Claim No. SCT 201/2020 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 LANDRY Claimant and LANGSTON RESTAURANT & BAR Defendant Hearing : 23 July 2020 Judgment

Claim No. SCT 201/2020

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

LANDRY

Claimant

and

LANGSTON RESTAURANT & BAR

Defendant

Hearing **: 23 July 2020**
Judgment **: 29 July 2020**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON the Claim Form being filed on 22 June 2020

AND UPON the Defendant's Acknowledgment of Service being filed on 1 July 2020 with the intention to defend all of this Claim

AND UPON a Consultation being held on 7 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 27 July 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 9,278.29.

2. The Defendant shall pay the Claimant the Court fees in the sum of AED 367.25.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 3 August 2020
At: 12pm

THE REASONS

The Parties

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

2. The Defendant is Langston Restaurant & Bar (the "Defendant"), a company located in 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 14 and 15 February 2019 (the "Employment Contract"). The Claimant's start date pursuant to the Employment Contract is 1 April 2020. The Claimant was terminated by way of a letter dated 20 February 2020 which was received and signed by the Claimant on 9 March 2020.

4. On 22 June 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 11,876.

5. On 1 July 2020, the Defendant filed its reply to the Claim with the intention to defend all the claims.

6. The matter was called for a Consultation before SCT Judge Delvin Sumo on 7 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 27 July 2020 (the "Hearing"). After reviewing all documents and evidence submitted on the Court file, I give my judgment below.

The Claim

7. The Claimant's case is that he was employed with the Defendant as a `Manager' from 1 March 2019. The Claimant alleges that the Employment Contract was signed on 14 and 15 February 2019 with the start date of 1 April 2019, and submits that at the time, the Claimant was in India and due to delays in arranging the Claimant's visa, the Claimant started working with the Defendant in India from 1 March 2019 until his arrival in May 2019 in the United Arab Emirates. The Claimant alleges that he was terminated by way of a termination letter on 9 March 2019, however the letter was backdated on 20 February 2020 stating that his last working day is on 20 March 2020 (the "Termination Letter"). The Claimant submits that he did not receive his end of service entitlements as owed to him pursuant to the DIFC Employment Law, in the amount of AED 11,876.

8. The Claimant seeks payment of the following sums:

(a) The sum of AED 2,000 for his outstanding salary for the month of March and April 2019;

(b) the sum of AED 745 for the air ticket the Claimant paid for to fly to the United Arab Emirates;

(c) the sum of AED 590 for the health insurance;

(d) the sum of AED 2,366 for the outstanding salary from 20 March until 31 March 2020;

(e) the sum of AED 1,065 for the outstanding salary from 1 April until 9 April 2020;

(f) the sum of AED 2,625 applicable to service charges for the month of January and February 2020; and

(g) the sum of AED 2,485 for his end of service gratuity.

9. On 13 July 2020, the Claimant, in his reply to the Defence, submitted that he is further claiming from the Defendant wages from 9 April 2020 until 11 July 2020 in the sum of AED 10,650. During the Hearing, it was clarified that this amount is being claimed under Article 19 of the DIFC Employment Law.

The Defence

10. In response to the Claim, the Defendant confirmed at the Hearing, that due to delays in the visa processing, the Claimant could not travel to the United Arab Emirates until May 2019. The Defendant alleges that, in the meantime, the Claimant started working for another the company belonging to the Defendant company in India. The Claimant further submits that the Defendant intended to terminate the Claimant on 20 February 2020, however the Termination Letter was only handed over to the Claimant on 9 March 2020 due to his absence from work and company accommodation.

11. Moreover, the Defendant submits that the Claimant's end of service entitlements was paid on 17 April 2020 in the sum of AED 5,250 consisting of 20 days worked in March 2020 and the outstanding accrued but untaken annual leave and public holidays.

12. The Defendant further submits that the Claimant is not entitled to wages during the COVID-19 period pursuant to the Presidential Directive No. (4) of 2020 in Respect of COVID-19 Emergency Measures issued by the DIFC Authority.

Discussion

Jurisdiction

13. 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.

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

Findings

15. The start date and termination date are in dispute between the parties, therefore, I shall first determine these dates and then discuss my findings in relation to the Claimant's end of service entitlements.

16. The Employment Contract states 1 April 2019 as the start date. The Defendant argues that the delays in arranging a visa for the Claimant resulted in the Claimant travelling to the United Arab Emirates in May 2019. The Defendant did not submit any proof or evidence that this delay was at the fault of the Claimant, and therefore I consider the start date of the employment to be 1 April 2019 as per the Employment Contract.

17. The Claimant received the Termination Letter on 9 March 2020, however the letter was dated on 20 February 2020. The Defendant did not submit any proof or evidence that the Claimant was verbally or in any other way terminated on 20 February 2020 nor did the Claimant dispute that the Termination Letter was in fact handed over to the Claimant on 9 March 2020. Therefore, I consider the termination date to be 9 March 2020.

18. At the Hearing, parties confirmed that the Claimant has received an amount of AED 5,250 on 17 April 2020 for the Claimant's salary until 20 March 2020 and accrued but untaken annual leave and public holidays in accordance with the final settlement offer as submitted by the Defendant. However, the Claimant submits that he did not agree to this amount, and that the calculation was done wrongly (the "Settlement")

19. As per the Settlement, the Claimant worked 20 days in March 2020. Based on the monthly salary of AED 3,570, the Claimant's daily salary is AED 119 per day (3,570 / 30 = daily salary). Therefore, for 20 days, this totals to the sum of AED 2,380 (AED 119 x 20).

20. The Claimant's daily wage is AED 164.77 per day (3,570 x 12 / 260 = daily wage)

21. The Settlement states that the Claimant has accrued 15 annual leave days and 13 public holidays. The daily wage is calculated to be AED 164.77 as set out in paragraph 19 of this judgment, and therefore, I find that the Claimant is entitled to the sum of AED 4,613.56 (AED 164.77 x 28 days).

22. At the Hearing, parties confirmed that the amount of AED 5,250 has already been paid out to the Claimant for the entitlements as set out in paragraph 19 and 21, therefore, I find that the Claimant is entitled to the remaining amount in the sum of AED 1,743.56 (AED 2,380 + AED 4,613.56 = AED 6,993.56 - AED 5,250)

23. As the start date of the employment has been determined to be 1 April 2019, I am satisfied that the Claimant is entitled to his outstanding salary for the month of April 2019. The Claimant submits that he has received AED 2,250 and based on his monthly salary of AED 3,570, the Claimant is entitled to receive the outstanding amount for April 2019 in the sum of AED 1,320. The Claimant's claim for his outstanding salary for March 2019 shall be dismissed.

24. As the termination date has been determined to be 9 March 2020, I am satisfied that the Claimant is also entitled to his salary from 20 March 2020 until 9 April 2020. Therefore, for 20 days, this totals to the sum of AED 2,261 (AED 3570 /30 days x 20 days= AED 119).

25. Furthermore, the Claimant claims service charges for the month of January and February 2020 in the sum of AED 2,625. The Defendant argues that the Claimant is not entitled to such payment as the payment of service charges is at the discretion of the Defendant.

26. The Employment Contract states the following:

> "you will be entitled to the Company's incentive scheme. The particular of the scheme are as determined by the relevant division for which the employee works and company scheme rules which are amended from time to time. The Employee acknowledges that the Company Incentive Scheme is discretionary".

27. Pursuant to the Employment Contract, I am of the view that the services charges paid to the Claimant are at the discretion of the Defendant. Therefore, I dismiss the Claimant's claim for service charges in the sum of AED 2,625.

28. The Claimant further claims that he is entitled to be reimbursed the sum of AED 745 for the air fare used to travel to the United Arab Emirates. The Employment Contract does not make provision for air fare allowance to be provided to the Claimant, however, I am of the view that this cost fall within Article 21 (2) of the DIFC Employment Law, which states the following:

> "Subject to Article 21 (3), an Employer is not permitted to recoup from an Employee any costs or expenses incurred by the Employer in the course of recruiting the Employee".

As the Claimant was recruited by the Defendant and he was required to travel to the United Arab Emirates for this job, the Defendant is responsible for the air fare costs. Therefore, the Defendant shall return the amount of AED 745 to the Claimant.

29. Furthermore, the Claimant claims that he is entitled to be reimbursed the sum of AED 590 for health insurance as the Defendant is liable to pay for these according to the Employment Contract, which states the following:

> "The Company will provide you with a government Health Card which enables you to use government Hospitals".

30. In light of the above and pursuant to Article 56 of the Employment Law which requires the Defendant to obtain and maintain health insurance cover for each of its Employees, I shall grant the Claimant's claim for health insurance in the sum of AED 590.

31. I am also satisfied that the Claimant is entitled to his end of service gratuity. The Claimant worked for the period from 1 March 2019 to 9 April 2020 which amounts to 1 year, 1 month (21 days / 12 months = 1.75 for each month x 1 month = 1.75 days) and 9 days (1.75 / 30 = 0.06 for each day x 9 = 0.54 days).

32. The gratuity shall be calculated based on the employee's basic wage in accordance with Article 66 of the DIFC Employment Law:

(a) AED 3,420 x 12 months / 365 days = AED 112.44 (Daily Rate)

(b) AED 112.44 x 21 days = AED 2,361.24 for the first year

(c) AED 112.44 x 1.75 days = AED 196.77 for 1 month

(d) AED 112.44 x 0.54 = AED 60.72 for 9 days

(e) AED 2,361.24 + 196.77 + 60.72 = AED 2,618.73

33. Therefore, I find that the Claimant is entitled to the sum of AED 2,618.73 as his end of service gratuity.

34. The Claimant's submissions dated 13 July 2020 make mention of a claim for penalties under Article 19 of the DIFC Employment Law in the

sum of AED 10,650, although not referred to in the Claim Form even though I pointed this out during the Hearing. I will not deal with this claim in dept as it is not claimed on the Claim Form, however, I note the following.

35. Article 19 of the DIFC Employment Law states that;

> "19. Payments following termination
>
> (1) 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.
>
> (2) Subject to the provisions of Article 19(3) and 19(4), an Employee shall be entitled to and the Employer shall pay a penalty equal to an Employee's Daily Wage for each day the Employer is in arrears of its payment obligations under Article 19(1).
>
> (3) A penalty pursuant to Article 19(2) may only be awarded to an Employee if the amount due and not paid to the Employee in accordance with Article 19(1) is held by a Court to be in excess of the Employee's Weekly Wage.
>
> (4) A penalty pursuant to Article 19(2) will be waived by a Court in respect of any period during which:
>
> 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".

36. The Claimant's last working is assumed to be on 9 April 2020. On 17 April 2020, the Defendant paid to the Claimant the sum of AED 5,250 as his end of service entitlements. As the Defendant was under the assumption that he cleared the Claimant's end of service entitlements, I will exercise my powers and waive any penalties pursuant to Article 19 of the DIFC Employment Law. Furthermore, the Claim was filed on 22 July 2020 and has been pending with the Court for over five weeks, which also leads me to waive the penalties for this period pursuant to Article 19 (4) (a) of the DIFC Employment Law.

37. Therefore, the Claimant's claim for penalties under Article 19 of the DIFC Employment law shall be dismissed.

Conclusion

38. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 9,278.29 being the total sum of the Claimant's entitlements.

39. The Defendant shall pay the Claimant the Court fee in the sum of AED 367.25.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 3 August 2020
At: 12pm