Claim No. SCT 232/2020 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 LOHITH Claimant and LOKESH'S RESTAURANT AND LOUNGE DIFC/LOSHAN CONSULTING GROUP Defendant Hearing : 24 August

Claim No. SCT 232/2020

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

LOHITH

Claimant

and

LOKESH'S RESTAURANT AND LOUNGE DIFC/LOSHAN CONSULTING GROUP

Defendant

Hearing	**: 24 August 2020**
Judgment	**: 31 August 2020**
Amended Judgment	**: 3 September 2020**

AMENDED JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON the Claim Form being filed on 13 July 2020

AND UPON the Claimant amending the Claim on 14 July 2020

AND UPON the Defendant filing an Acknowledgment of Service with the intention to defend all of this Claim dated 21 July 2020

AND UPON a Consultation being held on 28 July 2020 before SCT Judge Delvin Sumo with the Claimant and the Defendant's representative in attendance

AND UPON the parties failing to reach a settlement at the Consultation

AND UPON a Hearing having been listed before SCT Judge Nassir Al Nasser on 24 August 2020 with the Claimant and the Defendant's representative in attendance

AND UPON reviewing all documents submitted on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 29,308.21 being the total sum of the Claimant's entitlements subject to the Claimant completing a notice period of three months.

2. The Defendant shall pay the Claimant the Court fee in the sum of AED 586.16.

Issued by:
Nassir Al Nasser
SCT Judge and Registrar
Date of issue: 31 August 2020
Date of reissue: 3 September 2020
At: 1pm

THE REASONS

The Parties

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

2. The Defendant is Lokesh's Restaurant and Lounge DIFC/LoshanConsulting Group (the "Defendant"), a company located in Gate Village, 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 29 October 2014 (the "Employment Contract"). The Claimant's start date pursuant to the Employment Contract was 15 December 2014.

4. The Defendant terminated the Employment Contract on 27 July 2020.

5. On 13 July 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 18,000.

6. On 21 July 2020, the Defendant filed its reply to the Claim with the intention to defend all of the claims.

7. The matter was called for a Consultation before SCT Judge Delvin Sumo on 28 July 2020, although both of the parties were in attendance, they failed to reach a settlement. In accordance with the rules and the procedures of the SCT, the matter was referred to me for determination, pursuant to a hearing held on 24 August 2020 (the "Hearing"). After reviewing all of the documents and evidence submitted on the Court file, I give my judgment below.

The Claim

8. The Claimant's case is that he was employed by the Defendant from 15 December 2014. The Claimant alleges that he is entitled to his unpaid salary from 21 March 2020 until the date of termination as he was placed on unpaid leave throughout this period. In addition, he is also seeking payment of his alleged pending tips from November 2019, January, February and March 2020.

9. On 28 July 2020, the Claimant amended his statement of claim, claiming the sum of AED 21,581.10.

10. On 5 August 2020, the Claimant reamended his statement of claim, and claimed the sum of AED 36,751.02, consisting of the following:

(a) Housing allowance from the period of 21 April to 27 July 2020 (3 months and 7 days) in the sum of AED 4,303.33.

(b) 3 months' tips for the months of November 2019, February and March 2020 in the sum of AED 7,924.50.

(c) End of service gratuity for the period of 26 December 2014 to 31 January 2020 in the sum of AED 8,986.

(d) Leave balance of 13.74 days in the sum of AED 2,787.19

(e) 3 months' notice period in the sum of AED 12,750.

The Defence

11. In response to the Claim, the Defendant provided the Claimant with a projective Final Settlement in the sum of AED 27,858.92, subject to the Claimant serving a three months' notice period as agreed between the parties.

12. However, in response to the claim for the housing allowance, the Defendant alleges that the Claimant is not entitled to any sums as he was placed on unpaid leave from the period of 21 March 2020 until the date of his termination.

13. The Defendant alleges that the Claimant was placed on unpaid leave from 21 March 2020 to 20 April 2020. However, on 23 March 2020, the Defendant sent the Claimant a letter stating that he would be placed on unpaid leave from only 21 March 2020 until 31 March 2020. Later, on 26 March 2020, the Defendant sent another letter stating that the Claimant would remain on unpaid leave from 21 March 2020 until business operations resumed.

14. In relation to the notice period, the Defendant alleges that the parties agreed upon a notice period of 3 months, starting from 27 July until 25 October 2020, however, it is alleged that the Defendant failed to state within the termination letter the commencement date of the notice period. On 11 August 2020, the Defendant sent the Claimant a letter in relation to the start date of the notice period but alleges that the Claimant failed to attend.

Discussion

Jurisdiction

15. The DIFC Courts and the SCT have jurisdiction over this case as it relates to employment within the DIFC and the claim value in question is less than AED 500,000.

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

Findings

17. The start date and termination date are confirmed by the parties. In addition, the Claimant agreed on the Final Settlement provided by the Defendant, but there are two issues remaining:

(a) Whether the Claimant has successfully proven his claim for outstanding sums owed in the form of a housing allowance.

(b) The start date of his notice period.

18. In relation to the Claimant's claim for housing allowance, on 21 March 2020, the Claimant applied for unpaid leave from 22 March 2020 to 20

April 2020, as per the form submitted by the Defendant.

19. On 23 March 2020, by way of a letter, the Defendant notified the Claimant that he would be placed on unpaid leave from 21 March to 31 March 2020, and on 26 March 2020 the Claimant was informed again, by way of a letter, that due to the Covid-19 pandemic and the closure of the Defendant's restaurant, the Claimant would continue to be on unpaid leave from 21 March 2020 until further notice.

20. Pursuant to the Presidential Directive No. 4 of 2020 in Respect of COVID-19 Emergency Measures (the "Directive"), the Claimant was placed on unpaid leave from 21 April 2020 until the date of commencement of work.

21. The Defendant argues that the Claimant was terminated before the commencement of work, therefore, he is not entitled to a housing allowance from the period of 21 April to 27 July 2020.

22. Article 6(1) of the Directive states as follows:

> "An Employer may only during the Emergency Period implement any one (1) or more of the following Emergency Measures in respect of some or all of their Employees without such Employees' consent:
>
> ..
>
> (c) impose leave without pay"

23. I find that the Defendant duly informed the Claimant that he would be placed on unpaid leave, as per the requirement of the Directive.

24. Article 5 of the Directive stipulates that "Employer who wish to apply any of the Emergency Measures shall give five (5) days' prior notice thereof in writing to their relevant affected Employees".

25. I find that the letter dated 26 March 2020, as mentioned above, is sufficient to be considered as notice given to the Claimant by the Defendant. Therefore, I find that the Claimant is not entitled to the housing allowance.

26. In addition, the Claimant argues that pursuant to Article 9(1)(b) of the Directive, the Defendant was required to provide him with a housing allowance from 21 April 2020 until the date of commencement of work. Article 9(1)(b) states as follows;

> "where the Employer is in the retail, service or hospitality industry and the Terminated Employee was dependent on the Employer for accommodation, the Employer shall continue to provide such accommodation to Terminated Employees"

27. Having reviewed the Article, I find that that the Claimant has failed to differentiate between a `housing allowance' and `accommodation' provided by an employer. In the current case I note that the Claimant was provided a housing allowance, which was provided in monetary form, however, the Article is clear in its wording insofar as it states that an employer shall provide `accommodation' which I find relates to physical accommodation, not payment in the form of an allowance. Therefore, I dismiss the Claimant's claim for housing allowance.

28. In relation to the Claimant's claim for his notice period, I note that, the Employment Contract states that in the event the Defendant terminates the Claimant, a notice period of not less than one month must be given in writing. However, I further note that the parties separately agreed that the Claimant will serve a notice period of three months, as per the letter provided by the Defendant to the Claimant dated 11 August 2020.

29. The letter dated 11 August 2020, states that the notice period would start from 25 July 2020. However, I find that the notice period must commence from the date that the Defendant informed the Claimant he was to return to work i.e. 11 August 2020. Therefore, in this case, I find that the Claimant shall serve his notice period from 11 August 2020 to 11 November 2020.

30. At the hearing, the Defendant informed the Courts that the Claimant did not yet start serving his notice period. However, the Claimant agreed that he would commence work from 25 August 2020.

31. Article 62(3) of the DIFC Employment Law stipulates that: "Article 62(2) shall not prevent an Employer and Employee from agreeing to a longer notice period in an Employment Contract."

32. As the parties have attempted to agree upon a longer notice period, I am of the view that this falls foul of Article 62(3), and therefore I shall consider the start date of the notice period to be 11 August 2020 (being the date that the Defendant informed the Claimant to commence work by way of a letter). I also find that the Defendant has already deducted the period of 11 August 2020 to 24 August 2020 from the projective Final Settlement.

33. The Defendant after the hearing, provided the Claimant and the Courts with a projective Final Settlement figure in the Sum of AED 27,858.05.

34. Therefore, I find that the Claimant is entitled to a Final Settlement, but the projective Final Settlement provided by the Defendant in the sum of AED 27,858.05, subject to the Claimant completing a notice period of three months. However, I find that the Final Settlement figure provided by the Defendant is incorrect and I have provided my own calculations below. I have found the actual figure to be AED 29,308.21 which relates to the following payments:

> (a) 3 months' notice period from 11 August 2020 to 11 November 2020 in the sum of AED 12,750 minus AED 1,919.35 being the days that the Claimant was absent from work from 11 August 2020 to 24 August 2020) = AED 10,830.65;
>
> (b) Leave balance in the sum of AED 2,695.15;
>
> (c) Cash and credit tips in the sum of AED 7,824.50; and

(d) Gratuity in the sum of AED 7,957.91. from the date of employment until 31 January 2020.

35. In relation to the Claimant's claim for gratuity, the Defendant confirmed, by way of an email sent by the Courts, that the Claimant has been enrolled into the Qualifying Scheme in accordance with DIFC Law No. 4 of 2020 Employment Law Amendment Law (the "Amended Employment Law").

36. Pursuant to Article 66(7) the Amended Employment Law, as of 1 February 2020, an Employer is required, on a monthly basis, to pay its employee's Core Benefits to the Qualifying Scheme.

37. Therefore, the Court shall only calculate the Claimant's gratuity transfer amount up until the 31 January 2020. As per Article 66(2) of the DIFC Employment Law, 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 of the Employee's Basic Wage for each additional year of service prior to the Qualifying Scheme Commencement Date"

38. The Claimant's basic salary was in the sum of AED 2,250, therefore, the calculation shall be as follows:

39. For the first five (5) years of Employment, AED 2,250 x 12/365 = 73.97 daily salary x 21 days = AED 1,553.37 x 5 = AED 7,766.85 for the period from the commencement date of his employment until 15 December 2019.

40. From 16 December 2019 to 31 January 2020 the calculation is AED 73.97 x 2.583 days= AED 191.06.

41. Therefore, the Gratuity amounts to the sum of AED 7,957.91.

42. The Court also finds that no amount should be paid out to the Claimant until his last working day, which, if he serves his notice as agreed during the Hearing would be on 11 November 2020 - as end of employment entitlements are only paid out upon the employee's last working day with the employer.

43. However, it was agreed that upon the Claimant serving his notice, he shall receive his monthly allowance for the notice period each month.

Conclusion

44. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 29,308.21 being the total sum of the Claimant's entitlements subject to the Claimant completing a notice period of three months:

(a) 3 months' notice period from 11 August 2020 to 11 November 2020 in the sum of AED 12,750 minus AED 1,919.35 the days he was absent from 11 August 2020 to 24 August 2020 = AED 10,830.65.

(b) Leave balance in the sum of AED 2,695.15.

(c) Cash and credit tips in the sum of AED 7,824.50.

(d) Gratuity in the sum of AED 7,957.91 from the date of Employment until 31 January 2020.

45. The Defendant shall pay the Claimant the Court fee in the sum of AED 586.16.

Issued by:
Nassir Al Nasser
SCT Judge and Registrar
Date of issue: 31 August 2020
Date of reissue: 3 September 2020
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