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

LEXI

Claimant

and

LACEY LLC

Defendant

Hearing : **5 October 2020**
Judgment : **7 October 2020**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON the Claim Form being filed on 24 August 2020

AND UPON a Hearing having been held before SCT Judge Nassir Al Nasser on 5 October 2020, with the Claimant and the Defendant's representative in attendance

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 his end of service entitlements in the sum of AED 26,004.68.

2. The Defendant shall cancel the Claimant's visa immediately.

3. The Defendant shall pay the Claimant the Court fee in the sum of AED 520.09.

Issued by:
Nassir Al Nasser
SCT Judge
Date of issue: 7 October 2020
At: 3pm

THE REASONS

The Parties

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

2. The Defendant is **LACEY LLC**, a company registered in the DIFC (the "Defendant").

Background

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an employment contract dated 9 June 2014 with a commencement date of 4 July 2014. On 2 November 2019, the Claimant and the Defendant entered into a new Employment Contract (the "Employment Contract").

4. On 5 April 2020, the Claimant provided his resignation notice to the Defendant.

5. On 24 August 2020, 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 38,707.

6. On 30 August 2020, the Defendant responded to the claim by filing an Acknowledgment of service setting out its the intention to defend all of the claim. The Defence was filed by the Defendant on 16 September 2020.

7. On 16 September 2020, the Defendant filed its defence.

8. The parties met for multiple Consultations with SCT Judge Hayley Norton on 7, 14, 17 and 21 September 2020 but were unable to reach a

settlement.

9. Thereafter, the parties attended a hearing listed before me on 5 October 2020.

The Claim

10. The Claimant filed a claim with the SCT alleging that he is entitled to the sum of AED 38,707, consisting of the following claims:

(a) Salary for March 2020 in the sum of AED 3,000;

(b) Salary for 5 days worked in April 2020 in the sum of AED 1,666;

(c) Payment in lieu of Annual Leave accrued but untaken in the sum of AED 7,166;

(d) Payment in lieu of days worked on public holidays in the sum of AED 6,000;

(e) End of Service Gratuity from 4 July 2014 to 4 July 2019 in the sum of AED 17,500; and

(f) End of Service Gratuity from 5 July 2019 to 5 April 2020 in the sum of AED 3,375.

The Defence

11. The Defendant filed its defence rejecting the Claimant's claims on the bases set out below.

12. In relation to the Claimant's claims for salary for the month of March 2020 and 5 days salary for the month of April 2020 in the sum of AED 4,666, the Defendant alleges that the Claimant had signed a document by virtue of which the Defendant deducted amounts from the Claimant's salary on a temporary basis.

13. The Defendant submits that pursuant to the Employment Contract between the parties, the Claimant is entitled to a maximum of five (5) working days of accrued but untaken leave to be carried over to the next year for a maximum period of twelve (12) months, subject to the approval of his direct manager, which was not provided to the Claimant. The Defendant therefore denies that the Claimant is entitled to AED 7,166 in relation to his claim for accrued but untaken annual leave.

14. As regards the Claimant's claim for payment in lieu of days worked on public holidays in the sum of AED 6,000, the Defendant submits that there was one public holiday from January 2020 to 5 April 2020 that was announced by the UAE government, and therefore refutes the Claimant's claim accordingly.

15. The Defendant submits that the gratuity payment owed to the Claimant must be calculated pursuant to the Claimant's last basic salary and states that the Claimant is entitled to the sum of AED 17,884.

16. The Defendant also submits that the Claimant did not show up to work since 5 April 2020 and failed to serve his notice period. Therefore, the Defendant submits that the Claimant owes the Defendant the sum of AED 10,000 for the one-month notice period he failed to serve.

Discussion

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

18. The Defendant, in its submissions, makes reference to the UAE Federal Labour Law, which does not apply in the DIFC. The Claimant is employed by a DIFC entity, and therefore, the DIFC Employment Law shall apply.

19. The Defendant provided a document titled "Resolution No. 279 of 2020 issued by the Ministry of Human Resources and Emiratization" which the Defendant submits allowed the Defendant to deduct amounts from the Claimant's salary. This resolution does not apply in the DIFC, however, I shall consider the document signed between the parties dated 1 April 2020 to be an agreement to deduct amounts from the Claimant's remuneration, without making reference to the aforementioned resolution (the "Deduction Agreement").

20. The Defendant deducted 30% of the Claimant's salary for March 2020 submitting that it was well within its rights to do so, given that the Claimant had signed the Deduction Agreement. The Agreement makes no reference to the start date of the deduction; therefore, I shall consider 1 April 2020 to be the date in which the deduction of the Claimant's salary commenced. I find the Defendant's deduction of the Claimant's salary for the previous month to be unlawful, and the Defendant had no right to do so.

21. Therefore, in relation to the Claimant salary for March 2020, I find that the Defendant shall pay the Claimant the deducted amount of AED 3,000. In regards to the Claimant's salary for days worked in April 2020, this is to be taken in accordance with the Deduction Agreement.

22. The Claimant's salary was AED 10,000 per month, and as per the March 2020 pay slip was deducted in the amount of 30%.

23. In the month of April 2020, the Claimant only worked for 5 days, for which he is entitled to the following salary: 10,000 - 30%= 7,000/30days = 233.33 x 5 days = AED 1,166.65.

24. In relation to the Claimant's claim for 19 days annual leave accrued but untaken in the sum of AED 7,166, Clause 3 of the Employment Contract reads as follows:

"(1) the Employee is entitled to twenty-four (24) working days of paid leave per annum, accrued on monthly pro rate basis, In accordance with company policy

(2) Article 3(1) is applicable only if the Employee has been employed for at least one (1) year and is subject to the approval of his direct manager

(3) the Employee is entitled to a maximum of five (5) working days of accrued but untaken leave to be carried over to the next year for a maximum period of twelve (12) months, subject to the approval of his direct manager

(4) the Employee is not entitled to payments in lieu of unused leave except where the Company has terminated this contract without cause, or the company agrees otherwise."

25. Furthermore, Clause 27(3) of the DIFC Employment Law, reads as follows:

"An Employee is entitled to carry forward up to five (5) Work days of accrued but untaken Vacation Leave into the next Vacation Leave year for a maximum period of twelve (12) months after which any unused vacation leave shall expire"

26. Article 28 of the DIFC Employment Law states, where relevant, that:

"(1) 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 calculated in accordance with Article 28(3).

(3) An Employee's Gratuity Payment shall be calculated as follows:

Compensation in lieu of Vacation Leave, or any amount owed by the Employee is respect of excess Vacation Leave taken, shall be calculated using the Employee's daily wage at the termination date."

27. The Claimant submits that he is entitled to 19 days of accrued but untaken annual leave. However, as per the Employment Contract and the DIFC Employment Law, the Claimant was only entitled to carry forward 5 working days of accrued but untaken into the next vacation leave year, and any unused vacation leave has since expired. In addition, I find that the Claimant is entitled to 6.33 days of accrued but untaken annual leave from January 2020 to 5 April 2020.

28. I find that the Claimant is entitled to 11.33 days of accrued but untaken annual leave calculated on the Claimant's daily wage as per clause 28(3) of the DIFC Employment Law, as follows:

AED 7,000 x 12 months/260 days = AED 323.07 x 11.33 days of annual leave = AED 3,660.38

29. In relation to the Claimant's claim for payment in lieu of days worked on public holidays, the Claimant claimed the sum of AED 6,000 without providing any evidence or justification to support this Claim, and also failed to mention which public holidays he is seeking payment in lieu of. The Defendant argues that the Claimant is only entitled to payment in lieu of working on one public holiday, which was on 1 January 2020. Therefore, I find that the Claimant is entitled to one public holiday in the sum of AED 323.07.

30. Article 66 of the DIFC Employment Law states, where relevant, that:

"(1) An Employee who is not required to be registered with the GPSSA under Article 65(`), and who completes continuous employment of at least one (1) year with their employer, before or after the Qualifying Scheme Commencement Date is entitled to a Gratuity Payment for any period of service prior to the Qualifying Scheme Commencement Date on the termination of their employment. .

(2) An Employee's Gratuity Payment shall be calculated as follows:

(a) an amount equal to twenty-one (21) days of the Employee's Basic Wage for each year of the first five (5) years of service prior to the Qualifying Scheme Commencement Date; and

(b) an amount equal to thirty (30) days for the Employee's Basic Wage for each additional year of service prior to the Qualifying Scheme Commencement Date. .

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(7) From the Qualifying Scheme Commencement Date an Employer shall, on a monthly basis, pay to a Qualifying Scheme, for the benefit of each Employee who is not an Exempted Employee, an amount equal to as least the Core Benefits, which shall be calculated as follows:

(a) five-point eight three percent (5.83%) of an Employee's Monthly Basic Wage for the first (5) years of an Employee's service, inclusive of any period of employment of Secondment served to prior to the Qualifying Scheme Commencement Date; and

(b) eight-point three three percent (8.33%) of an Employee's Monthly Basic Wage for each additional year of service."

31. The abovementioned clauses provide that an employer is required pay to an employee, within 14 days of the employee's termination date, a gratuity payment, in addition to amounts equal to the core benefits set out by the DIFC Employment Law, such amounts to be paid into a Qualifying Scheme. The gratuity payment to be paid must be for any period of service prior to the Qualifying Scheme Commencement Date, which is defined in the Law to be 1 February 2020. Therefore, I find that the Claimant is entitled to his gratuity payment, as accrued until 31 January 2020, calculated below.

32. The Claimant's basic wage is AED 4,500, and the gratuity payment is to be calculated against the period of service from the Claimant's first working day with the Defendant until 31 January 2020. The Claimant worked from 4 July 2014, meaning the period of service to be calculated for gratuity is 5 years and 6 months and 27 days.

Gratuity = AED 4,500 basic wage x 12 months / 365 days = AED 147.94 per day x 21 days (for the first 5 year) = AED 15,533.70

Gratuity for 6 months = 21 days/ 12 = 1.75 days = 6 months x 1.75 = 10.5 days x AED 147.94 = AED 1,553.37.

Gratuity for 27 days = 1.75 days / 30 = 0.05 per day x 27 days = 1.35 days x AED 147.94 = AED 199.71.

In accordance with the above, the Claimant is entitled to AED 17,286.78 for gratuity payment.

33. The parties have not provided any evidence to demonstrate that the Claimant has been enrolled into a qualifying scheme, nor has any evidence been provided to show that the Claimant would be exempted from being enrolled. In light of this, I order that the Defendant pay to the Claimant an amount equal to the minimum benefits set out by the DIFC Employment Law, which would reflect the contributions that the Defendant would have paid into the qualifying scheme had it complied with the requirements of the DIFC Employment Law. This is to be calculated as follows.

34. The Claimant's employment with the Defendant was for the amount of 5 years, 9 months and 1 day. Taking into consideration the period of service undertaken by the Claimant prior to the commencement date of the Qualifying Scheme, the Claimant would be entitled to contributions for the period between 1 February 2020 to 5 April 2020, being the Claimant's last working day.

Between 1 February 2020 - 5 April 2020:

The Claimant's monthly basic wage is AED 4,500 x 5.83% (being the minimum contribution amount defined by the Employment Law) = AED 262.35 per month x 2 months = AED 524.7.

Between 1 April 2020 - 5 April 2020:

AED 147.94 (being the Claimant's daily basic wage) x 5.83%= AED 8.62 per day x 5 days = AED 43.1.

35. Therefore, in accordance with the above, the Claimant's entitlement in regards to contributions that should have been made by the Defendant to a qualifying scheme is AED 567.80.

36. In relation to the Defendant's deduction of sums owed to the Claimant in regards to the Claimant's failure to serve a notice period, I find that the Defendant has done so unlawfully, and the appropriate remedy is for the Claimant to not be paid sums in lieu of the notice period.

37. As the employment relationship between the parties has ended, the Defendant must cancel the Claimant's visa and I hereby order that this be done forthwith.

Conclusion

38. In light of the aforementioned, the Defendant shall pay the Claimant his end of service entitlements in the sum of AED 26,004.68.

39. The Defendant shall cancel the Claimant's visa immediately.

40. The Defendant shall pay the Claimant the Court fee in the sum of AED 520.09.

Issued by:
Nassir Al Nasser
SCT Judge
Date of issue: 7 October 2020
At: 3pm