Claim No. SCT-470-2019

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

KAAPRO

Claimant

and

KACEE (DUBAI) LLC

Defendant

Hearing: 30 October 2019

Judgment: 11 November 2019

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON hearing the Claimant and the Defendant's representative

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 the sum of AED 42,813.83 in relation to the below:

(a) unpaid salary from 1 - 17 September 2019 in the sum of 7,846.18;

(b) 30 days' notice in the sum of AED 10,000;

(c) untaken vacation leave and public holidays in the sum of AED 10,384.65;

(d) flight allowance in the sum of AED 1,500; and

(e) gratuity in the sum of AED 13,083.

2. The Defendant shall pay the Claimant the DIFC Courts filing fee in the sum of AED 856.27.

Issued by:Maha Al MehairiSCT JudgeDate of issue: 11 November 2019At: 3pm

THE REASONSThe Parties1. The Claimant is Kaapro (herein "the Claimant"), an individual filing a claim against the Defendant regarding his employment at the Defendant's company.2. The Defendant is Kacee (Dubai) LLC (herein "the Defendant"), a company registered in the DIFC located , Dubai, UAE.**Background and the Preceding History**3. The Claimant commenced work for the Defendant on 3 January 2016 as per the employment contract signed by both parties (the "Employment Contract").4. The Claimant contends that he was terminated for cause by the Defendant on 22 September 2019.5. On 6 October 2019, the Claimant filed a claim in the DIFC Courts Small Claims Tribunal (the "SCT") claiming his end of service entitlements in the sum of AED 88,000.6. On 13 October 2019, the Claimant amended his claim and included an accommodation allowance at the rate of AED 100 per day.7. The parties attended a Consultation with SCT Judge Delvin Sumo on 14 October 2019, however the parties failed to reach a settlement.8. Both parties attended the hearing before me on 30 October 2019 (the "Hearing").9. The Court requested that the parties submit additional information and supporting documents, which were filed on 5 and 11 November 2019.**The Claim**10. The Claimant's case is that he was employed with the Defendant as a `General Cook' from 3 January 2016, however, the Claimant was terminated for cause on 22 September 2019. The Claimant alleges that he was verbally forced to take annual leave from 6 to 22 September 2019, on which date he claims to have received the termination letter by way of email.11. The Claimant alleges that he was terminated for cause without notice nor was he given the chance to respond to any allegations made against him by the Defendant. Moreover, the Claimant alleges that the reasons for his termination were invalid as the incidents happened at the workplace and occurred while he was on leave. Furthermore, being designated as the General Cook, the Claimant claims that he was not responsible for the department under which the specific incidents took place.12. The Claimant further alleges that pursuant to his Employment Contract his basic salary was AED 10,000 and upon receiving his end of

service entitlements calculation, the Defendant reduced the Claimant's basic salary to AED 5,000. The Claimant alleges that he never received the payslips wherein the salary is broken down into a basic salary of AED 5,000 and general allowance of AED 5,000.13. The Claimant therefore filed a claim in the SCT which consists of the following:

> (a) pending salary of September 2019 in the sum of 8,461.64;(b) 30 days' notice in the sum of 10,000;(c) arbitrary dismissal up to 3 months' salary in the sum of AED 30,000;(d) 34 vacation days from 2018 and 2019 in the sum of AED 13,076.92;(e) air ticket from 2017-2018 in the sum of AED 2,420;(f) end of service gratuity in the sum of AED 24,231.06;(g) daily penalty under Article 19 of the DIFC Employment Law No. 2 of 2019; and(h) accommodation allowance in the sum of AED 100 per day;

The Defence14. The Defendant failed to file a written defence, however, at the Hearing, the Defendant's representative alleged that he was forced to terminate the Claimant for cause due to several incidents that took place under the Claimant's section. The reasons and specific incidents are set out in the termination letter sent to the Claimant by way of an email on 17 September 2019.15. At the Hearing, it was alleged by the Defendant that the Claimant worked until 6 September 2019 and thereafter he was verbally informed to take annual leave until he was terminated on 17 September 2019.16. The Defendant alleges that the Claimant was responsible for the department under which the incidents happened and being on annual leave does not remove his responsibilities for the specific tasks. The designation of the Claimant as a "Cook In-Charge" is mentioned on the pay slips which were emailed to the Claimant on a monthly basis.17. The Defendant stated at the Hearing that on the same pay slips, the basic salary and the general allowances of the Claimant were specified, and these pay slips were emailed to the Claimant every month.18. The Defendant alleges that the Claimant never raised this issue before and received his salary and a monthly payslip without any formal or informal complaint to the management.**Discussion**19. The DIFC Courts and the SCT have jurisdiction over this case as it regards employment within DIFC and the amount 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.**Outstanding Salary**21.The Defendant agreed at the Hearing that the Claimant is entitled to his 6 days' September 2019 salary. The only remaining issue between the parties is whether the Claimant is entitled to his claim for the remaining days of September 2019.22. The Defendant provided an email dated 17 September 2019 informing the Claimant of his termination. At the Hearing, the Claimant confirmed that the email address to which the termination letter was sent belonged to him. Therefore, I will consider the termination date to be 17 September 2019.23. Therefore, the Claimant is entitled to his salary from 1 - 17 September 2019. Based on the monthly salary of AED 10,000, the Claimant's daily wage is AED 461.54 per day (10,000 x 12 / 260 = daily wage). Therefore, for 17 days, this totals to AED 7,846.18 (AED 461,54 x 17).Notice Period and Arbitrary Dismissal24. The Claimant claimed 30 days' notice in the sum of AED 10,000 alleging that the Defendant terminated the employment for cause. The termination letter referred to incidents that occurred at the workplace, however, the Defendant failed to provide evidence to demonstrate that the Claimant himself caused these incidents. In fact, both the Claimant and the Defendant agreed at the Hearing that these incidents occurred while the Claimant was on leave. Article 63(1) of the DIFC Employment Law states that:

> "the employer may terminate the employee's Employment with immediate effect for cause in circumstances where the conduct of 1 party warrants termination and where a reasonable Employer or Employee would have terminated the Employment as a consequence thereof. "

25. Based on the above, I am not satisfied that the Claimant was directly responsible for the incidents that occurred and as detailed in his termination letter. I am not satisfied that the Defendant has established termination for cause and, therefore, the Claimant is entitled to 30 days' notice in the sum of AED 10.000.26. The Claimant's claim of 3 months' salary in the sum of AED 30,000 is rejected as the DIFC Employment Law does not make provision for arbitrary dismissal.Vacation Leave and Public Holidays27. Article 28(1) of the DIFC Employment Law states that, where an employee's employment is terminated, the employer shall pay the employee an amount in lieu of vacation leave accrued but not taken up to and including the termination date using the employee's daily wage in accordance with Article 28(3).28. Similar for the public holidays and pursuant to Article 32(3)(b) of the DIFC Employment Law, if an Employee agrees to work on a public holiday, in addition to their daily wage, the employer must provide the employee with a payment of an amount equal to the employee's daily wage for the public holidays worked.29. At the Hearing, the Claimant and the Defendant agreed that the total untaken vacation leave and public holidays amounted to 33.5 days. They further confirmed that the Claimant was requested to take annual leave from 7 to 17 September 2019, a total of 11 days, therefore, this amount shall be deducted from the total, 33.5 - 11 = 22.5 untaken vacation leave and public holidays.30. The Claimant is entitled to compensation for 22.5 days. The daily wage is calculated to be AED 461.54 in paragraph 23 of this judgement, therefore, the Claimant is entitled to AED 10,384.65 (AED 461.54 x 22.5).**Flight Allowance**31. As per the terms of the Employment Contract, the Claimant is entitled to one economy class return ticket every one year, from the start date of the employment. The Claimant has worked from 3 January 2016 until 17 September 2019, which is 3 full years completed.32. The Claimant claims pending allowance for the air ticket of 2017 and 2018 which has not been contested by the Defendant. As requested, the Defendant provided the company policy in respect of air ticket allowance and in accordance with the policy, the Claimant is entitled to AED 1,500 for his air ticket allowance of 2017 and 2018.**End of Service Gratuity**33. The Claimant also argues that he is entitled to gratuity in the sum of AED 24,231.06 based on his last gross salary of AED 10,000. However, the Defendant calculated the entitlement based on the basic salary of AED 5,000. The Defendant stated that all employees of the Defendant were provided with a monthly payslip which includes the breakdown of their salary. The monthly payslips were sent to the email address which the Claimant at the Hearing confirmed to be his. The Claimant failed to produce any evidence to show that he challenged his payslips or the breakdown on the payslips.34. Therefore, I find that the Claimant was aware of the information set out on the pay slips which confirms his basic salary of AED 5,000 and general allowances of AED 5,000. Therefore, the gratuity shall be calculated based on the basic wage in accordance with Article 66 of the DIFC Employment Law.35. The Claimant worked for the period from 3 January 2016 to 17 October 2019 which calculates to 3 years, 9 months (21 days/12 months = 1.75 for each month x 9 months = 15.75 days) and 14 days (1.75 / 30 = 0.06 for each day x 14 = 0.84 days).36. The gratuity shall be calculated as following:

> (a) AED 5,000 x 12 months /365 days = AED 164.38 (daily rate)(b) AED 164.38 x 21 days = 3,451.98 x 3 years = AED 10,355.94 for the first 3 years(c) AED 164.38 x 15.75 days = AED 2,588.98;(d) AED 164.38 x 0.84 = AED 138.08(e) AED 10,355.94 + 2,588.98 + 138.08 = AED 13,083.

37. Therefore, I find that the Claimant is entitled to the sum of AED 13,083 as end of service gratuity.Penalties under Article 19 of the DIFC Employment Law38. The Claimant claims penalties under Article 19 of the DIFC Employment Law for any delay in payment from the date of judgment in this case until the payment is made.39. Article 19(4)(a) of the DIFC Employment Law states that;

"A penalty pursuant to Article 19(2) will be waived by a Court in respect of any period during which:a dispute is pending in the Court regarding any amount due to the Employee under Article 19(1)."

40. The Claimant filed his claim on the 6 October 2019. As established hereabove, the termination date was 17 September 2019 with 30 days' notice period. I will exercise the powers vested in me by Article 19(4)(a) of the DIFC Employment Law and reject the Claimants claim in respect of any penalties in accordance with Article 19 of the DIFC Employment Law.**Accommodation Allowance**41. As per the terms of the Employment Contract, the Claimant is entitled to accommodation provided by the Defendant during his employment until his last working day, being 17 September 2019. From the documents submitted by the Claimant, it shows that the Claimant was staying in the Defendant's accommodation up until 8 October 2019.42. The Claimant's request to allow him to stay in the accommodation until a judgment in this case has been rendered or to award the Claimant an accommodation allowance is therefore rejected.**Conclusion**43. The Defendant shall pay the Claimant the sum of AED 42,813.83 in relation to the below:

(a) unpaid salary from 1 - 17 September 2019 in the sum of 7,846.18;(b) 30 days' notice in the sum of AED 10,000;(c) untaken vacation leave and public holidays in the sum of AED 10,384.65;(d) flight allowance in the sum of AED 1,500; and(e) gratuity in the sum of AED 13,083.

44. The Defendant shall pay the Claimant the DIFC Courts filing fee in the sum of AED 856.27.

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