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

MIA

Claimant

and

MAX RESTAURANT LTD



Hearing : **3 January 2021**
Judgment : **14 January 2021**

JUDGMENT OF SCT JUDGE MAHA ALMEHAIRI

UPON this Claim being filed on 6 December 2020

AND UPON the Amended Claim being filed on 8 December 2020

AND UPON a hearing having been listed before SCT Judge Maha Al Mehairi on 3 January 2021, with the Claimant and the Defendant's representative in attendance

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

IT IS HEREBY ORDERED THAT:

1. The Claimant's claim is dismissed.

2. Each party shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 14 January 2021
At: 10am

THE REASONS

The Parties

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

2. The Defendant is Max Restaurant LTD (the "Defendant"), a restaurant located in the DIFC.

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 29 July 2019 (the "Employment Contract"). The Claimant was hired as a waitress with a monthly salary of AED 4,000.

4. The Claimant's employment with the Defendant continued until 20 November 2020. The Claimant received a termination notice from the Defendant terminating her employment due to alleged poor performance. The Claimant received her final settlement on 24 November 2020.

5. On 29 November 2020, the Claimant received a letter from the Defendant explaining the reasons for the terminations and setting out the details regarding the final settlement. The Claimant received her salary for the days she worked in November, payment in lieu of accrued but untaken vacation leave and payment in lieu of a one-month notice period.

6. On 6 December 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming the amount of AED 8,000 for unpaid tips owed to the Claimant by the Defendant.

7. On 13 December 2020, the Defendant filed an Acknowledgment of Service setting out its intention to defend all of the claim.

8. The parties met for a Consultation with SCT Judge Delvin Sumo on 16 December 2020 but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 3 January 2021.

9. At the Hearing, the Defendant contested the Claimant's claim arguing that the Claimant had several warnings from the Defendant due to poor performance. Under the Defendant's employee Handbook, there were procedures to be followed in relation to poor performance and providing that disciplinary actions could be taken, being:

> "Disciplinary action may occur when an employee fails to follow the company standards and Policies & Procedures outlined in this booklet or any inappropriate acts not specified in this booklet but in violation of UAE Law.
>
> Disciplinary Action Offence:
>
> (1) Verbal warning / Note to file (valid for 3 months)
>
> (2) 1st written warning (valid for 6 months)
>
> (3) Suspension due to pending results of investigation
>
> (4) 2nd and final written warning (valid for 1 Year)
>
> (5) Dismissal
>
> Colleague may lose tips, future increment opportunity or bonuses depending on the severity of the offence activated on your file. This will be authorized by the General Manager or the Executive Chef."

10. The Defendant stated that monthly tips are not a contractual constraint. The Defendant submitted that tips fall under the reward system implemented by the Defendant in accordance with its internal policy and procedure, and they are awarded to employees according to that system. The reason for non-payment of the tips to the Claimant are due to disciplinary actions taken against the Claimant as a result of the warning letters issued to her.

11. The Claimant rejected the Defendant's submission stating that the reason for her termination was because she was, at the time of termination, on annual leave and she had extended her leave for another week, claiming that she had fallen ill. The Claimant submits that the monthly tips form part of her employment rights and that she is entitled to be paid her monthly tips.

Discussion

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

13. The Claimant's claim is for unpaid monthly tips for the period that she worked for the Defendant.

14. The Court reviewed the Defendant's submissions and is satisfied that the Claimant's tips were retained in compliance with the Defendant's internal rules and regulations, and any other employees that were terminated following a final warning would not have been entitled to retain their tips either.

15. The Court has reviewed the Claimant's final warning issued on 17 September 2020, which was issued by the Defendant citing reasons of the Claimant's alleged insubordination and poor performance, which did not contain any reference to the Claimant's request for time off when she fell ill. I am of the view that the reason behind the Claimant's final warning was that the Claimant availed of annual leave until 6 September 2020, and then requested a week's extension which, in turn, was denied by the Defendant.

16. The Defendant submits that the Claimant ignored the applicable procedures put in place by the Defendant in respect of applying for an extension of annual leave. Instead, the Claimant sent a message via WhatsApp to her colleague, the head waiter, informing her of her extension. The Defendant goes on to submit that, as per company policy, the Claimant should have sent an email to the Defendant's Senior management team to request permission to extend her annual leave.

17. The Defendant further submits that the Claimant failed to provide a sick leave or any other medical report to justify her extension of annual leave. The Claimant did submit a medical report confirming that she underwent a minor surgery on 7 September 2020, which was only received by the Defendant on 9 October 2020.

18. The Court is satisfied that the Defendant followed the law and procedure with the termination of the Claimant. The Defendant supported its submissions with evidence and followed the DIFC Employment Law. As a result of the warning letters issued to the Claimant by the Defendant for insubordination, poor performance and attitude the Claimant was not entitled to the monthly tips, as such the Claimant's claims are dismissed.

Conclusion

19. In light of the aforementioned, I dismiss the Claimant's claims.

20. Each party shall bear their own costs.

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Ayesha Bin Kalban
SCT Judge and Deputy Registrar
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