Claim No. SCT 250/2019

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 NASSIR AL NASSER

BETWEEN

JEZEBEL

Claimant

and

JIE

Defendant

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Hearing:❖❖❖❖❖❖❖❖❖ ❖❖❖❖❖❖❖❖❖❖❖ **16 June 2019**

Judgment: ❖❖❖❖❖ ❖❖❖❖❖❖❖❖❖❖❖ **27 June 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

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 Claimant's claims of 3 months' salary compensation, gratuity and 24 days' annual leave shall be dismissed.
2. The Defendant shall provide the Claimant with an Air Ticket to his home country.
3. The Defendant shall cancel the Claimant's employment visa.
4. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 27 June 2019

At: 8am

THE REASONS

The Parties

1. The Claimant is Jezebel (herein "the Claimant"), an individual filing a claim against the Defendant regarding his employment at the Defendant company.
2. The Defendant is Jie (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 14 May 2017 signed on 24 May 2017 with an effective date of 26 June 2017 (the "Employment Contract").
4. On 4 April 2019, the Claimant was terminated by the Defendant.
5. On 7 May 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for various employment claims and claimed compensation in the sum of AED 108,116.20.

6. On 12 May 2019, the Defendant filed an Acknowledgment of service with an intention to defend the claim. On 13 May 2019 the Defendant filed his defence defending the claim.

7. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 19 May 2019 but were unable to reach a settlement.

8. Both parties attended the hearing before me listed on 16 June 2019.

The Claim

9. The Claimant's case is that he was employed with the Defendant as a `Resident DJ' for a period of one year and eleven months, from 26 June 2017 to 4 April 2019, the date the Defendant decided to terminate the Claimant's employment, following which his last working day was 5 May 2019.

10. The Claimant alleges that he worked at the Defendant's premises in Dubai for 4 days per week and 1 day at the Defendant's premises in Abu Dhabi.

11. The Claimant alleges that the Defendant asked him to work in Abu Dhabi although he was under the Defendant's DIFC visa without any mention in his Employment Contract. He alleges that he performed in both venues without proper financial compensation.

12. In June 2018, the Claimant alleges that the Defendant decided to renovate the DIFC premises and he was informed that he would be working in the Defendant's Abu Dhabi premises 3 days a week in order to receive his full salary. The Claimant alleges that he was not given a choice and the HR department deducted 24 days of his annual leave for the remining 2 days of the week (the period he did not perform at the Abu Dhabi premises).

13. Subsequently, the Claimant alleges that he asked for a great sum in respect of transportation allowance, as he was only paid a transportation allowance in the sum of AED 750 per month for the period of 2 and a half months.

14. Following his leave, the Claimant resumed work on 26 August 2018 and alleges that the Defendant delayed paying his salary for more than 2 months.

15. The Claimant was terminated on 4 April 2019 and served a one-month notice, following which his last working day was on 4 May 2019. The Claimant alleges that on 5 May 2019 he was asked to sign a Final Settlement or else he would face absconding penalties, which he refused to sign.

16. Thereafter, the Claimant filed a claim with the DIFC Courts claiming the total sum of AED 108,166.20 which includes the following:

(a) 3 full months' salaries;

(b) compensation of termination/redundancy after 1 year and 11 months as, it is claimed that the Defendant decided to terminate the Claimant before the holy month of Ramadan;

(c) Gratuity for 42 days in the amount of AED 27,999.72;

(d) 28 days' annual leave accrued but untaken in the sum of AED 18,666.48

(e) flight ticket to the Claimant's home country;

(f) cancellation of his employment visa; and

(g) recovery of the court fees in the sum of AED 2,162.18.

The Defence

17. The Defendant agrees that the Claimant had been employed from 26 June 2017 to 4 May 2019, with this being his last working day.

18. The Defendant also alleges that the Claimant signed his final settlement document and calculation on 5 May 2019, agreeing and accepting all the calculations, except for the accrued leave calculation, where he stipulates on the final settlement document that "*I refuse to accept this amount regarding leave balance."* The Defendant provided a copy of the final settlement agreement which includes the Claimant's note and signature as evidence, which was verified by the Claimant at the hearing.

19. The Defendant also alleges that the Claimant worked five days a week. He performed three days a week in Dubai, one day a week in Abu Dhabi and one day was attended for administrative matters. In addition, the Defendant adds that this schedule was agreed with the Claimant verbally during his recruitment stage and acknowledged by the Claimant via email dated 13 May 2018 where he states that "*As per my current contract of **Jie**'s Dubai I am to host one day in Abu Dhabi Weekly*". The Defendant also adds that the Claimant is subject to Clause 3(g) of the Employment Contract, which states "*in addition to the duties of the second party, the second party from time to time be required to undertake additional or other duties as necessary to meet the needs of the first party's business*".

20. The Defendant refutes the Claimant's allegation of performing in Dubai and Abu Dhabi without proper financial compensation and confirmed to the Court that there had been no complaint from the Claimant during his period of Employment with the Defendant.

21. The Defendant alleges that the Dubai premises was under renovation from 1 July 2018 until 27 October 2018. Furthermore, an agreement was made with the Claimant to perform three days per week at the Abu Dhabi premises, and this was communicated with the Defendant via email dated 13 May 2018. On the same day, the Claimant responded confirming his attendance under the condition of being provided

transportation costs.

22. On 13 August 2018, via email, the Defendant approved the transportation allowance of AED 1,000 for the month of July 2018 and AED 800 for the month of August 2018. On 26 August, the Claimant responded, "*I will expect the AED 1,800 for July and August 2018 in the next salary as discussed*". ��������������

23. Furthermore, the Defendant alleges that, in the same email of 13 August 2018, the working days and the leave days schedule was clarified to the Claimant based on the working day schedule provided by the Defendant to the Claimant on 10 May 2018. Wherein it provided that the Claimant must apply for 12 days' annual leave during July 2018 and 12 days annual leave during August 2018, which covers the two days off per week as per the work schedule communicated to the Claimant.

24. On 26 August 2018, the Claimant enquired about the annual leave via email stating that such action "*is in breach of my gratuity terms of end of contract. And therefore, forfeiting my wright [sic] for end of contract gratuity as per DIFC Rules."* On the same day the Defendant responded stating that "*annual leave is not linked to gratuity*".

25. Subsequently, the Claimant responded via email dated 26 August 2018 stating that *"in regard to gratuity/severance payment, we did not discuss it but it goes without saying that cutting days from my annual leave is interfering with them"*. The Defendant responded that "*annual leave is paid leave and had nothing to do with gratuity days*." Following this the Defendant alleges that there was no response from the Claimant.

26. The Defendant alleges that the Claimant submitted his annual leave application forms to the Defendant for July 2018 on 17 August 2018 and for August 2018 on 13 September 2018.

27. On 4 April 2019, the Defendant terminated the Claimant's employment, providing him with one month notice as per Article 60 of the DIFC Employment Law, with his last working day being on 4 May 2019.

28. On 5 May 2019, the parties met, and the Defendant provided the Claimant with the Final Settlement calculation in the total amount of AED 19,608.58, plus a flight ticket to his home country. The final settlement included the following:

������ ������ (a) Salary payment from 1 May 2019 to 4 May 2019 in the sum of AED 2,580.65;

������ ������ (b) Accrued leave balance - 4 days in the sum of AED 2,301.37; and

������ ������ (c) Gratuity in the sum of AED 14,726.56.

29. The Defendant alleges that the Claimant signed the final settlement but noted on the document that "*I refuse to accept this amount regarding the leave balance."*

30. The Defendant alleges that the Claimant is not entitled to the sum of AED 108,166.20 as he had signed a final settlement offer.

Discussion

31. 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.

32. The Claimant filed a claim, claiming the sum of AED 108,166.20 which includes:

������������(a) 3 full months' salaries compensation of termination/redundancy after 1 year and 11 months as, it is claimed that the Defendant decided to terminate the Claimant before the holy month of Ramadan;

������������ (b) Gratuity for 42 days in the amount of AED 27,999.72;/span>

������������ (c) 28 days' annual leave accrued but untaken in the sum of AED 18,666.48

������������ (d) flight ticket to the Claimant's home country;

������������ (e) cancellation of his employment visa; and

������������ (f) recovery of the court fees in the sum of AED 2,162.18.

33. However, it is argued by the Defendant that the Claimant signed a final settlement letter and is not entitled to the sum of AED 108,166.20.

34. Therefore, I will determine in this Judgment that the Claimant's claims are as follows:

������������ (a) 3 months' salary compensation;

������ ������(b)Gratuity for 42 days;

������ ������(c) 24 days' annual leave;

������������ (d) Air ticket to the Claimant's home country;

������ ������(e)Cancellation of employment visa; and

******************** (f)Recovery of the Court fees.

Three months' salary compensation

35. The Claimant argues that he is entitled to 3 months' salary compensation in the sum of AED 60,000 as he was terminated due to the Defendant's actions during the execution of the Employment Contract. The Claimant argues that the Defendant terminated his Employment Contract just before the Holy month of Ramadan, before his vacation, in order to avoid paying a full month salary during his time off.

36.

    The Defendant argues that Clause 60(b) of the DIFC Employment Law stipulates that

    the notice period required to be given by an employer to an employee to terminate the Employment Contract without cause shall be not less than "*thirty (30) days, if the period of continuous employment of the employee is in excess of three (3) months but less than five (5) years.*"

37. Furthermore, the Defendant argues that the Claimant was provided with thirty days paid notice period as per the DIFC Employment Law.

38. By reviewing the evidence provided, I find that the Claimant has been awarded thirty days' notice. Therefore, I dismiss the Claimant's claim for 3 months' salary compensation.

Gratuity

39. The Claimant claimed gratuity calculated for 2 years of employment and in accordance with his full gross salary in the sum of AED 27,999.72.

40. The Defendant argues that on 5 May 2019, the parties met, and the Defendant provided the Claimant with the Final Settlement calculation in the total amount of AED 19,608.58, plus a flight ticket to his home country. It is the Defendant's position that the Claimant accepted and signed the Final Settlement letter which included the gratuity payment. The only concern that the Claimant had in respect of the Final Settlement related to the deduction of 24 days annual leave, which he did not accept.

41. The Defendant also argues that pursuant to the DIFC Employment Law, an employee's gratuity payment should be calculated as an amount equal to twenty-one days of the employee's basic wage for each year for the first five years.

42. I am of the view that the Final Settlement offered to the Claimant on 5 May 2019 shall be considered as a binding agreement as it satisfies the requirements of an offer, acceptance and consideration. The Claimant did not reject the offer but in fact signed and accepted it. For the avoidance of doubt, it is to be noted, that even if the Claimant had rejected the Final Settlement, the calculation provided in regard to his gratuity is grater than the sum that would be afforded to the Claimant under the DIFC Employment Law. Clause 62(2)(a) of the DIFC Employment Law stipulates that:

"the gratuity payment shall be calculated as follows: twenty one (21) days' basic wage for each year for the first five (5) years of service."

43. I am satisfied to determine that the Claimant failed to provide any evidence to demonstrate that he rejected the Final Settlement and in fact I find that the Claimant accepted the final settlement which is binding upon both of the parties.

44. Therefore, I dismiss the Claimant's claim for gratuity.

24 days' annual leave

45. The Claimant argues that during the renovation period of the Dubai premises, he was informed that he will be working at the Defendant's Abu Dhabi premises 3 days per week in order to receive his salary. Furthermore, he argues that he was not given a choice and had to accept to work, and that the Defendant deducted 24 days of his annual leave for the 2 days per week that he did not perform at the Abu Dhabi premises.

46. The Defendant argues that as per the email correspondence between the parties, the Claimant accepted to work at the Abu Dhabi premises for 3 days per week under the condition of paying him the transportation allowance, and the parties agreed that the Claimant would receive the sum of AED 1,800 for July and August 2018.

47. The Defendant also argues that the 24 days' annual leave deduction was made pursuant to a verbal agreement between the parties which is supported by the annual leave forms submitted by the Claimant for 12 days in July 2018 and 12 days in August 2018.

48. Although the Claimant argues that he was threatened and forced to submit the annual leave forms, he failed to provide any evidence of threat and force.

49. I find that it was the *****Claimant's own choice to submit the annual leave forms and I he failed to provide any evidence of threat or force being made upon the Claimant.

50. Therefore, I dismiss the Claimant's claim for the payment of the 24 days annual leave.

Air Ticket

51. The Defendant agreed to provide the Claimant with an air ticket to his home country therefore I find that he shall be successful in this Claim.

Cancellation of Employment Visa

52. Since the Employment Contract has been terminated and the Claimant received his final settlement, I order that the Defendant shall cancel the Claimant's Employment Visa.

Court Fees

53. The Claimant claimed the Court fees in the sum of AED 2,162.18.

54. I find that the Claimant was not wholly successful in his claim. Therefore, each party shall bear their own costs.

Conclusion

55. In light of the aforementioned, I find that the Claimant's claims of 3 month's salary compensation, gratuity and 24 days' annual leave shall be dismissed. ◆

56. The Defendant shall provide the Claimant with an air ticket to his home country.

57. The Defendant shall cancel the Claimant's employment visa.

58. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 27 June 2019

At: 8am