THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS

BEFORE SCT JUDGE MARIAM DEEN

BETWEEN

IDUS

Claimant

and

IESSICA LTD

Defendant

Hearing: 24 April 2018

Final Submissions: 8 May 2018

Judgment:13 May 2018

JUDGMENT OF SCT JUDGE MARIAM DEEN

UPON the Claim Form being filed on 14 March 2018;

UPON the Defendant acknowledging service of the Claim Form and indicating its intention to defend part of the Claim on 20 March 2018;

UPON the parties being called on 28 March 2018 for a Consultation with SCT Judge Natasha Bakirci and the parties not having reached settlement;

UPON a Hearing having been held before SCT Judge Mariam Deen on 24 April 2018, with the Claimant and the Defendant's representative in attendance;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1.The Defendant shall pay **AED 9,596.48** to the Claimant, consisting of:

(i) AED 2,799.04 in respect of the Claimant's notice period;

(ii) AED 2,210 in respect of air fare to the Claimant's home country;

(iii) AED 287.13 in respect of the hospital treatment;

(iv) AED 1,100 in respect of the bank discrepancy;

(v) AED 1,533 in respect of the excess baggage charge; and

(vi) AED 1,667.31 in respect of the Court fee.

2. All other claims are dismissed.

Issued by:

Mariam Deen

SCT Judge

Date of Issue: 13 May 2018

At: 10am

THE REASONS

Parties

1.The Claimant is Idus, a Bulgarian national bringing a claim arising out of her employment with Iessica Ltd (the "Claimant").

2. The Defendant is Iessica Ltd, a DIFC registered company located in DIFC and represented by Ikosa, the GCC Regional Manager (the "Defendant").

Background and the Preceding History

3. The dispute arises in relation to an employment relationship between the parties, pursuant to which the Claimant worked for the Defendant as an Assistant Marketing Manager. They entered a three-year employment contract on 1 September 2015 (the "Original Contract") however, due to problems in securing the appropriate visa, this was replaced with a one-year contract commencing on 2 January 2016 and expiring on 31 December 2016 ("Contract 1"). The Claimant's basic monthly salary was specified as AED 8,000 in addition to commission for sales. On 23 December 2016, the parties entered a second contract, renewing the terms in Contract 1; it commenced on 2 January 2017, with an expiry date of 31 December 2017 ("Contract 2").

4. The Claimant made several attempts to enquire about a renewal of Contract 2 and continued to work until 8 February 2018, when she was informed via WhatsApp message that she was terminated. This was confirmed in a letter from the Defendant dated 13 February 2018, which stated that Contract 2 expired on 31 December 2017 and was not renewed. The Defendant acknowledged that the Claimant was entitled to end of service gratuity, a one-way air ticket to Cyprus, or equivalent amount and yearly leave entitlement less the days already taken.

5.The Claimant alleges that she is owed the following amounts by the Defendant:

(i) AED 2,909: an additional 8 working days for one-month notice period (14 working days paid only);

(ii) AED 24,000: three months compensation for termination of a limited contract;

(iii) AED 2,210: air ticket to home country;

(iv) AED 287: Al Zahra Hospital expenses;

(v) AED 9,113: dental procedure expenses;

(vi) AED 40,000: five months salary for additional work as a secretary/accountant;

(vii) AED 1,100: difference between the amount calculated by the accountant and received at NBAD;

(viii) USD 433.13: reimbursement of the DIFC Courts SCT filing fee; and

(ix) EUR 350: reimbursement of the excess luggage fee paid on behalf of the Defendant (this was added to the claim at the Hearing).

6. In the interests of expediency and thoroughness, rather than consider each of the parties' submissions in an isolated way, I will address each item claimed for by the Claimant in turn, with a consideration of each parties' position, including their written and oral submissions. I will also provide an analysis of the law where relevant; as the Defendant is an employer registered in the DIFC, the employment relationship is governed by the DIFC Employment Law.

Discussion

(i) One-month notice period

7. The Claimant submitted that she had only been paid in lieu of receiving a 14-day notice period, but that the DIFC Law entitled her to receive a notice period of one month. Therefore, she requested that the Defendant pay the difference.

8. In its written submissions, the Defendant had argued that Contract 2 specified for there to be a 2-week notice period. However, in the hearing the Defendant accepted that it owed the Claimant 8 additional days, which was said to be the difference between two weeks and one-month periods.

9. Article Four of Contract 2 provides:

"A. This contract shall be renewed only if both parties agree in writing. If there is no such agreement 30 days before the expired day then the

contract does not exist."

10. The Claimant submitted that she had made several enquiries to the Defendant before Contract 2 expired, as to whether it would be renewed. I have had sight of messages sent by her to members of the Defendant's team which support this argument, however, there is no evidence of her being told she is no longer required to work until 8 February 2018. The Defendant appears to accept that the Claimant worked until 8 February 2018 as they have paid her salary until this date. Although Contract 2 would ordinarily have come to a natural conclusion on 31 December 2017, the fact that the Claimant did not receive an adequate response to her enquiries regarding renewal and was not informed to no longer attend work, it is implied by the parties' conduct (namely, the Claimant continuing to work and the Defendant allowing her to continue working) that the terms of Contract 2 would have continued until 8 February 2018. The Defendant submitted that following the expiry of Contract 2, the Claimant continued working during a period of negotiating a renewal of her employment, however, due to her requests which included an increase in salary, renewal was decided against.

11. Accordingly, I am satisfied that the Claimant continued her employment until 8 February when WhatsApp messages confirm she was informed that she was no longer needed. The Defendant ought not to benefit from its failure to inform the Claimant as to her position in its company prior to or at the expiry of Contract 2. It is implied by their conduct that the Claimant continued to be employed pursuant to the terms of Contract 2 in the period between 31 December 2017 and 8 February 2018 and therefore, Contract 2 did not come to a natural expiry on 31 December 2018 and she is entitled to notice upon termination.

12. Article 59 of the DIFC Employment Law provides:

"**Rights of employer and employee to minimum notice**

(1) An employer or an employee may terminate an employee's employment in accordance with this Article.

(2) Subject to Article 59(4) and (5), the notice required to be given by an employer or employee to terminate a person's employment, where the person has been continuously employed for one (1) month or more, shall not be less than:

(a) (7) days if the period of continuous employment is less than three (3) months;

(b) (30) days if the period of continuous employment is three (3) months or more but less than five (5) years;

(c) (90) days if the period of continuous employment is five (5) years or more.

(3) This Article shall not prevent an employer and employee from agreeing to a longer or shorter period of notice nor shall it prevent either party from waiving notice or from accepting a payment in lieu of notice. ."

13. As the Claimant's period of continuous employment is more than three months but less than five years, Article 59(2)(b) applies to entitle her to a 30-day notice period. The Court calculates outstanding employee entitlements using the employee's daily wage. The Claimant's monthly salary was AED 8,000; therefore, her annual salary was AED 96,000 (8,000 x 12) and her daily salary is equivalent to AED 263 (96,000 / 365). Therefore, the Claimant is entitled to a total of AED 7,890 in lieu of notice.

14. The parties agree that the Defendant has already paid the Claimant for what was described as "14 days notice" calculated at AED 363.64 per day, which is a total of AED 5,090.96 (14 x 363.64). Therefore AED 2,799.04 remains outstanding (7,890 less 5,090.96) and shall be paid by the Defendant to the Claimant.

(ii)Three months compensation for termination of a limited contract

15. The Claimant made the argument that she was entitled to compensation for the Defendant's termination of Contract 2, which she claimed to be a limited contract. The Defendant denied that any such payment was due and owing to the Claimant.

16. Whilst the Claimant's arguments may be valid for an employment relationship in onshore Dubai in accordance with UAE Labour Law, this particular employment relationship is governed by the DIFC Employment Law which makes no provision for early termination compensation, nor does it make the distinction between limited and unlimited employment contracts.

17. In conclusion, there is no basis in law for this claim and it is dismissed.

(iii) Air ticket to home country

18. The parties helpfully agreed that the Claimant would be entitled to an air ticket to her home country, in accordance with Article Six of Contract 2. I queried the value of such a ticket and the Claimant suggested that it varied between AED 1,900 and 2,500 and subsequently produced evidence of a ticket being available on 6 May 2018 for AED 2,210. The Defendant agreed with this cost estimation in its email dated 8 May 2018, therefore, the Defendant shall pay the Claimant AED 2,210 in respect of the air ticket.

(iv)Al Zahra Hospital expenses

19. The Claimant submitted that she received medical treatment at Al Zahra Hospital in Dubai, on 4 January 2018. A receipt has been provided in support of this assertion and the Claimant argued that as her medical insurance had expired at this time, she had to pay for the treatment herself and ought to be reimbursed.

20. Article 53 of the DIFC Employment Law states:

"An employer is required to obtain and maintain health insurance cover for its employees."

21. As I have found at paragraph 11 above, that Contract 2 is impliedly continued until 8 February, I am also of the view that the Claimant should have been provided with medical insurance at this time and that the Defendant is responsible for the costs incurred by the Claimant for her treatment.

22. The receipt reflects the price of AED 287.13; therefore, the Defendant shall pay the Claimant this amount in respect of the hospital treatment.

(v) Dental procedure expenses

23. The Claimant submitted that in October 2016, she was hit by a car in front of Emirates Financial Towers whilst attending a meeting. She explained at the Hearing that as a result of the accident she suffered broken teeth which she received dental treatment for in Cyprus on 23 December 2016; a receipt for the treatment costing EUR 2,000 is produced in this regard. The Claimant claimed that she could not proceed with medical examinations or treatment in Dubai following the accident, as the Defendant had not provided her with medical insurance at this time and, therefore, she used her own annual leave to return home and receive treatment, which the Defendant ought to be liable to pay for.

24. In its submissions, the Defendant responded that the dental receipt was only sent to it for the first time on 1 March 2018. It was essentially argued that the Defendant should not be responsible for this treatment as it took place outside of the UAE, appeared to be cosmetic in nature and not linked to any road traffic accident or otherwise, as there was no corroborating evidence or police report filed. The Defendant argued that it was only obligated to provide health insurance to employees from 31 December 2016, but the Claimant's accident occurred in October 2016. However, it is important to highlight that the Defendant appears to be referring to the onshore Dubai regulations which were imposed in 2016, Article 53 of the DIFC Employment Law applied to require DIFC employers to provide health insurance to its employees at all relevant times.

25. At the Hearing, the Defendant appeared to claim it had no knowledge of the accident, but the Claimant produced evidence of messages sent by her to the Defendant on 11 October 2016, clearly informing of the car accident she was involved in and explaining:

> "I cant open a case as I could not do all the medical exams, its very expensive without insurance. On the same time I could not say at the hospital that I don't have insurance, if I did, it could cost problems to the company."

26. The burden of proving all aspects of the claim rests upon the Claimant. Although there is no reason to believe that the Claimant is not being truthful in her account of the accident and injuries, it does appear that her treatment was of a cosmetic/dental nature; and she has not satisfied the Court on the balance of probabilities, that the accident occurred in Dubai and resulted in injuries that required treatment overseas, for which the Defendant should be liable to pay for.

27. Therefore, the Claimant's claim for reimbursement of the dental treatment is dismissed.

(vi) Additional work responsibilities

28. The Claimant is seeking compensation for additional duties that she alleges were carried out by her over the course of five months from 1 September 2017 and has valued this as being equivalent to AED 40,000, i.e. five months' salary. The Claimant submits that upon her colleague leaving the company, she was alone in the office and expected to assume her former colleague's responsibilities in addition to her own, albeit, outside of the scope of her duties. The Claimant has produced supporting evidence in the form of messages and emails which demonstrate the type of additional work she was carrying out, including secretarial, PRO and accounting duties. The Claimant also submits that she worked overtime and, on the weekend, but conceded in her claim form:

> "I never complained as I liked my job and I wanted to give only the best of me"

29. The Defendant responds that the Claimant's request for additional salaries is awkward and unjustified, as the additional work she claims to have carried out are part and parcel of running the office, which she as a Manager was responsible for. In the Hearing it was submitted that the Claimant received commission based on sales, therefore, it was up to the Claimant to manage her hours in respect of overtime and in light of the potential for commission.

30. Once again, this claim is brought by the Claimant and the burden of proving it rests squarely on her shoulders. I have considered the further evidence and spreadsheets submitted in support of this aspect of the Claimant's claim and although it seems likely that the Claimant would have taken on more work upon the departure of her colleague, this does not automatically entitle her to more pay unless expressly or impliedly agreed by the Defendant. I have seen no evidence of the Defendant having agreed to pay the Claimant anything more than her salary in exchange for her carrying out additional duties, nor is there any type of assurance given at any time. I have seen evidence of the Claimant contacting the Defendant several times to renegotiate a higher salary in the renewal of her employment contract, but the parties failed to reach any agreement on this point which ultimately resulted in the employment ending.

31. Accordingly, the Claimant's claim for additional salaries is dismissed.

(vii) NBAD bank transfer

32. The Claimant submitted that she received AED 1,100 less than owed to her in the final payment received by the Defendant and the Defendant helpfully agrees with that calculation and has accepted that it is owed to the Claimant.

33. The Defendant shall pay the Claimant AED 1,100 in respect of the bank discrepancy.

(viii) Excess baggage fare

34. The Claimant is seeking to be reimbursed EUR 350, which is the excess baggage fare she paid on 25 December 2016, upon her return flight to Dubai from Cyprus. It is submitted that Ikosa had personally provided her with marketing materials which she was to bring with her from Cyprus and which caused her to exceed her luggage allowance, requiring her to pay an excess baggage fee. An Emirates receipt has been

provided in support of this claim. The Claimant submits that she sought to be reimbursed by the Defendant upon his arrival to Dubai, however, she was informed that the company did not like to pay for excess baggage and she needed to provide alternative receipts, which she was unable to do.

35. The Defendant was afforded additional time to respond to this aspect of the claim following the hearing and his response was as follows:

> "The amendment claim has been noted and the added claim regarding extra charge for luggage weight is accepted although this was a wrong decision taken at the time by the claimant. The claimant should have informed the company of such charge before payment was made to the airline and not act on her own decision."

36. Although the Defendant appears to object to Claimant's decision to pay the excess baggage fare, it does not deny that the marketing materials were transported from Cyprus to Dubai in the course of Claimant's employment. Therefore, I am of the view that the Defendant ought to bear the cost of transporting the marketing materials to Dubai and the Defendant shall pay the Claimant AED 1,533 (equivalent to EUR 350) in respect of the excess baggage fare.

(ix) Reimbursement of the DIFC Courts's SCT filing fee

37. The Claimant is seeking to be reimbursed her Court filing fee and the Court has broad powers in respect of its discretion to order for costs to be paid to the successful party.

38. The Court fee amounted to AED 1,667.13 following the uplift corresponding to the amendments to the Claim Form. While the Claimant was not completely successful in her claim, the Defendant has been found to be liable for the majority of the Claimant's heads of claim, therefore I am of the view that it is in the interests of justice that the Defendant bear the cost of the Court fee.

39. Accordingly, the Defendant shall pay the Claimant AED 1,667.13 in respect of the SCT Court filing fee.

Conclusion

40. In light of my observations above, the Claimant is awarded a total of AED 9,596.48. At the Hearing, the Defendant mentioned there may have been a slight overcalculation in the payment made to the Claimant in respect of untaken annual leave allowance, however this was not quantified, and no counterclaim was filed in this regard, therefore it has not been considered in this Judgment. All other claims are dismissed.

Issued by:

Mariam Deen

SCT Judge

Date of Issue: 13 May 2018

At: 10am