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 AYESHA BIN KALBAN

BETWEEN

IONAS

Claimant

and

IVAAR MIDDLE EAST LLC

Defendant

Hearing: **8 July 2018**

Judgment: **16 August 2018**

JUDGMENT OF SCT JUDGE AYESHA BIN KALBAN

UPON hearing the Claimant and the Defendant

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

IT IS HEREBY ORDERED THAT:

1. The Claimant's claims are dismissed.

2. Each party shall bear their own costs.

Issued by:

Ayesha Bin Kalban

SCT Judge

Date of Issue: 16 August 2018

At: 4pm

THE REASONS

The Parties

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

2. The Defendant is Ivaar Middle East LLC (herein after "the Defendant"), a company registered 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 9 July 2017 (the "Employment Contract"). The parties have agreed, by way of a hand-written amendment to clause 1.2 of the Employment Contract, that the period of employment was to commence on 31 July 2017. This is a point of contention in this matter and shall be addressed within this Judgment.

4. The Claimant was an employee of the Defendant from 31 July 2017 as a Specialist Operations Manager. The Claimant's remuneration for his

employment with the Defendant was stated to be a base salary for AED 560,000 per year to be paid on a monthly basis, in addition to the Defendant's reimbursement of business expenses for days spent in Riyadh, which is in line with the scope of the Claimant's employment.

5. On 10 May 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payments in the sum of AED 267,963.89 which consist of various claims made by the Claimant pursuant to the Defendant's termination of the Claimant's employment. On 29 May 2018, the Claimant made further amendments to his claim. I have determined there to be 9 issues in this claim, which will be discussed hereunder.

6. The Defendant responded to the claim on 17 May 2018, defending the claim.

7. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 24 and 30 May 2018 but were unable to reach a settlement.

8. Both parties attended the hearing before me listed on 8 July 2018.

The Claim

9. The Claimant's case is that he was employed by the Defendant from 31 July 2017 up to the date of his termination on 1 March 2018.

10. The Claimant alleges that the Defendant had failed to make payments owed to him under the DIFC Employment Law and the Employment Contract. There are various matters raised in the submissions put before me, and I have therefore determined the relevant issues in this matter to be as set out below.

11. The first claim made by the Claimant is set out in the claim form and further submissions made during the course of these proceedings. The Claimant articulates this claim to be a deduction and conversion of wages made by the Defendant without the Claimant's consent. The Claimant alleges that the Defendant deducted the amount of AED 10,000 from his final wage payments, which appears to be an amount withheld by the Defendant against expenses made by the Claimant. The Claimant was the holder of a corporate credit card, which was issued to him by the Defendant. Upon the termination of the employment relationship between the parties, the Claimant was informed that the amount of AED 10,000 would be withheld by the Defendant while the latter established which of the expenses charged to the credit card related to business expenses and which of them were personal to the Claimant. It is the Claimant's case that he did not consent to the withholding of this sum and claims a penalty figure to be applied from the date his wages were owed until the date in which the amount was released back to him. The Claimant confirms that he consented to the deduction in the amount of USD 454.49 by way of an email to the Defendant on 8 April 2018, however maintains that he is owed the amount of AED 4,602.74 as a penalty amount pursuant to Article 18 of the DIFC Employment Law amounting to the Claimant's daily wage accruing on a daily basis from the date the Claimant's wages were allegedly due until the date of payment, which was completed 17 days after the Claimant's last day of employment.

12. In addition to the abovementioned claim, the Claimant claims that he is entitled to housing allowance for his accrued vacation days in the amount of AED 2,697.89 and housing allowance in the amount of AED 5,662.98 for the period of time when the Claimant was placed on garden leave. He also requests the application of Article 18 of the Employment Law to this claim, in such that the amount of AED 1,555.55, being the Claimant's daily wage, would continue to accrue until the date payment is made.

13. The third claim sought by the Claimant is the reimbursement of the amount of AED 43.30 being the Claimant's laundry expenses. The Claimant has also requested the application of the Article 18 penalty to accrue on this amount until the date payment is made.

14. Furthermore, the Claimant seeks the payment of 2 additional days in which he contends that he was employed by the Defendant but was never paid for, in the sum of 4,307.68. The Claimant submits that he had spent two days in Madrid on 21 and 22 July 2017, and claims that he is entitled to be paid for that period of time. The Claimant also claims that he was asked to be in Riyadh on 1 August 2017, and claims that he had travelled from 31 July 2017 in order to commence his duties on his start day, which was to be 2 August 2017.

15. The Claimant also submits that his termination from the Defendant company was wrongful, unfair and arbitrary, and therefore seeks declaratory relief to that effect. The Claimant seeks 3 months wages in this respect for loss of income, in the amount AED 139,999.98.

16. In addition to the above, the Claimant submits that the Defendant failed to pay the Claimant's accrued but untaken vacation days in full. The Claimant alleges that he is entitled to 6.67 accrued days, and the Defendant has only provided payment for 6.2 accrued days, making the difference in days to be 0.47 days, amounting to AED 1,102.30. The Claimant seeks the accrual of the Article 18 penalty to this amount.

17. Furthermore, the Claimant submits that the Defendant's actions were unlawful and in malice towards him in order to oppress, vex and/or annoy him. In this regard, the Claimant seeks punitive damages and remedies to be determined by the Court, assessed by the Claimant to be in the amount of AED 46,666.66.

18. The Claimant also seeks the reimbursement for a return air ticket to Ireland and back to the UAE, in the amount of AED 3,135. The Claimant has also sought the cancellation of his visa.

The Defence

19. As regards the Claimant's claim for the application of the Article 18 penalty to the period of time in which the Defendant withheld the amount of AED 10,000 for the deduction of expenses made by the Claimant to the corporate credit card in his possession, the Defendant contends that this was performed in line with the Defendant's standard practice and was communicated to the Claimant during his exit interview. The Defendant asserts that the Claimant had been made aware of the Defendant's intention to deduct a sum of the Claimant's wages to settle the outstanding personal expenses that the Claimant charged to the credit card, and therefore the Defendant was within its rights to withhold the amount pending its review of the expenses charged to the card, and its determination as to the nature of these expenses. The Defendant also submits that in withholding this amount, it was exercising its powers under Clause 13 of the Employment Contract (as set out below) and any delay in returning the balance of sums to the Claimant was due to the fact that there were ongoing discussions between the parties as to the correct amount due to be

deducted from the Claimant's wages.

20. The Defendant responds to the Claimant's claim for the payment of housing allowance during the Claimant's accrued but untaken vacation days and the garden leave by stating that the Claimant has no entitlement to housing allowance under the Employment Contract or otherwise. The Defendants submits that the DIFC Employment law does not provide a statutory provision that evidences such an entitlement. The Defendant makes reference to Article 28(2) of the DIFC Employment Law, which reads:

> "Compensation in lieu of vacation leave shall be calculated using the employee's daily wage applicable on the employee's last day of employment."
>
> The Defendant alleges that the Claimant's renumeration clause does not contain a provision for housing allowance to be paid to the Claimant as part of his wages, and therefore housing allowance does not form a part of the Claimant's daily wage, which is what is applicable to compensation in lieu of vacation leave. It denies that this entitlement is owed to the Claimant, and therefore the Article 18 penalty should not apply to this claim. The Defendant further submits that the Claimant was reimbursed for his housing expenses as costs incurred to the Claimant, and these were expected to be charged to and covered by the corporate credit card given to the Claimant. Therefore, the Defendant submits that the Claimant is not entitled to a cash allowance in respect of housing.

21. In response to the Claimant's claim for AED 43.30 for laundry expenses, the Defendant submits that this amount is an expense personal to the Claimant, which the Claimant attempted to expense as a business-related expense. The Defendant has submitted a document displaying a company policy in which an employee of the Defendant is entitled to a weekly laundry allowance of USD 50, and the charge being claimed by the Claimant has exceeded that amount. Alternatively, the Defendant submits that even if the Claimant was entitled to this amount, the Defendant had waived the amount of USD 16.44 of the Claimant's credit card charge, which is an amount in excess of the AED 43.40 figure claimed. The Defendant also confirms that the Claimant's entitlement to the Article 18 penalty in relation to this claim should be denied.

22. Further to the above, the Defendant refutes the Claimant's claim for the payment of 2 additional days in the amount of AED 4,307.68, stating that it is not appropriate to compensate the Claimant for the days in which he was travelling to Riyadh in order to commence work with the Defendant. In the Defendant's Reply dated 4 July 2018, the Defendant confirms that the amount of days owed to the Claimant for his time spent in Madrid were factored into the Employment Contract by stating that the Claimant commenced work on 31 July 2017. The Defendant submits that this was performed for accounting purposes, and therefore the Claimant had already been paid for that time within the payroll for the month of September 2017. The Defendant submits that the Claimant attended the Riyadh office on 2 August 2017, and therefore the Claimant's salary was to accrue from that date. The Defendant therefore reiterates that the adjustment to the start date in the contract was completed in order to accommodate the payment for the 2 days that the Claimant spent in Madrid. The Defendant also rejects the Claimant's claim for the Article 18 penalty to be accrued upon this claim.

23. In response to the Claimant's claim that the termination of his employment was unfair and wrongful, the Defendant submits that the Claimant's assertion is misconceived, The Defendant further submits that the DIFC Employment Law does not provide a remedy for arbitrary dismissal, and that the Claimant has failed to provide a basis in law for this claim.

24. The Defendant further submits that the Claimant has failed to provide an explanation for his assertion that he is entitled to 0.47 days more than what has been paid to him as accrued vacation leave. The Defendant has stated that its records indicate that the Claimant is entitled to 6.2 days, pursuant to Article 30(2) of the DIFC Employment Law which reads as follows:

> "30. Leave during the first year of employment
>
> (1) During the first year of employment, the amount of vacation leave an employee may take at any time is limited to the amount deemed to have accrued at that time, less the amount of vacation leave already taken during that year, unless the employer agrees otherwise.
>
> (2) For the purposes of this Article, leave is deemed to accrue over the employee's first year of employment, at the rate of one-twelfth of the amount specified in Article 27 on the first day of each month of that year. "
>
> The Defendant also relies on Clause 6.1 of the Employment Contract which provides that:
>
> "Full-time employees are entitled to be paid annual vacation of twenty (20) working days for every completed year of service. The annual vacation period shall be calculated pro rata for any period of less than a year provided the Employee has completed a minimum of three months of service. The Employee accepts that his/her entitlement to paid vacation is calculated, on a monthly basis, pro rata his effective working time in the month."
>
> The Defendant submits that the Claimant's assertion that he is entitled to 6.67 days is based on the incorrect assumption that he is entitled to leave for an entire month even where his employment was terminated before the end of the month. The Defendant submits that it is therefore entitled to pro rate the Claimant's annual leave entitlement, and refutes the Claimant's claim for the accrual of the Article 18 penalty.

25. The Defendant responds to the Claimant's claim for punitive damages and remedies by submitting that the Claimant has failed to specify the actions undertaken by the Defendant to vex, oppress or annoy the Claimant. The Defendant denies that any threats have been made towards the Claimant, and asserts that the Defendant does not condone such behaviour. As such, the Defendant asserts that the Claimant is not entitled to any such claim.

26. In response to the Claimant's request for the air fare to his country of repatriation, the Defendant submits that in accordance with a Personnel Sponsorship Agreement between the Defendant and the DIFC Authority, the Claimant is entitled to a one-way ticket to Dublin upon the cancellation of his visa. The Defendant submits that the visa cancellation request was submitted to the authorities by the Defendant ahead of the filing of the defence, but the request could not be completed pursuant to the Claimant's failure to attend the Defendant's offices to complete the cancellation process.

Discussion

27. 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.

28. It is noted that the Claimant has sought to claim the Article 18 penalty for each of his claims and has requested that the penalty accrue separately on each cause of action. Article 18 of the DIFC Employment Law reads as follows:

> "18. Payment where the employment is terminated
>
> (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."
>
> In the event that the Claimant succeeds in proving that there are outstanding wages owed to him, he may be entitled to a penalty charge which may accrue on the outstanding wages. Article 18 does not mention that the penalty is to apply to each wage separately, and rather reads that a penalty figure shall accrue on the amount of all wages due and owing to the employee. Therefore, I dismiss the Claimant's claim for the Article 18 penalty to be applied on each separate claim.

29. As regards the Claimant's claim for the Article 18 penalty to be applied for the period of time that it took for the Defendant to refund the deduction it made to the Claimant's wages for the purposes of retaining a sum to be applied to any personal expenses made by the Claimant to the corporate credit card issued to him, I find that the Defendant has not acted outside its standard practice. Clause 13 of the Employment Contract reads as follows:

> "Monies owed to the Company; Expenses.
>
> Upon the termination of the Employee's Employment from the Company, the Employee promises to execute any documents that may be necessary to authorize the Company to deduct from the Employee's final wages or other monies due to the Employee any debts or financial obligations, including any loans or interest thereon, owed to the Company and/or the Group by the Employee."
>
> In my view, this clause authorizes the Defendant to deduct from the Employee's final wages the sums of money owing to the Defendant. While the clause does not expressly provide the mechanism in which this can be done or the amount that can be withheld while determining the amount of the deduction, I do not find that the Defendant acted in bad faith in relation to this and was exercising an acceptable amount of caution in order to recover any funds owing to it. Therefore, I dismiss the Claimant's claim for the accrual of a penalty amount under Article 18 of the Employment Law to the period of time that it took for the Defendant to refund the deduction made to the Claimant's wages.

30. In relation to the Claimant's Claim for housing allowance to be paid to him for the accrued but untaken vacation days owed to him and for the period of time in which he was placed on garden leave, I find that the Claimant was not entitled to a housing allowance during his employment with the Defendant. There is no mention of such an allowance in the contract, and there is no statutory entitlement to this in the DIFC Employment Law. I find the Defendant's reference to Article 28(2) of the Employment Law to be appropriate, and concur that the Claimant's daily wage did not include an amount for housing allowance. Thus, it follows that the Claimant is not entitled to housing allowance for his accrued but untaken vacation days. I adopt similar reasoning to the Claimant's claim for housing allowance for the garden leave, in such that, pursuant to the finding that the Claimant's monthly paid remuneration did not include housing allowance, it is not appropriate to award such an entitlement. The arrangement between the parties for the Claimant's living expenses seems to be an informal one, and has not been put forward in any submissions. As the Claimant has been unsuccessful in his claim for housing allowance, I reject the Claimant's claim for a penalty charge under Article 18 of the DIFC Employment Law.

31. In review of the Claimant's reply to the defence, the Claimant denies having had sight of the Defendant's policy in regards to the weekly allowance for laundry expenses citing that his understanding was that the Claimant was entitled to USD 50 for laundry per days of staying in hotels. The Claimant has not put forward any proof to evidence this. The Claimant attempts to make a further claim that this was an expense approved by the Defendant previously, however I confess to having some difficulty comprehending this argument. In any event, I am satisfied that the Defendant's policy on expenses determines the amount claimed by the Claimant to be in excess of the amount allowed to the Claimant, and thus the Claimant's claim for laundry expenses is dismissed. It therefore follows that the Claimant's claim for a penalty charge under Article 18 of the DIFC Employment Law must be dismissed.

32. As regards the Claimant's claim for an additional two days' wages to be paid to him for 31 July 2017 and 1 August 2017, I find that the Claimant only attended the Riyadh office on 2 August 2017 and therefore should only be paid from that period of time. The adjustment to the Claimant's start date in the Employment Contract was to accommodate the two days in which the Claimant performed a handover in Madrid, and does not cover the days in which the Claimant travelled to Riyadh, being 31 July 2017 and 1 August 2017. The Defendant has confirmed that it has already paid to the Defendant within the September payroll for the 2 days that the Claimant spent in Madrid. I find that the Claimant is not entitled to claim that his employment commenced on the day he travelled to Riyadh, and his salary can only be paid from the day in which he physically attended the Defendant's premises. Therefore, I dismiss the Claimant's claim for the two additional days wages to be paid to him, and thereby dismiss the Claimant's claim for the Article 18 penalty sought.

33. In relation to the Claimant's claim for compensation in the amount of 3 months' wages due to his allegation that his termination from the Defendant was unfair, wrongful and/or arbitrary, I find that the Defendant, in its dismissal of the Claimant, did not act in bad faith, and exercised its powers to terminate an employee in accordance with the DIFC Employment Law. The Claimant, in his reply to the defence, has claimed that in the scope of his employment with the Defendant he performed some of his duties in Riyadh and therefore claims that while a remedy for arbitrary dismissal is not one provided by the DIFC Employment Law, his involvement in Saudi Arabia entitled him to some provisions under the UAE

Federal Law. This argument is unsuccessful for many reasons, namely that this Claim is brought on the premise of determining the Claimant's entitlements pursuant to his employment with a DIFC employer. It follows that the DIFC Employment law is the statute that would apply in these circumstances. In any event, I reiterate that I do not find the Claimant's dismissal to be arbitrary, wrongful or unfair and therefore reject the Claimant's claim for compensation.

34. As regards the Claimant's claim for an amount of 0.47 days in accrued but untaken vacation days, I find that the Defendant has rightly calculated the Claimant's vacation days, in such that his annual vacation period is to be calculated pro rata. The reason for this is that the Claimant had not completed one year of service, and therefore his entitlement to vacation days would be pro-rated for the period of time he was in service to the Employer. Therefore, in accordance with Article 30(2) if the DIFC Employment Law and clause 6.1 of the Employment Contract, I dismiss the Claimant's claim for 0.47 days in accrued but untaken vacation days and the Article 19 penalty amount sought in relation to it.

35. I have not found any evidence of the Defendant's actions that can be deemed threatening or vexatious towards the Claimant, and the Claimant has not put forward any proof to suggest this. It follows that I dismiss the Claimant's claim for punitive damages and remedies for compensation against actions taken by the Defendant.

36. In relation to the Claimant's claim for payment to be made in lieu of a return ticket to Ireland, I find that the Claimant is not entitled to such a claim under the Employment Contract, nor is such an entitlement contained in the Employment Law. The Defendant's defence refers to a Personnel Agreement between the Claimant and the DIFC Authority which entitles the Claimant to a one-way ticket upon the cancellation of the Claimant's visa. I have not had sight of this agreement, but agree with the Defendant that there is no statutory provision for the Claimant to be entitled to return ticket to Ireland, nor payment in lieu of such a ticket. The Defendant has confirmed that it will be providing a one-way ticket to Ireland for the Claimant upon the cancellation of his visa, and therefore I do not believe it necessary to order it to do so. Thus, the Claimant's claim for a return ticket to Ireland is hereby dismissed.

37. During the course of the Hearing, I directed the Defendant to proceed with the cancellation of the visa. At the time of writing this Judgment, it appears that the Defendant has provided a document to the Claimant evidencing the cancellation of the Claimant's visa and therefore there is no need to labour this point.

Conclusion

38. In light of the aforementioned, I order that the Claimant's claim be dismissed in its entirety. The Claimant is at liberty to apply to the Court in the event that the Defendant fails to provide his entitlement to a one-way ticket to Ireland.

39. Each party shall bear their own costs.



Issued by:

Ayesha Bin Kalban

SCT Judge

Date of Issue: 16 August 2018

At: 4pm