IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

N/A

BETWEEN

PHENIX

Claimant

and

PATTON

Defendant

ORDER WITH REASONS OF H.E. JUSTICE RENE LE MIERE

UPON the Claimant's Application No. CFI-087-2025/1 dated 11 May 2026 (the "Application")

AND UPON the Order with Reasons of H.E. Justice Rene Le Miere dated 2 July 2026

AND UPON the Claimant's costs submissions dated 16 July 2026

AND UPON the Defendant's costs submissions dated 17 July 2026

IT IS HEREBY ORDERED THAT:

1. Each party shall bear its own costs of the Application.

2. Each party shall bear its own costs of the parties' subsequent applications concerning the costs of the Application

Issued by:
Delvin Sumo
Assistant Registrar
Date of Issue : 22 September 2026
At: 2pm

SCHEDULE OF REASONS

A. Introduction

1. By an application dated 11 May 2026 (the "Application"), the Claimant sought a document production order pursuant to Rule 28 of the Rules of the DIFC Courts ("RDC") following the parties' exchange of Requests to Produce and objections. By an Order with reasons dated 2 July 2026, the Court determined the Application, made a series of document production, search and verification orders, and otherwise refused the Application. The Court made no immediate order as to costs and granted each party liberty to apply for costs within 14 days.

2. The Court now determines the parties' competing applications for the costs of the Application. In doing so, the Court has considered:

(a) the Claimant's written submissions on costs;

(b) the witness statement of Raghad Hammad dated 16 July 2026;

(c) the Defendant's written submissions on costs; and

(d) the Court's Order with Reasons dated 2 July 2026 and the underlying determination of the Application.

3. The Claimant seeks an order that the Defendant pay the Claimant's costs of the Application, to be assessed on the standard basis if not agreed. The Defendant seeks an order that the Claimant pay the Defendant's costs of and occasioned by the Application, likewise to be assessed on the standard basis if not agreed. The Defendant further contends that the Claimant should pay at least 60 per cent of the Defendant's costs.

4. The principal questions arising on the costs applications are:

(a) whether PD No. 1/2025 applies to the proceedings;

(b) whether paragraph 3 of PD No. 1/2025 applies to an interlocutory document production application;

(c) whether either party has established a basis for an adverse costs order under paragraph 3.2; and

(d) if so, what order should be made?

B. The Outcome of the Document Production Application

5. The Application comprised a substantial number of individual production requests. Although advanced in a single Redfern Schedule, each request raised distinct issues and the Court determined each separately. As explained in the Court's reasons dated 2 July 2026, the Court assessed each request by reference to relevance, materiality, specificity and proportionality, and whether the Defendant had demonstrated that it had undertaken a reasonable and proportionate search for responsive documents. Accordingly, the outcome of the Application turned on a request-by-request evaluation rather than a single global determination.

6. The Court granted relief in various forms. In some instances, the Court ordered the Defendant to conduct further reasonable and proportionate searches and to produce any additional documents found. In others, the Court required the production of specific categories of structured financial data or underlying datasets. The Court also ordered the production of native versions of certain documents and spreadsheets.

7. In several cases, rather than requiring further production, the Court directed the Defendant to verify its disclosure position by a Document Production Statement that identified the searches undertaken and confirmed the completeness of its disclosure. Other requests were refused.

8. The orders made were frequently qualified. The Court granted several requests only in part and materially narrowed some from the form in which they were advanced. In a number of instances, the Court considered that the Claimant had established sufficient grounds to require formal verification of searches and disclosure positions, but not sufficient grounds to justify a further order for production. Other requests were refused because they were excessively broad, insufficiently confined, speculative, duplicative, disproportionate, or extended beyond the issues arising on the pleadings.

9. The operative orders required the Defendant to undertake further searches, provide further production, produce structured data and native documents, or verify its disclosure position in relation to numerous identified requests. At the same time, the Order expressly provided that, unless otherwise ordered, the Application was refused.

10. The parties adopt different approaches to categorising and quantifying the outcome. The Claimant submits that it advanced 54 requests and obtained orders on 34. The Defendant analyses the Application as comprising 73 requests and distinguishes between requests that were refused, those that resulted only in verification directions, those granted in part, and those for which substantive production orders were made. Section D considers those differing approaches.

C. The Applicable Costs Regime

C1. Introduction

11. The parties take materially different positions on the legal framework governing the costs of the Application. The Claimant submits that the costs of the Application are to be determined under RDC Part 38 and that Practice Direction No. 1 of 2025 ("PD 1/2025") does not alter the ordinary costs regime applicable to an interlocutory document production application. The Defendant contends that, if PD 1/2025 is relevant, the Claimant's conduct brings the case within the exceptions in paragraph 3.2.

12. Three questions arise. First, whether the present proceedings fall within the scope of PD 1/2025. Secondly, if they do, whether paragraph 3 of that Practice Direction applies to the costs of an interlocutory application such as the present Application. Thirdly, what costs order should be made in the circumstances of the case.

C2. RDC Part 38

13. The starting point is RDC Part 38. Under RDC 38.6, the Court has broad discretion to determine whether costs are payable, the amount of those costs, and when they are to be paid. RDC 38.7 provides that, if the Court orders costs, the general rule is that the unsuccessful party will be ordered to pay the successful party's costs, although the Court may make a different order. RDC 38.8 requires the Court to consider all the circumstances, including the parties' conduct and whether a party has succeeded on part of its case even if it has not been wholly successful. RDC 38.9 makes clear that relevant conduct includes conduct before and during the proceedings.

14. RDC 38.10 confers a wide range of powers in relation to the form of any costs order, including orders for a proportion of costs, costs relating to particular steps in the proceedings, or costs relating to distinct parts of the proceedings. RDC 38.12 expressly contemplates costs orders in respect of interlocutory applications and identifies "costs in the application" as a distinct category of order commonly made before trial.

15. It follows that, absent any contrary provision, the Court has discretionary jurisdiction to determine the costs of an interlocutory document production application by reference to success, conduct and all the circumstances of the case.

C3. Does PD 1/2025 Apply to This Claim?

16. PD 1/2025 was issued to enhance access to justice in employment-related disputes by providing a proportionate, fair and efficient procedural framework. Paragraph 1.2 provides that the Practice Direction "applies to all employment claims brought before the Court of First Instance". Paragraph 3.1 further provides that, in employment disputes, the general rule is that each party bears its own legal costs.

17. PD 1/2025 took effect on 1 October 2025, the date of signature specified in the Practice Direction. The present proceedings were commenced by Claim Form on 10 October 2025. Accordingly, there is no issue of retrospectivity or transitional operation.

18. The present proceedings arise from claims brought by a former employee against his former employer concerning alleged employment entitlements, bonus payments, termination-related payments and related matters. The Claim was commenced and has proceeded as an employment dispute in the Court of First Instance. In my view, the proceeding falls within the definition of an "employment claim" in paragraph 1.2 of PD 1/2025. Accordingly, subject to the proper construction of paragraph 3, the Practice Direction applies to these proceedings.

C4. Does Paragraph 3 Apply to Interlocutory Applications?

19. The more substantial issue is whether paragraph 3 governs only the final costs disposition of an employment claim, or whether it applies to interlocutory applications brought during such proceedings.

20. The question is to be determined by reference to the text, context and purpose of the Practice Direction. Paragraph 3.1 sets out a general rule that each party bears its own legal costs in employment disputes. Paragraph 3.2 creates exceptions to that rule by empowering the Court to make an adverse costs order where a party has brought or conducted proceedings unreasonably, acted vexatiously or in bad faith, or where it is otherwise in the interests of justice. Any such order must be proportionate and accompanied by reasons.

21. The language of paragraph 3.2 is broad and contains no express limitation confining its operation to the final determination of a claim. In particular, the paragraph refers to the bringing or conduct of "proceedings". Ordinarily, interlocutory applications form part of the conduct of proceedings and are not separate from them. Accordingly, a party who unreasonably pursues or opposes an interlocutory application may be regarded as having conducted the proceedings unreasonably.

22. The absence of any express limitation is significant. Had it been intended that the discretion conferred by paragraph 3.2 could be exercised only at the conclusion of the proceedings, the Practice Direction would have said so. Instead, the language chosen is apt to encompass conduct at any stage of the litigation.

23. The purpose of PD 1/2025 reinforces that conclusion but does not drive it. The decisive consideration is that paragraph 3.2 refers broadly to the conduct of "proceedings" and contains no limitation confining its operation to a final costs determination. The objective stated in paragraph 1.1 is consistent with that reading and provides no reason to construe the word "proceedings" more narrowly.

24. I therefore conclude that paragraph 3 is not confined to costs orders made upon final determination of an employment claim. Subject to the exercise of the Court's discretion in the circumstances of the case, paragraph 3 applies to interlocutory applications brought in the course of employment proceedings, including applications for document production.

C5. Relationship Between PD 1/2025 and RDC Part 38

25. That conclusion does not mean that RDC Part 38 ceases to apply. PD 1/2025 contains no express provision displacing Part 38. Rather, paragraph 3 modifies what would otherwise be the ordinary starting position concerning costs in employment disputes. RDC Part 38 continues to supply the procedural and discretionary framework within which any costs decision falls to be made, including the matters relevant to success, conduct, proportionality and the available forms of costs order.

26. Accordingly, where PD 1/2025 applies, the Court must first determine whether the circumstances fall within paragraph 3.2. If no exception is established, the starting position prescribed by paragraph 3.1 is that each party bears its own costs. If one or more of the circumstances identified in paragraph 3.2 are established, the Court may then exercise its discretion to make such adverse costs order as is proportionate and just in all the circumstances.

C6. Conclusion on the Applicable Regime

27. For those reasons, I conclude that:

(a) the present proceedings constitute an employment claim within the meaning of paragraph 1.2 of PD 1/2025;

(b) paragraph 3 of PD 1/2025 applies to interlocutory applications brought in those proceedings, including the present application for document production;

(c) the costs of the Application are therefore to be determined by applying paragraph 3 of PD 1/2025 together with the discretionary principles set out in RDC Part 38; and

(d) the next question is whether either party has established a basis for an adverse costs order under paragraph 3.2, and, if so, what order should be made.

D. Success of the Parties

28. The Claimant submits that it was the substantially successful party on the Application. It relies on the number of requests for which orders were made and the practical significance of the further searches, production, and verification required of the Defendant.

29. The Defendant submits that the Application was excessive in scope and that the Claimant's success has been overstated. It relies on the requests that were refused or materially narrowed and distinguishes between substantive production orders and directions requiring verification of the Defendant's existing disclosure position.

30. I do not consider that comparative success can be determined by a purely numerical analysis of granted and refused requests. The parties use different denominators and characterise the orders differently. More importantly, the individual requests and the forms of relief granted were not equally significant in practice. The proper assessment must therefore consider the substance and practical effect of the outcome.

31. The Claimant obtained significant relief. The orders required further searches and production, disclosure of structured financial data, production of documents in native format, and formal verification of aspects of the Defendant's disclosure position. Some of that relief addressed matters of practical importance to the issues in dispute.

32. The Claimant did not, however, obtain the Application in the form in which it was advanced. The Court refused a significant number of requests. Many others were granted only in part or were materially narrowed. In several instances, the Court declined to order further production

and instead required verification of the Defendant's existing disclosure position. The Court also found that aspects of the Application were excessively broad, insufficiently confined, speculative, duplicative or disproportionate.

33. In those circumstances, I regard the Claimant as the more successful party in practical terms, but only to a limited extent. The outcome was mixed, and it does not support a conclusion that either party achieved comprehensive success.

34. The Claimant's greater degree of success is relevant, but it does not, of itself, determine the costs applications. Its significance must be considered in the context of paragraph 3 of PD 1/2025, particularly whether it is otherwise in the interests of justice to depart from the default position that each party bears its own costs.

E. Does the Case Fall Within Paragraph 3.2 of PD 1/2025?

35. Having concluded that PD 1/2025 applies to the present proceedings and that paragraph 3 extends to interlocutory applications, the starting point is paragraph 3.1, which provides that each party bears its own legal costs.

36. It follows that the fact that one party achieved greater success than the other on the Application does not, of itself, justify an adverse costs order. The Court must be satisfied that one or more of the circumstances identified in paragraph 3.2 have been established before departing from the default position.

E1 Unreasonable Conduct

37. The Claimant submits that the Defendant conducted the proceedings unreasonably by failing adequately to discharge its disclosure obligations, by providing incomplete information about its searches and document retention practices, and by filing its response to the Application outside the applicable time limits.

38. Paragraph 3.2(a) requires more than conduct which, with hindsight, could have been handled differently. The question is whether the bringing or conduct of the proceedings was unreasonable in a way sufficient to justify departure from the default rule established by paragraph 3.1.

39. The outcome of the Application shows that the Claimant raised legitimate concerns about the adequacy of the Defendant's disclosure and searches. The Court ordered further searches, production, structured data disclosure and verification in relation to numerous requests. However, the making of such orders does not, in itself, establish unreasonable conduct. In many instances, the Court accepted significant aspects of the Defendant's position, declined further production, or substantially narrowed the relief sought by the Claimant.

40. Nor am I persuaded that the timing of the Defendant's response, whether viewed in isolation or together with the other matters relied upon, amounts to unreasonable conduct justifying an adverse costs order.

41. The Defendant, for its part, submits that the Claimant acted unreasonably by pursuing an excessively broad and disproportionate Application and by failing adequately to engage with opportunities to narrow the issues before the Application was filed.

42. There is force in the Defendant's contention that many requests were put forward in a form broader than was ultimately justified. The Court repeatedly found that aspects of the Application were too broad, insufficiently confined, speculative or disproportionate, and numerous requests were refused or substantially narrowed.

43. However, the Application also resulted in significant relief in the Claimant's favour. The fact that some aspects of the Application exceeded what was ultimately justified does not mean that the Application itself, or the pursuit of the issues it raised, was unreasonable. The Court is not persuaded that the Claimant's conduct crossed the threshold contemplated by paragraph 3.2(a).

44. Accordingly, I do not find that either party brought or conducted the proceedings unreasonably, within the meaning of paragraph 3.2(a).

E2 Vexatious or Bad-Faith Conduct

45. Neither party contends that the other acted vexatiously or in bad faith.

46. In any event, there is no basis in the material before the Court for any finding of vexatious conduct or bad faith. Both parties' positions addressed genuine disputes about disclosure obligations and the proper scope of production under RDC Part 28.

47. Paragraph 3.2(b) is therefore not engaged.

E3 Interests of Justice

48. The remaining question is whether it is otherwise in the interests of justice to order costs against the respondent.

49. The Claimant submits that such an order is justified, having regard not only to the outcome of the Application but also to the respective positions of the parties. The Claimant is an individual former employee, whereas the Defendant is a corporate employer with substantially greater organisational and financial resources. The Claimant submits that the Court should take that disparity into account when considering whether it is in the interests of justice to depart from the default rule in paragraph 3.1.

50. I accept that the Court may have regard to the parties' respective circumstances when considering the interests of justice. Indeed, the evident purpose of PD 1/2025 is to promote access to justice in employment disputes. Employment litigation frequently involves a resource imbalance between an individual employee and a corporate employer. The adoption in paragraph 3.1 of a default position that each party bears its own costs reflects a policy choice, at least in part, to reduce the deterrent effect that the risk of an adverse costs order may have on employees seeking to vindicate employment rights.

51. However, a disparity in resources between the parties does not, of itself, justify an adverse costs order. If it did, the exception in paragraph 3.2(c) would risk becoming the norm rather than the exception in employment disputes. The existence of an imbalance in resources is part of the context in which the Court exercises its discretion, but it does not displace the default rule set out in paragraph 3.1.

52. The Claimant also relies on its greater degree of success on the Application. That consideration weighs in the Claimant's favour. As explained in Section D, I have concluded that the Claimant was the more successful party in practical terms. The Claimant obtained significant relief, including orders for further searches, production, disclosure of structured data, production in native format, and verification of aspects of the Defendant's disclosure position.

53. However, I have also concluded that the Claimant's success was limited and qualified. The Application produced a mixed outcome. The Court refused a significant number of requests and materially narrowed many others. The Court repeatedly found that aspects of the Application were broader than necessary or proportionate.

54. Further, I have concluded that neither party brought or conducted the proceedings unreasonably, and that neither party acted vexatiously or in bad faith. The Claimant's greater measure of success than the Defendant's does not, without more, justify displacing the default position established by paragraph 3.1. This is particularly so where PD 1/2025 departs from the ordinary costs rule and provides that each party ordinarily bears its own costs in employment disputes.

55. Taking all matters into account, including the Claimant's greater degree of success and the disparity in resources between the parties, I am not persuaded that it is in the interests of justice to depart from the default position set out in paragraph 3.1. The factors relied upon by the Claimant are relevant to the exercise of the discretion, but they are not sufficient, either individually or collectively, to warrant an adverse costs order against the Defendant under paragraph 3.2(c).

F. Orders

56. Accordingly, the Court is not satisfied that any of the circumstances identified in paragraph 3.2 of PD 1/2025 have been established. It follows that the default position in paragraph 3.1 applies and that each party must bear its own costs of the document production application and of the subsequent costs applications.

57. The Court will order:

(a) Each party shall bear its own costs of the Application.

(b) Each party shall bear its own costs of the parties' subsequent applications concerning the costs of the Application.