Claim No. SCT 334/2020 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 MAHA AL MEHAIRI BETWEEN LUYANA Claimant and LUNE Defendant Hearing : 27 October 2020 Judgment : 1 November 2020

Claim No. SCT 334/2020

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 MAHA AL MEHAIRI

BETWEEN

LUYANA

Claimant

and

LUNE

Defendant

Hearing :	**27 October 2020**
Judgment :	**1 November 2020**
Amended Judgment :	**3 November 2020**

AMENDED JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this Claim being filed on 22 September 2020

AND UPON a hearing having been listed before SCT Judge Maha Al Mehairi on 28 October 2020, with the Claimant and the Defendant's representative in attendance

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 4,448.81**.

2. 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: 1 November 2020
Date of Re-issue: 3 November 2020
At: 10am

THE REASONS

The Parties

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

2. The Defendant is Lune(the "Defendant"), a restaurant registered in the DIFC.

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 August 2017 (the "Employment Contract"). The Claimant was hired as General Manager with a monthly salary of AED 10,500 consisting of the following:

(a) Basic Allowance AED 8,000; and

(b) Living out Allowance AED 2,500.

4. The Claimant was employed by until 9 April 2020, when the Claimant, along with other employees of the Defendant, received notice that the Defendant restaurant was undergoing a temporary closure, in accordance with guidelines received by the relevant authorities under the

circumstances surrounding the COVID-19 pandemic (the "Pandemic"), and that all employees were to be placed on unpaid leave until further notice.

5. The Claimant submitted her resignation on 30 May 2020, and her last working day was 31 July 2020. The Defendant prepared her final settlement offer which the Claimant did not agree or accept, and she proceeded to file a claim before this Court.

6. On 22 September 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming the following:

(a) Payment in lieu of accrued but untaken annual leave for the period from 9 April 2020 to 31 July 2020;

(b) Payment in lieu of untaken public holidays on 30 and 31 July 2020.

7. On 6 October 2020, the Defendant filed an Acknowledgment of Service intending to defend all of the claim.

8. The parties met for a Consultation with SCT Judge Delvin Sumo on 8 August 2020 but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 27 October 2020.

9. At the Hearing, the Defendant did not contest the Claimant's entitlements under the Employment Contract but argued that its business and financial position have suffered as a result of the Pandemic

Discussion

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

11. I shall set out below each of the Claimant's claims, the Defendant's defence to each Claim, and accordingly, the Court's reasoning and finding.

Payment in lieu of untaken annual leave

12. The Claimant submits that she is entitled to annual leave that accrued in the period between 9 April 2020 to 31 July 2020. The Defendant refutes the Claimant's submissions and argues that the Claimant is not entitled to any leave accrual due to the fact that the Defendant restaurant was closed during an emergency period held as a result of the Pandemic. The Defendant argues that the Claimant was denied her leave in accordance with the Presidential Directive of the President of the DIFC that was issued during the emergency period (the "Directive"), and permits an employer to place its employees on unpaid leave without the requisite consent of the employee, during the defined commencement period set out in the Directive. The Defendant submits that under the Directive, the Claimant should not accrue any leave. The Defendant supports this argument with Article 2 of Clause 6 Emergency Employment Measures in the relevant section is set out below.

"5. Rationale

The President has the authority under the Founding Law to perform any action he considers necessary to ensure the proper management of the DIFC.

6. Emergency Employment Measures

(1) An Employer may only during the Emergency Period implement any one (1) or more of the following Emergency Measures in respect of some or all of their Employees without such Employees' consent:

(a) impose reduced working hours;

(b) impose Vacation Leave

(c) impose leave without pay;

(d) reduce Remuneration on a temporary basis;

(e) restrict workplace access; and

(f) subject to Section 12 below, impose Remote Working conditions and re-quirements, inclusive of (but not limited to) imposing means of measur-ing Employee engagement and productivity during Remote Working.

The following provisions of the

(2) Employment Law shall not apply to Employers during the Emergency

Period in so far as may be required to facilitate the Emergency Measures:

(a) Article 14(3);

(b) Article 29(2); and

(c) Article 30(1)."

13. I am of the view that the Defendant has misinterpreted the Directive. Article 6(2) of the Directive is limited to permit employers from following the requirements set out by Articles 14(3), Article 29(2) and Article 30(1) of the DIFC Employment Law. The Directive in its Article 6(1) sets out

the measures that an employer can take, and the prevention of the accrual of annual leave is not one of those measures.

14. Article 27 of the DIFC Employment Law which sets out that:

> "Vacation Leave
>
> (a) 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.
>
> (b) An Employee is entitled to be paid their Daily Wage during Vacation Leave.
>
> (c) An Employee is entitled to carry forward up to five (5) Work Days of accrued but untaken Vacation Leave into the next Vacation Leave Year for a maximum period of twelve (12) months after which any unused Vacation Leave shall expire.
>
> (d) Vacation Leave is exclusive of Public Holidays to which an Employee is entitled.
>
> (e) Unless otherwise agreed in writing by an Employee, and subject to Article 28(1), an Employee cannot receive payment in lieu of Vacation Leave.
>
> (f) Unless otherwise agreed by an Employer, Vacation Leave cannot be converted to Sick Leave if an Employee is sick during any period of Vacation Leave.
>
> **Compensation in lieu of Vacation Leave**
>
> (1) Where an Employee's employment is terminated, the Employer shall pay the Employee an amount in lieu of Vacation Leave accrued but not taken up to and including the Termination Date calculated in accordance with Article 28(3).
>
> (2) In the event that the Employee has taken more Vacation Leave than has accrued at the Termination Date, the Employer shall be entitled to deduct an amount calculated in accordance with Article 28(3) from any payments due to the Employee on the Termination Date.
>
> (3) Compensation in lieu of Vacation Leave, or any amount owed by the Employee in respect of excess Vacation Leave taken, shall be calculated using the Employee's Daily Wage at the Termination Date."

15. I agree with the Claimant's submission in so far as the Employment Law permits an employee to accrue leave during this period, and she is entitled to her annual leave. As such, the Claimant is entitled to payment in lieu of 9.18 days of vacation leave for the period from 9 April 2020 to 31 July 2020, as she was an employee of the Defendant until 31 July 2020. As such, I find that the Claimant shall be paid the amount of AED 5,076.94 (AED 10,500 x 12/260 = 484.62 x 9.18 = AED 4,448.81).

16. In addition, the Claimant is claiming 2 days of public holiday on 30 and 31 of July. When cross referencing these days with the Government's announcement on public holidays, the Court is satisfied that these days fall on the Day of Arafat and the Eid Al-Adha public holiday. The Defendant was requested to provide the Claimant's log in relation to attendance on these days for confirmation, which they provided. It is evidenced that the Claimant did work on those days, however she has exceeded her accrual of leave in respect to public holidays. In light of this, I dismiss the Claimant's claim of 2 public holidays.

Conclusion

17. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 4,448.81.

18. I am of the view that, as the Claimant has been successful in her claims, she is entitled to recover the court fee applicable to the filing of this case. The Defendant shall therefore pay to the Claimant the amount of AED 367.25 for the Court fee.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 1 November 2020
Date of Re-issue: 3 November 2020
At: 10am