover the fee that he has paid to the Court for the filing of this Claim. I am of the view that, as the Claimant has been largely successful on his claims, he should be entitled to recover a portion of the fee in respect of the claims for which he has been successful. It is to be noted that the Claimant has miscalculated some of the claims he has sought, and the fee to be recovered is to reflect the judgment sum ordered below.

Counterclaim

38. The Defendant failed to provide any evidence to support its counterclaim against the Claimant. In addition, the DIFC Employment Law states, in relation to Visas and permits that:

"(2) An Employer is not permitted to:

(a) recoup any costs and expenses incurred pursuant to Article 57(1) from an Employee; or

(b) retain the passport or other original personal documents of an Employee."

39. Therefore, I dismiss the Defendant's Counterclaim.

Conclusion

40. In light of the aforementioned, it is hereby ordered that the Defendant shall pay the Claimant the sum of AED 9,337.58.

41. The Defendant shall cancel the Claimant's visa.

42. The Claimant shall provide the Court with 3 quotations showing pricing of flight tickets to his country of repatriation, the Philippines, and accordingly the Court will decide on an amount to be paid to the Claimant in lieu of airfare.

43. The Defendant shall pay the Claimant the Court fees in the sum of AED 367.50.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 1 November 2020
At: 2pm