Claim No.xxxx

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

BETWEEN

Gerda

Claimant

and

Geoff LLC

Defendant

Hearing: **6 March 2016**

Judgment: **21 March 2016**

JUDGMENT OF JUDICIAL OFFICER MAHA AL MEHAIRI

IT IS HEREBY ORDERED THAT:

1.The Defendant shall pay the Claimant the amount of AED 56,667.84.2

2. The Defendant shall cancel the Claimant's visa by no later than 22 March 2016.

Background

3. The Claimant is Gerda, Project Manager employed by the Defendant on written agreement for the monthly salary of AED 13,415, the Claimant started working on February 2015.

4. The Defendant, Flowers By Geoff LLC, is a DIFC company that sells and distributes flowers to a wide range of events and occasions.

5.On 21 February 2016, the Claimant filed a Small Claim in the DIFC Courts Small Claims Tribunal, requesting her salaries for the months of November, December, January and 15 days in February 2016. The Claimant also request for her annual leave since she has completed a year working for the Defendant.

6. Pursuant to Rule 53.44, the parties agreed that they do not wish for a consultation and would like to proceed with the matter to be heard in a hearing. The hearing was heard before me on 6 March 2016, the Claimant and the Defendant's representative attended.

Discussion

Commencement of the Employment Contract

7. In the hearing there was a dispute regarding the date of the Claimant's first working day and last working day, both parties were requested to provide evidence on the matter. The Claimant sent email evidence to prove the above; she submitted a screenshot of an email sent to her work email from a client on 5 February 2015 as proof that she was already working with the Defendant.

8. Even though the Claimant submitted her Resignation Letter on 12 January 2016, she did send follow up emails to the Defendant informing the company of her official last working date.

9. Moreover, the Claimant provided the Courts with email evidence sent by Carl general manager and partner of the Defendant on 15 February 2016 to a client in which he advises the client to call the Claimant to handle a project.

10. The Court is satisfied from the evidence provided; that the Claimant commenced working with the Defendant on 5 February 2015 and her last working day was 15 February 2016.

11. As stated above the Claimant's starting date was 5 February 2015 and last working day, in addition to the 1 month notice is 15 February 2016, so accordingly the Claimant is entitled to the following:

Unpaid Salary

12. The Claimant requests her salary for the months of November, December, January and 15 days in February 2016, in addition to the 18 days that were deducted from her salary in August.

13. The burden of proof lies with the Defendant to produce evidence that he paid all the Claimant's entitlements according to the contract, and since no evidence was put forward for the mentioned months, the Claimant is entitled to the amount of AED 46,953 according to the below

calculation:

14. The Claimant's salary for a month is AED 13,415 with a daily wage of AED 447.16.

(1)The salary for the months of November, December, and January in the amount of (AED 13,415 * 3 months) AED 40,245

(2) The Claimant worked for 15 days in February 2016 (447.16* 15 days) AED 6,708.40

Unauthorised Deduction

15. The Claimant used 18 days leave in August and received half of her salary, this deduction is considered unlawful deduction according, to the DIFC Amended Employment Law No. 3 of 2012, which states that:

"19. No unauthorised deductions

An employer shall not deduct from an employee's wages or accept payment from an employee, unless:

(a) the deduction or payment is required or authorised under a statutory provision or the employee's contract of employment;

(b) the employee has previously agreed in writing to the deduction or payment;

(c) the deduction or payment is a reimbursement for an overpayment of wages or expenses; or

(d) the deduction or payment has been ordered by the Court."

16. For the reasons mentioned above the Claimant is entitled to the amount of AED 46,953.40 in addition to the amount of AED 6,707.50 that was deducted from her salary in August.

The total amount of untaken salary shall be AED 53,660.90

Annual leave:

17. The Claimant states that she took vacation leave from 14 August 2015 to 31 August 2015. The Claimant resumed work on 1 September 2015. The Courts did request for confirmation from the Defendant at the hearing heard on 6 March 2016 but no evidence were provided or were the dates confirmed by the Defendant. As such the Claimant took 18 days of unpaid leave in August. The Claimant also stated that for the month of August the Claimant received half of her salary due to the vacation days she took off in August.

18. The DIFC Amended Employment Law No. 3 of 2012 states the following:

"27. Vacation leave

(1) Subject to Article 30, an employer shall give an employee a minimum paid vacation leave of twenty (20) working days per annum to be accrued pro rata for employees who have been employed for at least ninety (90) days.

(2) .

(3) .

(4) .

(5) An employee is not entitled to a payment in lieu of vacation leave earned except where:

(a) the employee's employment is terminated; or

(b) the employer agrees otherwise.

Compensation in lieu of vacation leave

(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. In the event that the employee has taken more vacation leave than has accrued at the termination date, the employee shall repay the employer the corresponding sum.

(2) Compensation in lieu of vacation leave shall be calculated using the employee's daily wage applicable on the employee's last day of employment."

19. As per the Claimant's contract she is entitled to 30 calendar days as annual leave per year, the Claimant worked for 1 year and 10 days and took 18 days annual leave in August, as such:

(30 days - 18 days = 12 days annual leave) 12 days * 447.16 daily wage = AED 5,365.92

The compensation in lieu of vacation leave shall be AED 5,365.92

20. Moreover, the Defendant requested for the reimbursement for all international calls and excess data charges in the amount of AED 1,657.98 and the cash advances in the amount of AED 700. The Claimant acknowledged and agreed with these figures therefore, they will be deducted from the Claimant's final entitlement. The sum of AED 700 and AED 1,657.98 is equal to the amount of AED 2,358.98.

21, For the reasons stated above, the Claimant is entitled to the amount of AED 56,667.84 as full and final settlement, which is 59,026.82 offset by AED 2,358.98 as mentioned above.



Issued by:

Maha AlMehairi

Judicial Officer

Date of issue: 21 March 2016

At: 4pm