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

JAVAN

Claimant

and

JASLEEN LIMITED

Defendant

Hearing:**20 January 2019**

Judgment:**28 February 2019**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

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 Defendant shall pay the Claimant penalties under Article 18 of the DIFC Employment Law in the sum of AED 62,136.98 from 6 November 2018 to 30 December 2018.

2. All other claims shall be dismissed.

3. The Defendant shall pay the Claimant the Court fees in the sum of AED 70.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 28 February 2019

At: 12pm

THE REASONS

The Parties

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

2. The Defendant is Jasleen Limited (herein "the Defendant"), a company registered in the DIFC located at DIFC, Dubai.

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 February 2018 as a "Head of Investment Banking" with a commencement date of employment on 4 March 2017. The Claimant's total salary was AED 35,000

which consists of 30% of basic wage in the sum of AED 10,500, 30% housing allowance AED 10,500 and 40% for allowances in the sum of AED 14,000, 24 working days of leave per calendar year and a return ticket eligible to the Claimant and his family to his home country for each 12 months of employment.

4. On 6 December 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming for the Court fee for a previous employment case filed against the Defendant under Claim SCT-353-2018, penalties under Article 18(2) of the DIFC Employment Law following the Defendant's failure to comply with the terms of the Order issued under Claim SCT-353-2018, and the court filing fee for this claim

5. On 11 December 2018, the Defendant filed an Acknowledgment of Service intending to defend all of this claim.

6. The parties met for a Consultation with SCT Judge Hayley Norton on 17 December 2018 but were unable to reach a settlement.

7. Both parties attended the hearing before me listed on 20 January 2019.

The Claim

8. The Claim arises out of an Order issued on 14 November 2018 under case number SCT-353-2018, where the Defendant admitted the Claim and it was ordered that the Defendant pay the Claimant the amount of AED 121,810 as full and final settlement of the Claim.

9. The Defendant failed to comply with the terms of the Order under Claim SCT-353-2018 which led the Claimant to file a case against the Defendant claiming the filing fees for Claim SCT-353-2018 and for this Claim, and penalties under Article 18 of the DIFC Employment Law starting from the period of 6 November 2018, being 14 days after the Claimant's last working day to date, with a daily penalty equivalent to the last daily wage pay in the amount of AED 1,166.67, in summary the Claimant is requesting the following amounts:

a. SCT-353-2018 Court fee in the amount of AED 2,436.19

b. SCT-376-2018 Court fee in the amount of AED 748.70

c. Penalty under Article 18 in the amount of AED 35,000 (amount calculated up to 5 December 2018) with a daily wage of AED 1,166.67

10. The Claimant submits that the Defendant settled the outstanding salary payment that was due pursuant to the Order issued on 31 December 2018, being a delay of 54 days until payment, however, the Claimant is seeking penalties on the basis that other amounts are still owing, being the court fee.

11. In addition, the Claimant also alleges that he is entitled to penalties under Article 18(2) of the DIFC Employment Law from the date that the payment was delayed up to date.

The Defence

12. The Defendant submits that the payments owed to the Claimant were late because the company has been experiencing financially difficult times. The Defendant submits that they paid the pending salary to the Claimant on 31 December 2018 in line with the Order that was issued under Claim SCT-353-2018 by the Court on 14 November 2018.

13. The Defendant also argues that the Claimant is not entitled to the Article 18 penalties because `substantial payment' has been made and that the penalties should not continue to accrue because of the Claimant's claim for the Court fee from Claim SCT-353-2018.

14. The Defendant submits that if the late penalty should apply, then it should only accrue until the date that the Claimant received payment of his unpaid salary and not to the date of this judgment.

Discussion

15. This dispute is governed by the DIFC Employment 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.

Penalties under Article 18 of the DIFC Employment Law

16. The Claimant has claimed penalties under Article 18 of the DIFC Employment Law, which states as follows:

> "18(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.
>
> 18(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 penalty equivalent to the last daily wage for each day the employer is in arrears."

17. The Claimant's last working day was on 22 October 2018, following which the Defendant should have paid the Claimant his dues 14 days from the date of the Claimant's last working day, being, 5 November 2018. However, the Defendant failed to pay the Claimant his dues on time.

18. Therefore, I find that the Claimant is entitled to penalties under Article 18 of the DIFC Employment Law from 6 November 2018 up to 30 December 2018 in the sum of AED AED 62,136.98 (AED 35,000 being his monthly salary x 12/365 days x 54 days in arrears = AED 62,136.98).

19. The penalties shall not continue to accrue from the date of this Judgment up to the date of full payment.

Court Fee

20. Upon reviewing the Order issued on 14 November 2018, the amount in the Order did not refer to any Court fees, and it only addresses the Claimant's pending salary payments, as the paragraph specifically states, "IT IS HEREBY ORDERED THAT the Defendant shall pay the Claimant the sum of AED 121,810 as full and final settlement of this Claim."

21. I am of the view that the Claimant should have requested payment of the court fees at the time of filing his original claim and, as such, the claim for his court fees for SCT-353-2018 is denied.

22. In relation to the Court fees of this Claim, I find that the Defendant shall pay the Claimant's Court fee in the sum of AED 748.70.

Conclusion

23. In light of the aforementioned, I find that the Defendant shall pay the Claimant the total sum of AED 62,136.98 being the penalties under Article 18.

24. All other claims shall be dismissed.

25. The Defendant shall pay the Court fee to the Claimant in the sum of AED 748.70.

Issued by:

Maha Al Mehairi

SCT Judge

Date of Issue: 28 February 2019

At: 12pm