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

MICHAEL

Claimant

and

MATIDDA

Defendant

Hearing : **5 January 2021**
Judgment : **12 January 2021**

JUDGMENT OF SCT JUDGE DELVIN SUMO

UPON this Claim being filed on 4 November 2020

AND UPON a Consultation being held on 16 December 2020 before SCT Judge Hayley Norton with the Claimant's and the Defendant's representative attending

AND UPON the parties agreeing upon partial settlement of the Claimant's claim

AND UPON a Hearing having been listed before SCT Judge Delvin Sumo on 5 January 2021 with the Claimant's and the Defendant's representative in attendance

AND UPON reviewing all documents submitted 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: 12 January 2021
At: 10am

THE REASONS

Parties

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

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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 10 April 2013 (the "Employment Contract"). The Claimant's joining date was 22 April 2013.

4. The Claimant resigned on 1 August 2020 and served her last working day on 30 October 2020.

5. On 4 November 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming her end of service entitlements in the sum of AED 151,561.42.

6. On 18 November 2020, the Defendant filed an Acknowledgment of Service setting out its intention to defend all of the Claim.

7. The matter was called for a Consultation before SCT Judge Hayley Norton 16 December 2020 with both of the parties in attendance, wherein

the parties agreed upon a partial settlement of the Claimant's claim.

8. 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 5 January 2021 (the "Hearing"). After reviewing all documents and evidence submitted on the Court file, I give my judgment below.

The Claim

9. During the Consultation dated 16 December 2020, the parties agreed upon a partial settlement of the Claimant's claim and a Consent Order dated 23 December 2020 was subsequently issued by the SCT which recorded the terms of the settlement. The Claimant's claims in relation to an alleged payment for damages in the sum of AED 21,200 and accrued but untaken vacation leave in the sum of AED 26,650.17 were dealt with by way of a Hearing listed before me on 5 January 2021.

10. The Claimant's case is that she was employed with the Defendant from 22 April 2013. The Claimant resigned on 1 August 2020 and served her last working day on 30 October 2020. During the Claimant's notice period from 1 August 2020 until 30 October 2020, the Claimant was placed on garden leave by the Defendant pursuant to Article 62 (5) of the DIFC Employment Law, which states the below:

> "An Employer may require an Employee not to attend work or undertake their duties during all or part of the Employee's notice period."

11. The Claimant alleges that the Defendant had requested her to utilise her accrued but untaken vacation leave during her notice period. The Claimant submits that as per the DIFC Law, parties must mutually agree to this arrangement and that she never consented to the Claimant's request to utilise her vacation leave during her notice period.

12. Furthermore, in support of its claim, the Claimant has submitted a copy of the Defendant's human resources policy (the "HR Policy") and relies on Article 8.1 of the HR Policy which states the following:

> "Leave is not normally taken during the notice period and any outstanding vacation balances are paid out as part of the final settlement."

13. The Claimant relies on the abovementioned Article in support of her claim that the Defendant is not entitled to request the Claimant to take vacation leave during the notice period.

14. Furthermore, the Claimant claims damages in the sum of AED 21,200 for the period of 1 November 2020 to 24 November 2020. The Claimant submits that the Defendant has not paid her end of service entitlements in a timely manner, and therefore, she has financially suffered and struggled as a result of this delay. The Claimant further alleges that the Defendant has treated her badly during the exit process, and that she has faced several incorrect accusations made by the Defendant on various occasions.

15. The Claimant alleges that she was contacted by the legal representatives of the Defendant in order to finalise her end of service entitlements, however, the Claimant submits that she was not allowed to share her personal details with their legal representatives and that she, therefore, refused to communicate to any other party than the Defendant.

The Defence

16. The Defendant submits that on 11 August 2020, it had requested the Claimant to take her remaining accrued but untaken vacation leave pursuant to Article 29 (2) the DIFC Employment Law and for the Claimant to provide her preferred days to take vacation leave. The Defendant alleges that the Claimant failed to provide a response, and on 13 August 2020, the Defendant wrote to the Claimant requesting her to take her accrued but untaken vacation leave from 1 September 2020 until 4 October 2020. The Defendant submits that the Claimant is therefore not entitled to compensation in lieu of her accrued but untaken vacation leave days as she has availed of all of her accrued days.

17. In addition, the Defendant contends that the HR Policy is a draft document which has not been approved and signed by the Defendant's management team and was not shared with the Defendant's employees. The Defendant's position is that the Claimant therefore cannot rely on the draft HR Policy.

18. The Defendant submits that it has on numerous occasions, through its legal representative, reached out to the Claimant in order to finalise the Claimant's end of service entitlements. The Defendant alleges that the Claimant refused to cooperate with its legal representatives.

Discussion

Jurisdiction

19. 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.

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

Findings

<u>Vacation Leave</u>

21. On 11 and 13 August 2020, the Defendant wrote to the Claimant setting out its request to take vacation leave from 1 September 2020 until 4 October 2020 pursuant to Article 29 (2) of the DIFC Employment Law.

22. Article 29 (2) of the DIFC Employment Law reads as follows:

> "The Employer may require an Employee to take Vacation Leave on specified days in the current Vacation Leave Year by giving at least

seven (7) days prior written notice to the Employee."

23. It appears that the Defendant has provided the Claimant with more than seven days' notice as required by Article 29 (2) of the DIFC Employment Law. The DIFC Employment Law does not require the consent of the Claimant nor does it require that a request for any employee to be put on vacation leave be mutually agreed upon by the parties. In the absence of any provision in the DIFC Employment Law requiring consent by the employee, I am of the view that the Defendant is entitled to require the Claimant to be put on vacation leave during her notice period.

24. Furthermore, both parties have submitted witness statements in support of their respective arguments in relation to the Defendant's HR Policy. The Claimant's witness statement is provided by the HR Executive of the Defendant's company dated 5 December 2020, Mr Mith, and the witness submits that the HR Policy was approved by the Defendant's management team for newly appointed employees to the Defendant. The witness statement further provides that the HR Policy was not signed by the management team due to the circumstances arising out of the worldwide COVID-19 pandemic, however, it is clearly stated in paragraph 2 of the witness statement that:

"I would like to confirm that this document was prepared with the support of Michael and was approved by the management to be used for the new joiners. The document was not signed due to Covid-19 because we were working remotely; however, it was implemented right after coming back to the office. The document is shared with all the new joiners and communicated to the management through a PPT presentationimplemented and shared with all thenew joiners and communicated to the management through a PPT presentation" [sic]

25. The Defendant's witness statements are provided by the Sales Manager, Ms Minni, and the Chief Technical Officer, Mr Mithew, of the Defendant's company. Both witness statements provide that these individuals were not aware of the existence nor the implementation of this HR Policy. The Defendant has also submitted another witness statement dated 30 November 2020, provided by Mr Mith, which contradicts his witness statement made in support of the Claimant's Claim (set out in Paragraph 24 of this Judgment). Paragraph 2 of Mr. Mith's witness statement filed in support of the Defendant's claim provides the following:

"I would like to confirm that this document is a draft that has never been approved, nor communicated nor enforced by the Company".

26. At the Hearing, I asked the Claimant if the HR Policy had been communicated to the Claimant in writing. The Claimant confirmed that the HR Policy was not shared in writing to the Defendant's staff. The Claimant submits that she had received an email on 22 August 2020 from Mr Mith, which was also sent to the Managing Director of the Defendant's company, said email provided a presentation which set out the HR policy.

27. Moreover, the last page of the HR Policy contains a table which requires a signature from various individuals within the Defendant's company. It appears that the HR Policy as submitted, has not been signed. Furthermore, both the Claimant's witness statement as well as the email as mentioned in paragraph 26 of this Judgment, provide that the HR Policy is approved and implemented for newly appointed employees to the Defendant company, and this would effectively exclude the Claimant.

28. In light of the aforementioned, I am of the view that the Claimant's claim for accrued but untaken vacation leave in the sum of AED 26,650.17 shall be dismissed.

Claim for Damages

29. The Claimant claims the sum of AED 21,200 for the period of 1 November until 24 November 2020 as damages for the late payment of her end of service entitlement. Although the Claimant has not supported her claim by referring to the relevant Article in the DIFC Employment Law under which this claim would fall, I am of the view that it pertains to penalties under Article 19 of the DIFC Employment Law.

30. Article 19 of the DIFC Employment Law states that;

(1) "An Employer shall pay to an Employee all Remuneration (excluding where applicable, any Additional Payments deferred in accordance with Article 18(2), the Gratuity Payment and all accrued Vacation Leave not Taken, within fourteen (14) days after the termination date.

(2) Subject to the provisions of Article 19(3) and 19(4), an Employee shall be entitled to and the Employer shall pay a penalty equal to an Employee's Daily Wage for each day the Employer is in arrears of its obligations under Article 19(1)

(3) A penalty pursuant to Article 19(2) may only be awarded to an Employee if the amount due and not paid to the Employee in accordance with Article 19(1) is held by a Court to be in excess of the Employee's Weekly Wage

(4) A penalty pursuant to Article 19(2) will be waived by a Court in respect of any period during which:

a. a dispute is pending in the Court regarding any amount due to the Employee under Article 19(1)

b. the Employee's unreasonable conduct is the material cause of the Employee failing to receive the amount due from the Employer."

31. The Claimant served her last working day on 30 October 2020, and pursuant to Article 19 (1) of the DIFC Employment Law, the Defendant was required to pay out the Claimant's end of service entitlements within fourteen days after the termination date, being 13 November 2020. However, the Claimant proceeded and pre-emptively filed a Claim in the SCT on 4 November 2020.

32. I further note that the Defendant has submitted various email communication between the Defendant's legal representatives and the Claimant wherein the Claimant was requested to arrange a meeting in order to finalise her end of service entitlements. However, the Claimant refused to engage in any discussion with the Defendant's legal representatives which effectively resulted in the delay of payment of her end of service entitlements. I am of the view that the Defendant was entitled to appoint a legal representative to liaise with the Claimant in relation to her employment entitlements, therefore, by refusing to cooperate with the Defendant's appointed representative, the Claimant has delayed her payment entitlements unnecessarily.

33. Furthermore, the accrual of penalties has not been triggered, seeing as the Claimant has, as set out above, filed the Claim on a pre-emptive

basis. Article 19(4)(a) directs that the Court shall have discretion to waive a penalty for any period of time where a disputehas been pending with the Court, therefore I find that seeing as the Claimant's claim was brought ahead of the fourteen day grace period allowed to employers, there has been no breach by the Defendant of its duties towards the Claimant and therefore I dismiss the Claimant's claim for penalties accordingly.

Conclusion

34. The Claimant's claims shall be dismissed.

35. Each party shall bear their own costs.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of Issue: 12 January 2021
At: 10am