Claim No. SCT 231/2017

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 NASSIR AL NASSER

BETWEEN

HENRIETTA

Claimant

and

HALSTEAD MIDDLE EAST LLC

Defendant

Hearing: **5 October 2017**

Judgment: **11 October 2017**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

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 shall be dismissed.

2. The Claimant shall pay to the DIFC Courts the Court Fees in the sum of AED 3895.50.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 11 October 2017

THE REASONS

The Parties

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

2. The Defendant is Halstead Middle East LLC (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 in the position of "senior graphic designer" by an employment contract dated 21 October 2010 (the "Employment Contract").

4. Pursuant to the Employment Contract, the Claimant's total basic salary was AED 204,816 per annum paid in twelve months' equal installments, medical insurance cover under the Company's group scheme and annual vacation of twenty-five (25) working days for every completed year of service.

5. On 14 April 2017, the Defendant terminated the Claimant's contract by mutual agreement between the parties. As mutually agreed the notice period between 14 April 2017 and 13 July 2017 would be served as garden leave and the Claimant was not required to report to work during that time. In addition, the Claimant would be able to keep his residency visa and health insurance for himself and his family open until the termination date.

6. The parties also agreed that the Claimant was entitled to End of Service in the sum of AED 90,052.85, Holiday accruals in the sum of AED 5,233.05, Payment in lieu of Notice in the sum of AED 52,330.50, an end of service benefits in advance in the sum of AED 70,600 and a phone deposit of AED 5,000.00

7. On 28 August 2017, the Claimant filed a claim in the DIFC Courts Small Claims Tribunal (the "SCT") for payment of alleged End of Service benefits which consisted of a family air ticket for himself, his wife and two daughters in the sum of AED 8,000, Bonus for the year 2016 to be decided by the Courts, compensation for Arbitrary Dismissal of three month's salary in the sum of AED 52,329 and compensation for the Defendant's use of the intellectual property and copyright of the Claimant's business pictures in the sum of AED 123,000 (in which each photo costs AED 8,200).

8. The Defendant responded to the claim on 5 September 2017 defending the claim.

9. The parties met for a Consultation with SCT Officer Ayesha Bin Kalban on 25 September 2017 but were unable to reach a settlement.

10. Both parties attended the hearing before me listed on 5 October 2017. At the hearing the Claimant amended the claim form and deleted the first Defendant who was an employee of the Defendant. The amendment was approved and the hearing continued.

The Claim

11. The Claimant's case is for payment of alleged End of Service benefits which consist of a family air ticket for himself, his wife and two daughters in the sum of AED 8,000, Bonus for the year 2016 to be decided by the Courts, compensation for Arbitrary Dismissal of three month's salary in the sum of AED 52,329 and compensation for the Defendant's use of the intellectual property and copyright of the Claimant's business pictures in

the sum of AED 123,000 (in which each photo costs AED 8,200).



12. The Claimant also alleges that during the last two years of his employment he suffered from discrimination and offensive allegations and treatment from the HR manager and the HR team.



The Defence



13. The Defendant filed an acknowledgment of service and intended to defend the claim on the basis that the allegations made by the Claimant had no basis. The Defendant alleges that the Claimant has no rights in his claim.



14. The Defendant provided a Final Settlement Calculation document which is signed by both parties that the Claimant received all his dues on 13 April 2017. In addition, it is argued that the Claimant waived his rights to bring any claims against the Defendant arising out of the termination of his employment.



15. Furthermore, the Defendant argues that it is only obliged to provide a repatriation ticket for the Claimant and not his family. In addition, the Defendant argues that in regards to bonus payment for the year 2016, the Claimant's contract does not contain a bonus provision or clause and therefore, there is no contractual right for bonus payments. The Defendant further asserts that the bonus payments made in the previous year were totally discretionary.



16. The Defendant also alleges that the Claimant is not entitled to compensation for Arbitrary dismissal as there are no remedies against arbitrary dismissal in the DIFC Employment Law. The Defendant also referred to the case of *Hana Al Herz v The Dubai International Financial Centre Authority* [2013] DIFC CA 004, where the Court of Appeal ruled that the principle of unfair dismissal did not exist in DIFC Law.



17. In relation to the Claimant's claim for compensation for using the intellectual property and copyright of the Claimant's personal pictures, the Defendant argues that the usage of photos fell within the scope of the Claimant's employment, in addition it was done following discussions with the Claimant and his consent.



18. As regards the Claimant's claim for discrimination, the Defendant argues that the Claimant should support his allegation with evidence.



Discussion



19. 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.



20. In relation to the Claimant's claim that the Defendant shall provide repatriation tickets to the Claimant and his family, the Defendant argues that the Claimant is only entitled to a one-way ticket to his home country.

21. The Claimant failed to provide any evidence that his family are also entitled to a one-way ticket. Therefore, I am of the view that the Claimant's family are not entitled to tickets back to their home country.



22. The Claimant claimed bonus for the year 2016 and argued that for the past years he had received a bonus payment but failed to provide any evidence that he is entitled to a bonus for each year of employment. Moreover, the Defendant argues that there is no provision or clause in the Claimant's Employment contract that he shall be entitled to bonus every year. In addition, the Defendant argues that the bonus is entirely discretionary. Therefore, I take the view that the Claimant is not entitled to bonus for the year 2016.



23. The Claimant claimed compensation for Arbitrary Dismissal of three month's salary, but he also failed to provide any evidence that he was

unfairly dismissed. On the other hand the Defendant argues that claims for Arbitrary Dismissal do not exist under DIFC Law, relying on case law of the DIFC Courts in *Hana Al Herz v The Dubai International Financial Centre Authority* [2013] DIFC CA 004. In the light of that cited judgment, I find that the Claimant is not entitled to three month's salary as compensation for Arbitrary Dismissal.

24. The Claimant also claimed compensation for the company use of his photos without any payment. The Claimant again failed to provide any agreement between himself and the Defendant for the usage of his photos in work related to the Defendant's company. However, the Defendant argues that the usage of pictures was under the scope of work of the Claimant as a senior graphic designer and were used with his consent. The Defendant also provided email correspondence that the Claimant sent the Defendant a Facebook link to choose the pictures from but the Claimant failed to provide any document or correspondence that there would be a payment for each photo. Consequently, I dismiss the Claimant's claim for lack of evidence.

25. In relation to the Claimant's discrimination claim, the Claimant failed to provide any evidence to support his claim. The Defendant argues that the Claimant should provide evidence for any allegation he makes against the Defendant. Therefore, I dismiss the Claimant's claim for lack of evidence.

Conclusion

26. In light of the aforementioned, I find that the Claimant's claims shall be dismissed for lack of evidence.

27. The Claimant shall pay to the DIFC Courts the Court Fees in the sum of AED 3,895.50.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 11 October 2017

At: 3pm