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

KRITY

Claimant

and

KARAN RESTAURANT AND BAR

Defendant

Hearing: **10November 2019**

Judgment: **8 December 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON this claim being filed on 16 October 2019

AND UPON the Defendant filing an acknowledgment of service with an intention to defend part of the claim on 23 October 2019

AND UPON a consultation being listed before SCT Judge Maha Al Mehairi on 28 October 2019

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

AND UPON a hearingbeing listed before SCT Judge Nassir Al Nasser on 10 November 2019 at which the Claimant and the Defendant's representative attended

AND UPON the Defendant filing a counterclaim on 12 November 2019

AND UPON reading the submissions and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 14,937.69 in relation to the following:

    a. penalties pursuant to Article 19 of the DIFC Employment Law;

    b. salary of April 2019;

    c. salary for 14 days of May 2019;

    d. salary for 21 days of September 2019;

    e. payment in lieu of 4 public holidays and 10.6 vacation days accrued but untaken.

2. The Defendant's counterclaim shall be dismissed.

3. The Defendant shall pay the Claimant the Court fees in the sum of AED 367.50.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue:9December 2019

At: 2pm

THE REASONS

The Parties

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

2. The Defendant isKaran Restaurant and Bar (Dubai) LLC (herein "the Defendant"), a company registered in the DIFC located inDIFC, Dubai, UAE.

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 1April2019(the "Employment Contract").

4. On 22 September 2019, the Claimant terminated his employment for cause by way of an email with immediate effect.

5. On 16October 2019, 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 7,500.

6. On 23 October 2019, the Defendant filed an acknowledgment of service with the intention to defend part of the claim.

7. On 28 October 2019, the parties met for a consultation before SCT Judge Maha Al Mehairi but were unable to reach a settlement

8. On 3 November 2019, the Claimant amended his claim and claimed the sum of AED 15,000.

9. Both parties attended the hearing before me listed on 10November2019.

The Claim

10. The Claimant's case is that he was employed by the Defendant from 1April2019 to 22September 2019,being the Claimant'sdate of resignation taken with immediate effect due to an alleged incident of misconduct by the Defendant.At the time of employment, the Claimant's basic salary was AED 4,500 with allowances in the sum of AED 500.

11. The Claimant alleges that he joined the Defendant on 1 April 2019, but shortly afterhis employment was delayed by a month and a half without any prior notification from the Defendant. The Claimant alleges that he was left waiting without any salary for 44 days.

12. Furthermore, the Claimant alleges that he workedfrom 1 April 2019 until 5 April 2019, and thereafter he was informed that he would not be included in the payroll until further notice.

13. In addition, the Claimant alleges that he resumed work from 15 May 2019 and was only paid his salary from 15 May 2019 onwards.

14. The Claimant also adds that on 22 September 2019 he submitted his resignation alleging that he was verbally abused and shouted upon by one of the owners in front of the staff. Therefore, the Claimant alleges that because of this he terminated his Employment Contract for cause with immediate effect.

15. It is the Claimant's position that he was within his rights to terminate the contract pursuant to Article 63(1) of the DIFC Law No. 2 of 2019 (the "DIFC Employment Law")which stipulates:

> "An Employer or an Employee may terminate an Employee's employment with immediate effect for cause in circumstances where the conduct of one (1) party warrants termination and where reasonable Employer or Employee would have terminated the employment as a consequence thereof."

16. The Claimant also alleges that he notified the management about his final settlement but was misled to believe that the final settlement would be included with the payroll on the 10th of each month. The Claimant states that he received the Defendant's offer only on 14 October 2019 and that the offer was to cancel his visa and deduct his dues for the visa expenses paid by the Defendant.

17. The Claimant alleges that the Defendant has no right to deduct the cost of visa expenses pursuant to Article 21(3) of the DIFC Employment Law, which I set out below:

> "if an employee terminates their employment contract or any reason other than termination for cause under Article 63, and their termination date fall within a period of six (6) months from the Employee's date of commencement of employment, the employer may, subject to Article 57(2), recoup from the employee such reasonable costs or expenses which: (a) were directly incurred by the employer in the course of recruiting the employee; (b) are supported by proof of expenditure provided by the employer to the employee; and (c) are specified in the employment contract as being payable by the Employee to the Employer in such circumstances".

18. The Claimant alleges that the word `recruitment' refers to the process of finding a person to fill a position and that visa expenses would be categorised as an operational expense instead of a recruitment expense.

4. The Claimant alleges that he is entitled to 30 calendar days leave as per his Employment Contract. He also adds that pursuant to Article 27(1) of the DIFC Employment Law, he should be paid for leave accrued but untaken. The Claimant calculated that he is entitled to the following: 4.25 months x 2.5 days/month= 10.625 days x AED 166.67 his daily pay = AED 1,770.86

19. The Claimant alleges that he worked for 21 days in September 2019 and on 4 public holidays which totals 25 days x 166.67 = AED 4,166.75.

20. The Claimant also alleges that the final settlement should have been cleared within 2 weeks from the date of termination of employment. The Claimant states that he asked for his final settlement but received no response from the Defendant. Therefore, the Claimant included a claim for 10

days delay alleging that Article 19 (1) of the DIFC Employment Law stipulates "An Employer shall pay to an Employee all remuneration (excluding, where applicable, any additional payments deferred in accordance with Article 18(2)), the gratuity payment and all accrued vacation leave not taken, within fourteen (14) days after the Termination date". Therefore, 10 days x 166.67 = AED 16,66.70

21. In addition, the Claimant claimed his salary from 1 April 2019 (being the date that he signed the Employment Contract and the date that his visa was issued) to 14 May 2019, in the sum of AED 7,333.38.

22. Therefore, the Claimant claims the sum of AED 14,937.69 which consists of the following:

a. penalties for the delay in the sum of AED 1,666.70;

b. unpaid wages for 21 days of September 2019 and 4 public holidays in the sum of AED 4,166.75;

c. accrued vacation leave untaken in the sum of AED 1,770.86; and

d. unpaid wages from 1 April 2019 to 14 May 2019 in the sum of AED 7,333.38.

The Defence

23. The Defendant alleges that the Claimant is entitled to 20 days' leave per annum on a pro rata basis (i.e. 1.66 days per month) in accordance withArticle 27(1) of the DIFC Employment Law and not 2.5 days per month as stated by the Claimant.

24. Article 27(1) of the DIFC Employment Law stipulates:

"Subject to Article 30, an Employee who has been employed for at least ninety (90) days is entitled to paid vacation leave of twenty (20) work days in each vacation leave year."

25. In relation to the starting date, the Defendant alleges that the Claimant signed the Employment Contract on 1 April 2019, however, he was informed verbally that his first working day would be on 15 May 2019. The Defendant also adds that during the course of his employment, the Claimant never claimed his salary for April nor his remaining salary of May.

26. In relation to the penalties, the Defendant alleges that the penalties should be waived as the Claimant was the cause of such delays.

27. Article 19(4)(a) and (b) stipulates:

"a penalty pursuant to Article 19(2) will be waived by a Court in respect of any period during with:

(a) A dispute is pending in the Court regarding any amount due to the Employee under Article 19(1); or

(b) The Employee's unreasonable conduct is the material cause of the Employee failing to receive the amount due from the Employer."

28. In relation to the claim of 21 days of unpaid salary in September 2019 and the 4 public holidays, the Defendant agreed to pay the Claimant the pending amounts in the sum of AED 4,166.75.

29. On 12 November 2019, the Defendant filed a counterclaim alleging that the Claimant d pay the Defendant the visa expenses incurred following the Claimant's termination of the Employment Contract with immediate effect before the completion of 6 months.

30. In support of its counterclaim, the Defendant is seeking to rely upon Article 21(3)(c) of the DIFC Employment Law which stipulates as follows:

"if an Employee terminates their Employment Contract for any reason other than termination for cause under Article 63, and their Termination date falls within a period of six (6) months from the Employee's date of commencement of employment, the employer may subject to Article 57(2), recoup from the Employee such reasonable costs or expenses which:

(c) Are specified in the Employment Contract as being payable by the Employee to the Employer in such circumstances."

31. Therefore, by way of a counterclaim, the Defendant is claiming recovery of the Claimant's visa expenses in the sum of AED 6,500 plus the Court fees.

Discussion

32. This dispute is governed by the DIFC Employment Law in conjunction with the relevant Employment Contract.

33. The Claimant argues that he terminated his Employment Contract with immediate effect due to an incident of misconduct by one of the owners.

Article 63(1) of the DIFC Employment Law stipulates:

"An Employer or an Employee may terminate an Employee's employment with immediate effect for cause in circumstances where the conduct of one (1) party warrants termination and where reasonable Employer or Employee would have terminated the employment as a consequence thereof."

34. The question which arises is whether there was a cause to terminate the Employment Contract and whether a reasonable employer or employee would have terminated the employment as a consequence thereof.

35. The Claimant argues that he was verbally abused and shouted upon by one of the owners.

36. However, I find that the Claimant failed to prove that such an incident is sufficient to establish termination for cause. In addition, the Claimant

did not provide any prior warnings to his resignation. On the evidence presented before me, I am not convinced that such action would lead to termination for cause.

5. The Claimant claimed penalties arguing that the final settlement should have been cleared within two weeks from the date of termination of employment. The Claimant alleges that he asked for his final settlement but received no response from the Defendant. Therefore, the Claimant added 10 days delay until he filed a claim citing Article 19 (1) of the DIFC Employment Law which states that "An Employer shall pay to an Employee all remuneration (excluding, where applicable, any additional payments deferred in accordance with Article 18(2)), the gratuity payment and all accrued vacation leave not taken, within fourteen (14) days after the Termination date". Therefore, 10 days x 166.67 = AED 1,666.70

6. In response to the claim for penalty delays, the Defendant argues that the penalties should be reduced or waived as the Claimant was the cause the delay.

37. The Claimant provided evidence to show that he followed up with the Defendant a number of times to obtain a clearer picture of when he would be paid his final settlement.He was informed by the Defendant that his final settlement would be included in the payroll on 10 October 2019, although the final settlement was never received as promised.

38. Therefore, I disagree with the Defendant's argument that the Claimant was the reason of the delay. In fact, from the evidence provided,I am of the view that the Defendant was the reason for such delays.

39. I find that the Claimant is entitled to penalties under Article 19 of the DIFC Employment Law in the sum of AED 1,666.70.

40. In relation to the Claimant's claim for vacation leave accrued but untaken, the Claimant calculated his leave on 30 days leave per annum as per the Employment Contract. However, the Defendant argues that pursuant to the DIFC Employment Law it should be 20 days leave per annum.

41. Article 11(2)(a) of the DIFC Employment Law stipulates that "nothing in this law precludes an employer from providing in any employment contract terms and conditions that are more favourable to an employee than those required by the law."

42. In addition, the Employment Contract stipulates that the Claimant shall be entitled to 30 calendar days per annum.

43. Therefore, I find that the Claimant's calculation of 2.5 days per month is correct. However, the calculation of his daily wage is incorrect, as I have demonstrated above. As such, I find that the Claimant is entitled to 10.625 days x 166.67 daily wage = AED 1,770.86 for his vacation leave accrued but untaken.

44. In relation to the Claimant's claim for the sum of AED 4,166.75, in respect of his salary for 21 days in September 2019 and 4 public holidays,the Defendant agreed that the Claimant is entitled to the claimed amount.

45. In relation to the Claimant's claim for his salary from 1 April 2019 to 14 May 2019 in the sum of AED 7,333.38, the Claimant argues that he signed the Employment Contract on 1 April 2019. He also adds that the Defendant did not provide him with notification of the commencement date nor any official letter of the commencement date.

46. On the contrary, the Defendant argues that during that period the venue was under development and the Claimant was informed verbally that his official start date would be on 15 May 2019.

47. In the absence of any written evidence, I find that the Claimant is entitled to the salary of April 2019 and 14 days of May 2019 in the sum of AED 7,333.38.

48. The Defendant filed a counterclaim claiming the sum of AED 6,500 plus the court fees. The Defendant argues that the Claimant resigned before the completion of six months of employment.

49. Article 21(3)(c) stipulates:

> "if an Employee terminates their Employment Contract for any reason other than termination for cause under Article 63, and their Termination date falls within a period of six (6) months from the Employee's date of commencement of employment, the employer may subject to Article 57(2), recoup from the Employee such reasonable costs or expenses which:
>
> (d) Are specified in the Employment Contract as being payable by the Employee to the Employer in such circumstances."

50. The Defendant also provided a copy of the Employment Contract which stipulates the following:

> "the Company is liable to pay only for the employment visa expenses. If you resign from your services before completion of two years, the said expenses will be deducted from your final settlement."

51. However, Article 57 of the DIFC Employment Lawstipulates the following:

> "(1) if an Employee is required to work in the DIFC, their Employer is required to obtain and maintain, at the Employer's own cost, the requisite sponsorship documentation (including UAE and DIFC identity documentation), visas, authorisations, license, permits and approvals as may be required from time to time by Federal Law, Dubai Law, a Competent Authority or a personnel Sponsorship Agreement, to enable the Employee to work lawfully for the Employer in the DIFC and comply with such requirements.
>
> (2) An Employer is not permitted to:
>
> (a) recoup any costs and expenses incurred pursuant to Article 57(1) from an Employee; or
>
> (b) retain the passport or the original personal documents of an Employee."

52. It is clear from the DIFC Employment Law that Article 21 is in relation to recruitment costs, whereas Article 57 is in relation to visa permits. Therefore, the DIFC Employment Law differentiated between the recruitment costs which the Employer is entitled to recoup as per Article 21(3) and the visa costs which the Employer is not permitted to recoup as per Article 57(2).

53. Therefore I dismiss the Defendant's counterclaim pursuant to Article 57(2) of the DIFC Employment Law.

Conclusion

54. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED14,937.69 in relation to the following:

a. penalties pursuant to Article 19 of the DIFC Employment Law;

b. salary of April 2019;

c. salary for 14 days of May 2019;

d. salary for 21 days of September 2019;

e. payment in lieu of 4 public holidays and 10.6 vacation days accrued but untaken.

55. The Defendant's counterclaim shall be dismissed.

56. The Defendant shall pay the Claimant the Court fees in the sum of AED 367.50.

Issued by:

Ayesha Bin Kalban

SCT Judge and Deputy Registrar

Date of issue:9December 2019

At: 2pm