Claim No. SCT 311/2018

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

BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

ILANA

Claimant

and

IVEY GROUP LLC

Defendant

Hearing:**28 October 2018**

Further Submissions:**21 November 2018**

Judgment: **26 November 2018**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 23 September 2018;

AND UPON the Defendant acknowledging service of the Claim Form on 9 October 2018;

AND UPON the parties being called for a Consultation with SCT Judge Nassir Al Nasser on 14 October 2018, and the parties failing to reach a settlement;

AND UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 28 October 2018, with the Claimant and the Defendant's representative in attendance;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1.The Claimant's Claim shall be dismissed.

2. Each party shall bear their own cost.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 26 November 2018

At: 10am

THE REASONS

Parties

1.The Claimant, Ilana, is a Filipino employee of the Defendant company.

2. The Defendant, Ivey Group LLC, is a restaurant that is operating in the DIFC.

Background

3. The Claim arises out of an Employment Contract between the Claimant and Defendant. The Claimant started working for the Defendant as a food runner in November 2009 for a salary of AED 4,800 per month.

4. In 2015 the Defendant posted a memo to all employees stating that:

> "team,
>
> Please note the following bullet points below.
>
> *effective Feb 1st, 2015 all staff salaries will be reduced by 20%
>
> *Effective Feb 1st, 2015 the portions of service charge distributed is 50%"

5. The Claimant continued working for the Defendant for 3 more years with the salary deductions as stated in the memo. On 10 April 2018 the Claimant received his termination letter from the Defendant stating that he was required to serve 3 months' notice as per his employment contract, marking 10 July 2018 as his last working day at the restaurant.

6. On 23 September 2018, the Claimant filed a case against the Defendant in the DIFC Courts' Small Claims Tribunal ("SCT") requesting that the Court order that, as per the Employment Contract, the Defendant be required to pay AED 54,472.

7. The parties participated in a Consultation on 14 October 2018, before SCT Judge Nassir Al Nasser but were unable to reach a settlement. On 28 October 2018, I heard submissions from the Claimant and the Defendant's representative.

Particulars and Defence

8. The Claimant argued in the Claim Form that the Defendant owed the Claimant the amount of AED 48,282 for the deductions they made in 2015 in the amount of AED 1,238 for 39 months, in addition to 7% interest requested as a matter of equity. In addition, he claimed for one-month notice, as he booked a one-month holiday in May 2018 and received the termination notice in April 2018. The Claimant is also requesting for Article 18(2) of the DIFC Employment Law from July 10, 2018 until payment.

9. The Claimant submits that he did not sign any paper to approve the deduction in 2015, and as such it is considered unlawful deductions from the Defendant's side. The Claimant also adds that he was served with the termination letter in April 2015 and he booked a non-refundable vacation in May 2018, as such he is entitled to 1-month notice. Furthermore, the Claimant argues that for the reasons above he is entitled to late payment fee under Article 18(2) of the DIFC Employment Law.

10. The Defendant submits that the Claimant is not entitled to compensation for a reduced salary. The Defendant acknowledges that the Claimant's salary was reduced by 20%, however, asserts that this reduction was not improper and instead, it was reasonable and necessary for the financial stability of the Defendant, and avoided the Defendant having to undergo a redundancy or restructuring process.

11. The Defendant further asserts that prior to the reduction in the Claimant's salary, the Defendant made the Claimant aware by way of a written "memo" posted on the Defendant's premises advising of the salary reduction which would take effect as of 1st February 2015. In addition, and prior to the issuance of the "memo", the Defendant spoke with the Claimant's line manager to discuss the matter and explain the Defendant's reasoning and need to reduce the Claimant's salary and requested that the Claimant's line manager relay the Defendant's reasoning and needs to the Claimant directly.

12. The Claimant, once informed of the salary reduction, elected to accept the fact that his salary was being reduced on the grounds that, had the Claimant genuinely disputed or refuted the communicated salary reduction, the Defendant would have had no option but to make him redundant. The Claimant knew this very well since it was expressly confirmed to him and he decided to remain since he had no alternative employment options. Accordingly, the Claimant has received all of his salary due and payable to him under the terms of his employment with the Defendant.

13. It is the Defendant's position that the Claimant is not entitled to one month pay in lieu of notice. The Claimant had accrued vacation leave which he was entitled to use, and the Claimant requested, by way of prior written notice to the Defendant, to take the vacation leave from 15th May 2018 returning to work on the 15th June 2018. The Claimant's requested vacation leave was pre-approved by the Defendant prior to the issuance of the Termination Letter.

14. The Defendant believes this is a deliberate ploy to seek to either negotiate an enhanced payout or to abuse the penalty provisions contained at Article 18 of the DIFC Employment Law which is widely recognised and publicised as being a draconian provision which can materially financially benefit an employee at the disadvantage of an employer and result in aggressive and imbalanced penalties.

15. The Defendant submits that the Claimant is not entitled to interest for late salaries at a rate of 7% on the basis that there are no outstanding salary payments due and payable to the Claimant, as stipulated above. Furthermore, the Defendant asserts that the DIFC Employment Law does not make any reference to a 7% interest rate for payment of late salaries and, rather, there are provisions at Article 18(2) in respect of any outstanding payments due to an employee. Accordingly, the Defendant submits that this relief should be disregarded in the event that any funds are

determined to be due and owing to the Claimant.

16. The Defendant submits that having consideration to the DIFC Employment law and the reasons stipulated above, that the Claimant is not entitled to one-month payment in lieu of notice.

17. The Defendant submits that the Claimant is not entitled to delay interest in accordance with Article 18(2) of the DIFC Employment Law on the basis that there are no outstanding salary payments due and payable to the Claimant.

Discussion

18. The DIFC Courts and the Small Claims Tribunal have jurisdiction over this case as it concerns employment within the DIFC and the amount in question does not exceed AED 500,000. Further, Clause 9.2 of the Amended Employment Contract states that any disputes shall be subject to the exclusive jurisdiction of the DIFC Courts.

19. This dispute is governed by the DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 (the DIFC Employment Law) in conjunction with the relevant Amended Employment Contract.

20. There is just one issue to be decided in this dispute: is the Claimant entitled to the 20% deduction that was made from 2015? There is no dispute from the parties that the Claimant saw the memo that was posted on the wall. The Claimant also does not deny that he acknowledged reading the memo and continued working for the Defendant. The Claimant's action of continuing to work for the Defendant is to be taken as an implied action that he accepts the new terms of his employment agreement with the new 20% deductions.

21. In addition, the Claimant's request for 1 month notice in compensation for the 1 month annual leave he took in his notice period is not argued with any legal basis; as long as the employee was paid for the month that he went on vacation during his notice period then there is nothing to claim.

22. Article 28(1) of the DIFC Employment Law sets out 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*", and since there is no annual leave pending the Claimant is not entitles to any amount in lieu.

23. The Court is satisfied with the Defendants submissions and orders that the Claimant's Claims are dismissed with each party bearing their own Costs.



Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 26 November 2018

At: 9am