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

IGALICO

Claimant

and

INTEUS RESTAURANT & LOUNGE

Defendant

Hearing:**27 May 2018**

Judgment:**30 May 2018**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant

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 9,722.99 for her April 2018, vacation in lieu, end of service gratuity.

2.The Defendant shall provide the Claimant a one-way ticket to her home country.

3. All other claims shall be dismissed for lack of evidence.

4. The Claimant shall pay to the DIFC Courts the Court Fees in the sum of AED 384.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 30 May 2018

At: 10am

THE REASONS

The Parties

1.The Claimant is Igalico (herein "the Claimant"), an individual filing a claim against the Defendant regarding her employment with the Defendant's Restaurant.

2.The Defendant is Inteus LLC (herein "the Defendant"), a company that owns the registered Restaurant in the DIFC called Inteus Restaurant & Lounge located inDIFC, Dubai.

Background and the Preceding History

3.The underlying dispute arises over the employment of the Claimant by the Defendant in the position of "Hostess" by an employment contract dated 13 December 2016 (the "Employment Contract").

4.Pursuant to the Employment Contract, the Claimant's total basic salary was AED 3,400 per month, medical insurance cover under the Company's group/employer policy and annual vacation of thirty (30) days for every completed year of service.

5. On 28 March 2018, the Defendant terminated the Claimant's contract and provided the Claimant a one-month notice. In which the last working day shall be 27 April 2018.

6. On 10 April 2018, the Claimant filed a claim in the DIFC Courts Small Claims Tribunal (the "SCT") claiming the sum of AED 19,200, which consists of 3 months full salary for an allegedly unfair dismissal, payment in lieu of vacation in the sum of AED 2,100, end of service gratuity, home flight ticket as per the Employment Contract, 300 hours overtime for the period of 1 year and 4 months in the sum of AED 2,625 and for inappropriate lunch breaks AED 1,575 for 180 hours.

7. On 19 April 2018, the Defendant filed an acknowledgment of service with the intention to defend all of this claim.

8. The parties met for a Consultation with SCT Judge Mariam Deen on 1 May 2018 but were unable to reach a settlement.

9. Both the Claimant and the Defendant's representative attended the hearing before me listed on 27 May 2018.

The Claim

10. The Claimant alleges that she has been working with the Defendant from 22 December 2016. On 28 March 2018, the Claimant alleges that she was terminated for illegal cause.

11. The Claimant alleges that the Defendant during the period of employment held her passport without her consent. She also alleges that on 1 February 2018 she had a flight ticket to Oman, in which she requested her passport back, but the finance manager of the Defendant told her to put AED 1,000 as a deposit for her passport.

12. Furthermore, the Claimant alleges that the passport situation caused arguments between her and her manager. She also alleges that among the employees, she was the only employee with her passport held with the Defendant and she was the only employee who the company requested for deposit when she requested her passport to travel.

13. The Claimant also alleges that she never received a warning letter from the company and that her performance was always good, as she never received a complaint. However, on 28 March 2018 the Defendant provided the Claimant with a termination letter which was signed by the Claimant. Furthermore, the Claimant alleges that she signed because she did not want to work under pressure, stress and discrimination.

14. The Claimant also alleges that the Defendant's HR executive informed her that the Defendant will pay her April 2018 salary, vacation in lieu, end of service gratuity and a one-way ticket to her home country.

15. However, the Claimant is now seeking the sum of AED 19,200 which consists of 3 months full salary for an alleged unfair dismissal in the sum of AED 10,200, vacation in lieu in the sum of AED 2,100, end of service gratuity in the sum of AED 1,960, home flight ticket as per the Employment Contract, 300 hours overtime for the period of 1 year and 4 months in the sum of AED 2,625, for inappropriate lunch breaks AED 1,575 for 180 hours and compensation as the DIFC Courts decide is appropriate.

The Defence

16. The Defendant filed an acknowledgment of service and intended to defend the claim on the basis that the allegations made by the Claimant had no basis.

17. The Defendant provided a Final Settlement Calculation document which consists of the Claimant's salary for 28 days of April 2018 in the sum of AED 3,173, vacation in lieu in the sum of AED 4,588.6, End of Service gratuity in the sum of AED 1,960, one-way ticket to her home country and the Defendant also agreed to pay the Courts fees.

Discussion

18. This dispute is governed by DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

19. I will first consider the Claimant's claim that the Defendant unfairly dismissed the Claimant with any prior warnings in relation to her performance or attitude.

20. On 28 March 2018, the Defendant provided the Claimant with a termination letter that was signed by the Claimant. The termination letter provided the Claimant with one-month notice in which her last day of employment would be on 27 April 2018. The termination letter also specified that the Claimant shall follow up with the accounting department and HR to finalise her financial settlement.

21. In relation to the Claimant's claim of 3 months' salary due to unfair dismissal, there are no remedies against arbitrary dismissal in the DIFC Employment Law. In the case of *Hana Al Herz v The Dubai International Financial Centre Authority [2013] DIFC CA 004*, where the Court of Appeal ruled that the principle of unfair dismissal did not exist in DIFC Law.

22. Therefore, the Claimant is not entitled to compensation for Arbitrary dismissal. However, the Claimant is entitled to the salary of 28 days of April 2018 in the sum of AED 3,173.

23. In relation to the Claimant's claim for vacation in lieu in the sum of AED 2,100, the Claimant miscalculated the amount. The Defendant also miscalculated the amount in the end of service entitlements. Both the Claimant and Defendant calculated the amount on the basic salary where as it is clearly stated in Article 28 of the DIFC Employment Law which states that:

> "compensation in lieu of vacation leave shall be calculated using the employee's daily wage applicable on the employee's last day of employment".

24. In the Defendant's End of Service entitlements letter, the Defendant stated that the Claimant is entitled to 40.50 days' vacation in lieu that were untaken during the course of the Claimant's employment. Therefore, based on the calculations pursuant to Article 28 of the DIFC Employment Law, the Claimant is entitled to AED 113.33 (daily wage) * 40.50 days = AED 4,589.99.

25. In relation to the Claimant's claim for end of service gratuity, the Defendant has no objection to this payment and calculated that the Claimant is entitled to End of service gratuity in the sum of AED 1,960 for the period of employment 1 year and 4 months.

26. I am also in agreement with the calculation made by the Defendant regarding the Defendant's end of service gratuity.

27. In relation to the Claimant's claim of one-way ticket to her home country, the Defendant has no objection on that and agreed to provide the ticket.

28. In relation to the Claimant's claim of 300 hours overtime for the period of 1 year and 4 months in the sum of AED 2,625, for inappropriate lunch breaks AED 1,575 for 180 hours and compensation as the DIFC Courts decide; the Defendant argued that the Claimant did not provide sufficient evidence for overtime, and that the Claimant provided a hand-written document that is not signed by any manager in the company and does not have the Defendant's letter head.

29. The Claimant after the hearing submitted a message from RTA (Taxi confirmation) from 8 April 2018 up to 12 May 2018 alleging that during the termination period she was using taxis to attend work, while her contract clearly specified that the Defendant will provide transportation.

30. In response, the Defendant alleges that the transportation was from the place of accommodation to the work premises. However, due to the Claimant's termination, she was asked not to attend work.

31. In my view, the Defendant did not provide any evidence that the Claimant was asked not to attend work. Pursuant to the termination letter it is clearly stated that the Claimant's last day of working was 27 April 2018. Therefore, she is entitled to transportation as per her contract until the last day of work as per the termination letter.

32. However, the Claimant did not provide evidence of how much she had paid for transportation, the only document provided is the taxi order confirmation messages. Therefore, I dismiss the Claimant's claim for lack of evidence.

33. In my view the document provided by the Claimant as a support for her claim of overtime is not sufficient evidence. The Claimant also failed to provide evidence of her allegation of 180 hours of inappropriate lunch breaks.

34. The Claimant also failed to support her argument as to why she is entitled to compensation. The procedures taken by the Defendant when terminating the Claimant appear to be sound.

35. In relation to the Court fee, the Defendant agreed to pay the Claimant's court fee.

Conclusion

36. In light of the aforementioned, I find that the Claimant is entitled to the sum of AED 9,722.99 which consists of 28 days salary of April 2018 in the sum of AED 3,173.00; vacation in lieu in the sum of AED 4589.99; end of service gratuity in the sum of AED 1960; and a one-way ticket back to her home country.

37. However, the Claimant's claims of overtime, inappropriate lunch break and compensation shall be dismissed for lack of evidence.

38. The Defendant shall pay to the Claimant the Court Fees in the sum of AED 384.



Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 30 May 2018

At: 10am