Claim No. CFI 013/2026

DUBAI INTERNATIONAL FINANCIAL CENTRE COURT

IN THE COURT OF FIRST INSTANCE

N/A

BETWEEN

PERNELLA

Claimant/Applicant

and

PEARSON

Defendant/Respondent

ORDER WITH REASONS OF H.E. JUSTICE MARK PELLING

UPON the Claimant's Part 7 Claim dated 13 March 2026 (the "Claim")

AND UPON the Claimant's Amended Particulars of Claim dated 28 July 2026

AND UPON hearing counsel for the Claimant and counsel for the Defendant at the Case Management Conference held before H.E. Justice Mark Pelling on 21 September 2026

AND UPON the Claimant having applied for and having obtained permission to amend her Particulars of Claim

AND UPON the Defendant having applied for its costs of and occasioned by the amendment pursuant to Rule 18.27 of the Rules of the DIFC Courts ("RDC") (the "Costs Application")

AND UPON the Claimant having resisted the Costs Application as being contrary to the directions contained in Practice Direction No. 1 of 2025: Access to Justice in Employment Disputes (the "Practice Direction")

AND UPON the Defendant having submitted that the Practice Direction was of no application to an application for costs under RDC 18.27

IT IS HEREBY ORDERED THAT:

1.

(a) The Claimant shall pay the costs of, occasioned and thrown away by the Claimant's attempt to amend her Particulars of Claim in the form of the draft Laktineh Amended Particulars of Claim to be assessed summarily on the indemnity basis at the sooner of either the next attended hearing or following final judgment in these proceedings; but

(b) Save as set out in (a) above, there shall be no order as to:

(i) the costs of and occasioned by amendment to the Particulars of Claim; or

(ii) the costs of the Case Management Conference.

2. The parties shall have liberty to apply.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 30 September 2026
At: 12pm

SCHEDULE OF REASONS

Introduction

1. This is the determination of the Costs Application by the Defendant for an order that the costs of and occasioned by an amendment to the Particulars of Claim should be borne by the Claimant notwithstanding the terms of the Practice Direction. It is common ground that this Claim is an employment Claim within the meaning of the Practice Direction and thus is a Claim to which the Practice Direction applies - see Paragraph 1.2.

2. The purpose of the Practice Direction is identified in Paragraph 1.1 as being *".to enhance access to justice in employment-related disputes."*. It gives effect to that purpose by providing a discretion concerning the waiver of court fees that is immaterial for present purposes and by providing in relation to adverse costs orders that:

"3. **Adverse Cost Orders**

3.1. The general rule in employment disputes shall be that each party bears its own legal costs.

3.2. The court may, in its discretion, make an adverse cost order where:

(a) A party has brought or conducted proceedings unreasonably,

(b) A party has acted vexatiously or in bad faith, or,

(c) It is otherwise in the interests of justice to do so.

Any such order must be proportionate and accompanied by reason."

3. The purpose of the Practice Direction is to promote access to justice in respect of employment cases where one party may be substantially under resourced by comparison with the other party or parties by making it the default rule that employment disputes shall be resolved on the basis that each party bears its own costs. That strong policy constraint necessarily means that cases where the default position is not applied should be very much the exception rather than the rule. The only exceptions that apply are those set out in Paragraph 3.2 of the Practice Direction. Paragraph 3.2 creates three gateways through one of which a party seeking costs must pass. Once an entitlement to rely on one of the relevant gateways has been established, the Court then has a discretion as to whether or not to make an adverse cost order. It follows that establishing one of the gateways is a necessary but not a sufficient basis for seeking a costs order. The Practice Direction does not operate asymmetrically so the same principles apply whether the party seeking costs is a former employer or employee - see *AZ v. BY* CFI 119/2025; July 14, 2026, at [6]. The general rule in Paragraph 3.1 of the Practice Direction is expressed in entirely general terms. It does not either expressly or impliedly suggest there are any exceptions to the general rule other than those provided for by Paragraph 3.2. Given the purpose of the Practice Direction that is not surprising and in my judgment the Practice Direction was intended to set out a comprehensive code for the availability of costs in employment cases.

4. The exceptionality of the power to award costs relying on Paragraph 3.2(b) and (c) is readily apparent from the terms in which those gateways are expressed. Neither could sensibly be said to apply to the facts of this case. The gateway referred to in Paragraph 3.2(a) too is exceptional in its scope and requires the applicant for an adverse costs order to demonstrate unreasonableness to a high degree on the part of the respondent to such an application before it will be appropriate to displace the general rule identified in paragraph 3.1 of the Practice Direction - see AZ v. BY (ibid.) at [8].

5. It was submitted by the Defendant that whilst the practice Direction limits the circumstances in which the court can exercise its general discretion as to costs as set out in RDC 38.6 and 38.7, it is of no application to an application for costs under RDC 18.27. The Claimant maintained that this submission was without merit and that where an application for costs was made by reference to an application to amend a pleading, it was as much an application to which the Practice Direction applies as any other that might be made in an employment claim. I agree for the reasons set out below. It follows that any costs application made following an amendment in an employment claim must be one that first passes through one of the Paragraph 3.2 gateways before the Court gains a discretion as to whether to make a costs order. For the reasons explained below, there is one element of the Defendant's Costs Application that passes through the Paragraph 3.2(a) gateway and justifies an order being made as a matter of discretion but otherwise the Costs Application fails to satisfy any of the gateway tests. It is for that reason that I have directed there should be no order as to costs other than in relation to the element identified in the Order.

6. The Defendant argues that a practice direction is a rule of the DIFC Courts and therefore as a matter of law must yield to such a rule. Although counsel for the Defendant was at pains to make clear that he was not suggesting that the Practice Direction had been made ultra vires he nonetheless maintained that it had to be *"read down"* so as to give primacy to the RDC. In support of that contention, he relied on *Law No. 2 of 2025 Concerning the DIFC Courts* (the "Courts Law"), He relied on the definition in Article 2 of the RDC as being the *". rules regulating litigation procedure before the DIFC Courts, as issued by the President"* . of the DIFC. However, that is a definition provision. More significant for present purposes is Article (5), which provides that:

"The affairs of the judicial and administrative bodies of the DIFC Courts shall be regulated, and their functions determined, pursuant to this Law, DIFC Laws, and DIFC Regulations. The DIFC Courts shall exercise their duties and functions independently in accordance with the provisions of this Law, DIFC Laws, DIFC Regulations and Rules of the Courts."

Further, by Article (10), the Chief Justice of the DIFC Courts is empowered to issue instructions relating to the function of the DIFC Courts and its constituent circuits - see Article (10) B 1, establish the policies and procedures of the judicial affairs of the DIFC Courts - see Article (10) B 2 and by Article (10) B 3, to issue *". directives on relevant action, as found appropriate."*. Where the RDC are mandatory in effect that is expressly provided for within the Courts Law - see by way of example Article (17) G, which provides that the *". Rules of the Courts shall prescribe the time within which an appeal can be brought and the procedures and conditions relating to the filing and progression of the appeal."* By Article 1.4 of the Rules of the DIFC Courts (the "RDC") after 10 July 2011, the Chief justice is empowered to make amendments to the RDC.

7. By Article (23) of the Courts Law, the DIFC Courts are required to apply *". the DIFC Laws and DIFC Regulations to the proceedings before them, except where the DIFC Laws and DIFC Regulations provide otherwise."*. The RDC has been held by the Court of Appeal to be a DIFC Regulation - see *Nest Investments Holding SAL v. Deloitte & Touche (ME)* [2018] DIFC CA 011 at [41] followed in relation to the current version of the Courts Law in Thamer *Abdulaziz Albulaihid v. Shehata* [2023] DIFC 079. Article (25) requires that the *".procedures of litigation, evidence, interim and precautionary measures and enforcement of judgements shall be determined in accordance with the DIFC Laws, the DIFC Regulations, and the Rules of the Courts."*

8. By RDC 2.10(2), it is directed that to *". the extent that no Rule or Practice Direction dealing with the matter shall have been enacted, with regard to the Court of First Instance, the Guide together with any prescribed forms with such changes as the Court considers appropriate to be applied in the circumstances."* is to be the basis on which a court should proceed. The significant point for present purposes is that in this provision at least the RDC expressly places the RDC and any relevant Practice Direction on an equal footing so arguably at least a

Practice Direction that postdates the RDC will take effect in accordance with its terms.

9. In relation to costs, the RDC gives the CFI and the Court of Appeal an unfettered discretion as to what orders to make about costs - see RDC 38.6 - with the general rule being that costs will follows the event - see RDC 38.7. However, the RDC also makes specific provision about costs in defined events. In relation to amendments, RDC 18.27 provides that:

> "A party applying for an amendment will usually be responsible for the costs of and arising from the amendment, but the Court will have regard to any failure of a party to consent to an amendment in accordance with Rule 18.12."

It is worthwhile noting at this stage that RDC 18.27 is not mandatory in its terms as is apparent from the use of the word "usually" and by the qualifying phrase that appears at the end of the Rule. At best, it emphasises that in most cases, a party applying for an amendment will be responsible for the costs of the responding party and that the most likely reason for departing from that general rule will be where a party unreasonably refuses its consent to the amendment sought. The distinction that the Defendant seeks to draw between the general discretion provided for in RDC 38.6 and 38.7 and the costs that follow from an application to amend set out in RDC 18.27 is one that is simply not available because Paragraph 3.1 of the Practice Direction is entirely general in effect with the only applicable exceptions being those set out in Paragraph 3.2. It is as I have said a comprehensive code as to how costs are to be determined in employment disputes.

10. In my judgment, all of these provisions must be read together. So read, cases before the DIFC Courts must be determined in accordance with the provisions of the Courts Law, DIFC Laws, DIFC Regulations and Rules of the Courts, and the DIFC Courts will apply the DIFC Laws and DIFC Regulations to the proceedings before them, except where the DIFC Laws and DIFC Regulations provide otherwise - see Articles (23) and (25) of the Courts Law. In this context, *"DIFC Laws"* is defined by Article (2) of the Courts Law as meaning *"(a)ny laws issued by the Ruler concerning the DIFC"*. Thus, it includes the Courts Law. By Article (10) B 3, of the Courts Law, the Chief Justice is empowered to issue *". directives on relevant action, as found appropriate."*. Where such a practice Direction has been issued, then applying Articles (23) and (25) of the Courts Law, the DIFC Courts are bound to apply the Practice Direction because it has been issued by the Chief Justice in accordance with the powers conferred upon him (or her) by the Courts Law. To do otherwise would be to fail to determine cases in accordance with the DIFC Laws and/or to fail to apply the DIFC Laws to the cases before the DIFC Courts and/or would be a failure to give effect to the qualification in Article (25) that requires the DIFC Courts to give effect to the DIFC Regulations (including for these purposes the RDC) except where the DIFC Laws provide otherwise as will be the case where the Chief Justice has issued a Practice Direction pursuant to Article (10) B 3, of the Courts Law that qualifies what would otherwise be the effect of the RDC.

11. Returning to the Practice Direction, in my judgment it was one that was well within the powers of the Chief Justice to issue. Paragraph 3.1 establishes a general rule that applies in general to all employment disputes and contains no qualifications other than those set out in Paragraph 3.2. Whilst there might be scope in the future for a debate as to what constitutes an employment dispute, that is not so in this case because both parties are agreed that this is such a dispute. The effect of Paragraph 3.1 therefore is to qualify what would otherwise be the default principle set out in RDC 18.27, with the result that in an employment dispute, where a party applies to amend its pleadings, the costs of and occasioned by the amendment will be borne by the parties on whom those costs fall unless the court concludes that in the circumstances the applying party has either conducted proceedings in a manner that was unreasonable to a high degree (Paragraph 3.2(a)) or has acted vexatiously or in bad faith (Paragraph 3.2(b)) or that it is otherwise in the interests of justice to make an adverse costs order (Paragraph 3.2(c) - see *BGC Brokers LP v Adam Tillman* [2026] CFI 0/38/2025 and AZ v. BY (ibid.)).

12. There was some discussion in the course of the hearing as to how the Practice Direction might work in relation to RDC 31.28. That is concerned with the costs consequences that follow when a Part 32 offer is accepted. That issue does not arise on the facts of this case and I prefer to leave that issue to be determined in a case where that point arises. Similar considerations apply to the points made in relation to RDC 31.26 although, entirely provisionally, I consider it realistically arguable that the circumstances contemplated in that rule would be capable of coming within Paragraph 3.2 of the Practice Direction.

13. I now turn to the facts of this case. The Defendant's case was that the initial Particulars of Claim served by the Claimant were inadequate. This resulted in her then legal advisors supplying to the Defendant's solicitors a draft amended Particulars of Claim on 14 May 2026. That draft is referred to in these proceedings as the *"Laktineh APoC"*. The Defendant's solicitors responded on 15 May 2026 asserting that the proposed amendments were unsatisfactory because they lacked particularity in material respects. Ultimately by a letter of 21 May, the Defendant's solicitors consented to the proposed amendment in part but refused it in relation to other parts because of a lack of particularity and other alleged legal and factual defects.

14. On 31 May 2026, the Claimant's current solicitors wrote to the Defendant's solicitors informing them that they had been appointed by the Claimant in place of her previous advisors and on 18 June the Claimant's new solicitors supplied a replacement draft amended Particulars of Claim. It would be fair to say that this draft amendment was a significantly different document from both the original Particulars of Claim and the Laktineh APoC. As the Defendant submits the effect of these events is that the Laktineh APoC was withdrawn in its entirety. Ultimately by an Order made by consent by me on 7 August 2026, it was ordered that the Claimant be given permission to amend her Particulars of Claim in the form proposed by her new solicitors and sent to the Defendant's solicitors on 18 June 2026 and in relation to costs that the *". Defendants' costs of and occasioned by the Laktineh APoC and the QE APoC to be determined at the Case Management Conference or the next attended hearing (whether held remotely or in person) whichever be sooner."*

15. The Defendant seeks the whole of its costs of and occasioned by the amendment exercise. For the reasons I have explained above, that is not an order it is entitled to unless it could be shown that the Claimant has conducted itself throughout in relation to the amendments in a manner that was unreasonable to a high degree. In my judgment that could only be so if it could be said that the Claimant had acted in a manner that was unreasonable to a high degree by failing from the outset to plead its case in its current form. In my judgment such a conclusion would set the threshold that the Practice Direction applies at an unduly low level. The amendment of pleadings as claims progress is generally simply part of the process. The issue that arises in this case only arises because the normal consequences that follow from an amendment have been disapplied and that the claim advanced in the amendments to which the Defendant has consented set out a significantly different and more sophisticated claim does not take matters any further.

16. However, there is one aspect of the amendment process that in my judgment does lift what has occurred out of the norm to a level that was unreasonable to a high degree and that concerns the Laktineh APoC. It has been at least implicitly accepted by the Claimant that this document was unsatisfactory because ultimately, it was abandoned and replaced with the amendment proposed by the Claimant's current advisors. In my judgment this part of the exercise added unreasonably to the Defendant's costs burden and ought not to have occurred. In those circumstances, I consider that the Claimant ought to be required to pay the costs thrown away by that part of the exercise applying Paragraph 3.2(a) of the Practice Direction as it is to be construed applying the principles set out earlier. The remaining costs of the amendment exercise do not fall within any of the exceptions set out in Paragraph 3.2 of the Practice Direction and thus fall within the general rule set out in Paragraph 3.1.

17. I have directed that the costs that I have ordered the Claimant to pay to be assessed on the indemnity basis. This necessarily follows from the basis on which I have concluded that the Claimant must meet those costs - that is that the conduct of the Claimant in seeking permission to amend in the terms of and then withdrawing the draft Laktineh APoC was conduct that was unreasonable to a high degree.

18. I have directed that the costs be assessed at the sooner of the next attended hearing or in default after judgment at the trial in the interests of not wasting further time and costs on this issue. The sums involved will or ought to be relatively modest. In the event that this case is resolved by agreement then the effect of the order I have made ought to be taken account of in the overall settlement negotiations. However, I have given the parties liberty to apply in case an assessment is necessary that cannot be accommodated within the specific directions that I have given.