THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

IN THE COURT OF FIRST INSTANCE

N/A

BETWEEN

PAGET

Claimant/Respondent

and

PADRESA

Defendant/Applicant

REASONS FOR THE ORDER OF H.E. JUSTICE MARK PELLING DATED 23 OCTOBER 2026

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1. This is an application by the Defendant for immediate judgment in part, or to strike out in part, a claim by the Claimant against the Defendant for various sums claimed under a contract of employment that has been apparently determined by the Defendant (the "Application"). The Claim breaks into two-parts being firstly, a claim for deferred compensation, which is quantified at between approximately 90,000 and 101,000 Swiss Francs and secondly, a claim for what is described as variable compensation, but which in fact is a discretionary bonus, which is estimated at a value of about 300,000 Swiss Francs. The application I'm now concerned with is concerned exclusively the second of these two claims.

2. The factual circumstances which lead to the making of this claim are relatively straightforward. By a contract of employment entered into by the parties dated 21 June 2023, the Defendant employed the Claimant as a Relationship Manager with the rank of Executive Director as and from the date of the contract. The contract expressly provided that there would be a probationary period of three months during which the employment contract could be terminated at any time on seven days' notice. The contract then continued "*After the conclusion of the probationary period, your contractual notice period will be three months*." The contract provided in relation to variable compensation payments as follows:

> *"Any variable compensation payments or other special remuneration paid to you in addition to the fixed component of your salary, are discretionary in nature, do not constitute any right to future payments and/or future participation in variable compensation programmes, even if such payments are made several years in succession."*

The contract also provided in relation to such payments as follows:

> *"All variable compensation / bonus payments (including but not limited to those mentioned above) are subject to the condition that neither Party will have given notice to terminate the employment contract and/or the employment relationship will not have been terminated, respectively, as at the payment date. In case the employment with the employer will cease for any reason or be under termination notice before the payment date all pending instalments will automatically forfeit, meaning you will not be entitled to collect any pending instalments or any pro-rata part of them."*

3. Not merely did the contract of employment specify the terms and conditions which would apply in relation to the payment of discretionary bonuses, but at the same point was made in the *`Employer's Handbook'* in Section 7, under the heading "*Salary, Bonuses and Other Payments."* where at Article 49(2), it was provided that "*all bonus payments are. are subject to the condition that neither party will have given notice to terminate the employment relationship and or the employment relationship will not have been terminated respectively, as per payment date*." There was a similar provision in the variable compensation guidebook at Article 4.2, where under the heading "*Performance periods and early leavers*," it was provided that ". subject to the laws and regulations, any compensation becomes payable only if the Relationship Manager is in on going employment with the employer, notice of termination of the Relationship Managers' employment has not been given by the Relationship Manager or by the employer, and the Relationship Manager's employment contract has not been annulled or otherwise terminated on the date of payment."

4. The circumstances in which notice could be given terminating the employment contract was provided for by the DIFC Employment Law, which is the law by which the contract of employment, is governed. By Part 10, Article 62 of the Employment Law, it t is provided that:

> "(1) an employer or an employee may terminate an employee's employment without cause in accordance with this Article.
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> (2) subject to. Articles 62(3), 62(4), 62(6) and 63. The written notice required to be given by an employer or employee to terminate the employee's employment shall not be less than.
> (b) 30 days,if the period of continuous employment of the employee is in excess of three months, but less than five years, including any period of secondment."

5. By a letter dated the 24 November 2025 with the caption "*Termination with notice*," the Defendant wrote to the Claimant are as follows:

> "We refer to your discussions with your line management for the reasons discussed. We now set out the terms of the termination of your employment contract, dated 21 June 2023.
>
> (1) Termination of employment.

> The termination is subject to a notice period of 3 (three) months ("Notice Period") and your employment will terminate on the 23 February 2026 (the "termination date")."

The point which is made on behalf of the Defendant and as is common ground, is that at the date when this notice was given, that is to say, 24 November 2025, no assessment had been made as to the entitlement of any of the employees, including in particular, the Claimant to any bonus which would be payable in 2026. It is further the Defendant's case, which again I understand not to be in dispute, that the payment date for bonuses for 2026 would have been earlier than March 2026, following the usual practice of the Defendant As a, result, the payment date referred to in the provisions of the contract of employment quoted earlier would have arisen only after the delivery of the notice of termination. It would also have arisen after the termination date specified in the letter.

6. In those circumstances, the Defendant submits that there is no arguable basis for asserting that the Claimant was entitled to any bonus that was not payable on or before 24 November 2025 and, therefore, this part of the Claim ought to be disposed of by granting the Defendant immediate judgment in respect of it.

7. Before turning to the issues that arise, I should note one point which was made on behalf of the Claimant, was that there were two notices of termination, being the notice of termination to which I referred earlier in this judgment and what was described on behalf of the Defendant as a further notice of termination dated 5 December 2025. The document referred to was a document generated by Pe'er, addressed to the Claimant. It is headed "*Termination statement reminder for action on leaving*." It then states

> "According to our information, your employment with Padresa limited has ended as of 28th of February 2026. This document provides an overview of your plan positions held in Perfecta and outlines the potential impact that can occur to these positions as a result of your employment ending. Please check the taskbar in Perfecta to see if there are any outstanding tasks for you to complete while in Perfecta ."

Contrary to the submission made on behalf of the Defendant, this document is not a notice of termination, much less one that can be said to have been given on behalf of the Defendant. The document is an administrative document, which proceeds on the basis that the notice referred to earlier in this judgment has taken effect in accordance with its terms. The contrary is not arguable.

8. The other point which I should make at this stage, is that I inquired of the Claimant's legal representative, whether it was suggested that the 24 November notice was invalid. I was assured that that was not the submission that was being made.

9. Against that background, the Defendant maintains that the effect of giving notice was to bring the contract to an end before the payment date had arisen or could have arisen in relation to the 2026 bonus payment in consequence of which the Claimant had no entitlement to a bonus payable in March 2026 and, therefore, the claim to recover damages or payment by reference to an alleged entitlement to such a payment is bound to fail and should be resolved by either giving the Defendant immediate judgment on this element and/or striking out this element of the Claimant's claim. The Claimant's submission is that this is at least realistically arguably incorrect because the contractual notice provisions to which I've referred, are to be regarded as subject to an implied obligation that the Defendant would not terminate the employment contract other than in good faith, and that the circumstances surrounding the termination of the Claimant's contract of employment are such that a trial is required in order to determine whether the Defendant terminated the contract in good faith because there are very significant disputes of fact that will have to be resolved in order to decide that issue. The Defendant submits this is entirely misconceived because it was entitled to terminate the contract by notice without cause, and that is what it did and the consequences that follow for the bonus are what are provided for in the contract. The Defendant further submits that the submission on behalf of the Claimant that the rights and obligations contained in the contract of employment should be read, subject to the implication of terms pursuant to Article 57 of the DIFC Contract Law is wrong as a matter of law and must be rejected.

10. I turn to the principles which apply when determining an application for immediate judgment. They are not in dispute, because both parties relied upon the summary helpfully set out by H.E. Justice Rene Le Miere in *Alizz Islamic Bank S.A.O.C v Alef Capital B.S.C.(C) CFI 048/2025* (28 April 2026) at paragraphs 55 to 61. These principles were derived very closely from those set out in *Easyair Ltd v. Opal Telecom Ltd [2009] EWHC 339 (Ch)* at paragraph 15. The principles that apply in this area, as set out by H.E. Justice Rene Le Miere are as follows:

> "First, the question is not whether the Defendant's case is likely to succeed at trial, but whether it has a *realistic* as opposed to a fanciful prospect of success. A defence is realistic if it carries some degree of conviction and is more than merely arguable. A defence that is wholly unsupported, speculative, are contractually incontrovertible, or is contradicted by incontrovertible documents may properly be characterized as fanciful.
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> Secondly, the court must avoid conducting a mini trial. The immediate judgment jurisdiction is not intended to be used as a substitute for a full trial, where the resolution of issues depends on the *exclusion*, on the evaluation of disputed facts, the assessment of witness credibility, or the weighing of competing explanations capable of being tested only by oral evidence or and disclosure.
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> Thirdly, the court is not required to accept uncritically everything asserted in Witness Statements. The court can examine the material before it and assess whether factual assertions are of real substance, particularly where they are contradicted by contemporaneous documents or by the inherent logic of the contradictory. contractual framework relied on.
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> Fourthly, in deciding whether a defence has a real prospect of success, the court must consider not only the evidence actually placed before it on the application, but also the evidence that can reasonably be expected to be available at trial. It is not sufficient for a Respondent merely to assert that evidence might emerge at trial. Rather, the respondent must identify, at least in general terms, the nature and relevance of the evidence said to be capable of supporting its case. Conversely, where material factual development is realistically foreseeable, that may constitute a compelling reason for trial.
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> Fifthly, the existence of a short or potentially decisive point of law does not preclude summary determination where the court is satisfied that it has before it. All the material necessary to determine a legal question, and that the parties have had a fair opportunity to address it. The court should *grasp* the nettle and decide the point. However, where a legal issue is closely intertwined with disputed factual matters or with the evaluation of a complex, a contractual or commercial relationship in its factual context, a caution is required.

> Sixthly, even where a Defendant's prospects appear weak, the court must consider whether there is some other compelling reason why the case or issue should proceed to trial. Such reasons may include the need for fuller factual investigation, the development of expert evidence, or the proper resolution of issues that bear material upon the outcome and cannot be fairly determined on the limited record available on a summary application. Such reasons may include wider points of public interest, for example: if the court considers the case, raises a point of construction of a form of contract widely used in the market."

11. The point made on behalf of the Claimant is that the issues he contends, cannot and should not be resolved on an application of this sort and that I should dismiss the immediate judgment and strike out application on that basis. That would be so only if it was necessary to determine whether or not the Defendant had terminated the employment contract in good faith. However, that issue simply does not arise if the Defendant is correct in submitting that it was entitled to terminate the employment contract without cause.

12. In my judgment, the Defendant is correct in the submissions it makes concerning the effect in Law of the employment contract and what in consequence motivated the Defendant to serve notice of termination is entirely immaterial. In my judgment, it is beyond argument that the Defendant was entitled to serve notice for any or no reason and thus the need for an investigation of whether or not there was a legitimate reason for terminating the contract is simply one that does not arise.

13. I reach this conclusion because I consider the Claimant's case based on Article 57 of the DIFC Contract Law to be unarguable. Article 56 of the Contract Law provides that the contractual obligations of the parties may both be express or implied. In relation to implied obligations, Article 57 provides that "*Implied obligations arise from (a) the nature and purpose of the contract. (b) practices established between the parties and usages. (c) good faith and fair dealing and (d) reasonableness.*" The Claimant submits that it is realistically arguable that a term is to be implied into the employment contract that qualifies the apparently unqualified right of either party to terminate it without cause by giving the required period of notice by reference to Article 57(c) of the Contracts Law.

14. It was submitted on behalf of the Defendant that this was unarguable either as a matter of construction of the employment contract and/or as a matter of law applying Article 62 of the DIFC Employment Law and applying Court of Appeal authority as to how contracts of employment are to be construed in the DIFC Courts' jurisdiction.

15. The first question which arises, therefore, is whether the notice provisions contained in the contract of employment are to be read, subject to an implied qualification that prevents termination by notice other that for cause applying Article 57(c) of DIFC Contracts Law. In my judgment, the assertion that such a read across is required or indeed permitted is simply unsupportable as a matter of law as a result of the way in which Employment Law issues have been approached in this jurisdiction at Court of Appeal level. The first authority upon which the Defendant relied was *Lutfi v. DIFCA* [2013] DIFC CA 003. The facts in relation to that dispute are not material for present purposes, and I can start with the legal analysis which commences under the subheading "*Unfair dismissal*" in paragraph 29 of the Court of Appeal's judgment, where the Court of Appeal held:

> "As for unfair dismissal, the argument was advanced that termination was unfair and contrary to an implied term of mutual trust and confidence, fair dealing, good faith and reasonableness that the employer should act in accordance within its power to terminate. DCJ Colman rejected this unfair dismissal argument, as he did equally in the related case between AAH and DIFCA. He explained that any introduction of implied terms would be problematic, as such terms were difficult to define and uncertain in terms of application. Furthermore, the introduction of any such principle otherwise than by legislation would be wrong and inconsistent with the fundamental principle of the primacy of the express terms of the contract, subject only to the introduction of inconsistent implied terms by legislation."

In my judgment, this is a clear statement of general principle to the effect that the express terms of a contract of employment (at any rate in so far as they relate to termination) are not to be regarded as qualified by the implication of terms applying Article 57 of the Contract Law. The Court of Appeal continued in relation to the issue I am now considering at paragraph 57, by referring to an earlier decision of the Court of Appeal in *Al Herz against DIFC* [2013] DIFC CA 004, where it had been held as follows:

> "66. The unamended Employment Law makes no provision for an employee to claim unfair dismissal, although it recognises an employee's right to claim discrimination on grounds of sex, marital status, race, nationality, mental or physical disability, religion.".
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> "67. The relationship between the Appellant and the Respondent is regulated by the unamended Employment Law, which is a DIFC law. It sets out at Article 3 all the statutory rights and protections of the employee, and at Article 8 the minimum standard of requirements of employment, which the parties cannot contract out of. In substance then, the Employment Law has a regulatory content and is the only law that governs the employee who works for any entity having a place of business in the DIFC. Therefore, there is no basis to adopt any other law than the DIFC Employment Law to determine the rights of the Appellant, and its contractual relationship with the Respondent is regulated by the DIFC Employment Law. In any event, the Appellant has further failed to establish a legal right of compensation for unfair dismissal."

The consequence of this statement of general principle is, in my judgment, entirely clear. The contract of employment provides for a period of termination by three months' notice. That is further augmented by the Employment Law, which provides, as I have said, at Article 62, that an employer or an employee may terminate an employee's employment without cause by giving, in relation to an employee whose period of continuous employment is in excess of three months but less than five years, a period of 30 days' notice. These provisions take effect in accordance with their terms applying the reasoning of the Court of Appeal in the authorities to which I have so far referred.

16. Returning to the judgment of the Court of Appeal in *Lutfi*, it is relevant also to note that at paragraphs 69 and 70, the Court of Appeal added this:

> "Likewise, since the DIFC Employment Law makes provision for regulations to be issued to provide for rights for claims for unfair dismissal in the absence of such a regulation I consider that the Appellant cannot contract out of the DIFC Law."

There is thus no room for the implication of a term applying the Contract Law to qualify the contractual and statutory rights of the parties to a

contract of employment to terminate it without cause. This has been the consistent position of the Court of Appeal in this jurisdiction since 2013, as established by at least the decision of the Court of Appeal in *Al Herz* and the decision in *Lutfi*, at any rate in relation to the termination of contracts of employment. As the Court of Appeal held in paragraph 114 of its judgment in *Al Herz*. The trial judge adverted to the difficulties of definition and uncertain application of implied terms of this nature. One aspect of this is that the present question is one of termination of employment, not performance of employment obligations. Thus, while an implied term of mutual trust and confidence has been recognised in England as an incident of the employment relationship, in *Johnson v Unisys Ltd* [2001] UKHL 13; (2001) 2 All ER 801 the House of Lords held that it does not apply to the manner in which an employer exercises a contractual right of termination; see also *Eastwood v Magnox Electric PLC* [2004] UKHL 35; (2004) 3 All ER 991 referring to "the Johnson exclusion area" and *Edwards v Chesterfield Royal Hospital NHS Foundation Trust* [2011] UKSC 58; (2012) 2 AC 22"..."

17. Although there was some reliance placed, at least by implication, by the Claimant in these proceedings on the so-called Braganza Doctrine in English law, that was misplaced because that doctrine is of no application in relation to unqualified rights of termination conferred by contract - see *Taqa Bratani Limited v. Rockrose UKCS8 LLC* [2020] EWHC 58 (Comm) at [44] and [47] - [53] - and such rights cannot be read down by reference to implied terms on which the Braganza doctrine is based.

18. In those circumstances, the position in my judgment comes to this. The contract of employment between the Claimant and Defendant provided that it could be terminated by either party giving three months' notice to the other. Whilst the contract was silent as to the circumstances in which notice could be given, in my judgment it was plain, on a proper construction of the contract, that it permitted termination without cause by either party by giving three months' notice. Even if that is wrong, however, the contract is to be read together with Article 62 of the Employment Law, which enables either an employer or an employee to terminate an employee's employment without cause by giving the minimum periods of notice provided for in Article 62. It is not suggested that the period of notice given by the notice of termination given in this case was anything other than a period of notice that satisfied the requirements of Article 62.

19. In those circumstances, and returning to the terms of the contract, the right to a bonus, or to be considered as a matter of discretion for whether a bonus should be awarded, was limited by the terms of the contract between the parties. A right to a bonus or to be considered for a bonus was lost, where either party had given notice terminating the employment contract before the payment date applicable to a bonus entitlement. In this case, the termination notice was given well before the payment date, which, as I have said, was in March 2026, and indeed, under the terms of the notice, the Claimant's employment had come to an end well before the payment date as well.

20. In those circumstances, as it seems to me, this is a short and decisive point of law and construction which determines a very substantial part of this case which I should resolve at this stage applying the fifth principle identified by H.E. Justice Le Miere in *Alizz Islamic Bank*. It would be wrong in principle to permit to continue to trial a claim which is unarguable as a matter of law, as in my judgment this is for the reasons I have given. In those circumstances, I conclude that the Defendant is entitled to immediate judgment in relation to the bonus claim that has been advanced.

21. No application was made in the course of the oral submissions for permission to amend. There were various submissions made on behalf of the Defendant which emphasized that the ability to amend so as to raise claims not so far pleaded, would be impermissible as a matter of DIFC law and practice. The points which were made by the Defendant, in summary, were as follows.

22. Firstly, as a matter of DIFC procedural law, there is no relation backed doctrine which is available in order to permit amendments so as to circumvent limitation periods. This point was made most clearly by H.E. Justice Sir Jeremy Cooke in *Abdel Salam v. Expresso Telecom Group Ltd* [2019] DIFC CFI 015, at paragraph 54, where he said "*Counsel for Expresso rightly submitted that the DIFC knows of no principle of `relation back' where a new head of claim is raised by amendment, so that it operates as if it had been made at the time proceedings were first commenced.*" In England and Wales, that is a concept which has long been recognized, although it is subject to statutory constraint so as to preclude, or at any rate, limit the effect of the relation back doctrine for the purpose of circumventing limitation periods.

23. So far as limitation periods in the context of this case are concerned, the point that was made by the Defendant, and not, I think, disputed, is that there is a very strict limitation period which applies to presentation of employment claims in this jurisdiction. Article 10 of the DIFC Employment Law provides that, "*Subject to Articles 22 and 61(2), a court shall not consider a claim under this Law unless it is presented to the court either during an employee's employment with the employer or not later than six months after the relevant employee's termination date.*" It follows from this that any amendment so as to raise for the first time an alternative claim by reference to the claim to recover bonuses, is one which would fall foul of the Article 10 limitation period, in circumstances where it could not be circumvented by reliance upon a relation backed doctrine.

24. As this Court has held in relation to this limitation period,

> "Limitation periods are usually considered as a defence rather than a strict statutory requirement. However, when a statute explicitly states that the court shall not consider a claim unless it is presented to the court within a specified time, it creates a binding constraint. The court is obliged to adhere to the statutory limitation period. If the claim is brought before the specified time frame, sorry, brought after the specified time frame, the court cannot consider it. The language of `shall not' in Article 10. leaves no room for discretion."

See *Faizal Babu Moorkath v Expresso Telecom Group Ltd* [2023] DIFC CFI 008 at paragraph 193. In those circumstances, there is no room for any application to amend so as to circumvent the points I have made.

25. In those circumstances, the point really becomes a simple one. The Defendant gave notice, as it was entitled to do, by its letter dated 24 November 2025. It gave a period of three months' notice, and that period of notice expired on 23 February 2026. The notice was given before the payment date relevant for the 2026 bonus. Indeed, the notice expired and the employment of the Claimant came to an end prior to the payment date as well. The notice was given pursuant to an unqualified right to terminate on notice without cause, a right which arises both as a matter of construction of the contract of employment and also by operation of Article 62 of the Employment Law. There is no room for the amendment of the claim so as to substitute an alternative cause of action, even if one were available, because of the limitation period that applies in this area. For those reasons, I conclude that the Defendant is entitled to succeed and that, therefore, it is entitled to summary judgment in respect of the claim for

variable compensation in the form of a bonus payment, which the Claimant has so far advanced.

Costs

26. The issue I now have to determine concerns whether, and if so to what extent, the Claimant ought to be ordered to pay the costs of and occasioned by the summary judgment application I determined a moment ago.

27. Aside from the Practice Direction which applies to employment cases, to which I turn in a moment, the position concerning costs would be straightforward to resolve. The question of who should pay costs in relation to a contested application is to be decided by reference to a common-sense determination of who has been successful and who has not. Plainly, the Defendant has been successful, and therefore, but for the Practice Direction, would be entitled to its costs.

28. The question which arises is whether, this being an employment case, there should be any recovery of costs at all. The relevant principles are those set out in Practice Direction No. 1 of 2025, which, insofar as is material provides, by paragraph 3.1, that the general rule in employment disputes is that each side should bear their own legal costs. However, exceptionally, by paragraph 3.2 it's provided that "*the Court may, in its discretion make an adverse cost order where (a) Party has brought or conducted proceedings unreasonably., or (c) it is otherwise in the interest of justice do so. Any such order must be proportionate and accompanied by reasons.*"

29. The first question which arises what precisely the scope of paragraph (a) within Clause 33.2 of the Practice Direction is. In my judgment, in *AZ v. BY* [2025] DIFC CFI 119, I concluded that there was a strong similarity between what was required under this sub paragraph of the Practice Direction and the principles that apply to an application for costs to be assessed on the indemnity as opposed to the standard basis, applying the principles identified by the Court of Appeal of England and Wales in *Excelsior Commercial Industrial Holdings Limited ([2002] EWCA Civ 879)*. It was for that reason that I concluded that the search is for conduct which can be described as out of the norm, that is to say, conduct which is unreasonable to a high degree.

30. Generally speaking, the mere fact that a successful party has won decisively, or put another way, the losing party has been found to have an unmeritorious case, will generally not lead of itself to an award of costs to be assessed on the indemnity as opposed to the standard basis. For similar reasons such a case would not normally come within paragraph 3.2(a) of the Practice Direction unless the claim could be said to be so wholly without merit as to lift its commencement away from the norm.

31. Aside from that issue, I accept the submission, which is made on behalf of the Defendant, largely because it wasn't challenged, that at least paragraphs 17 and 30 of the Claimant's skeleton suggest that some or all of it was prepared using AI. I am not persuaded that the provisions within the skeleton argument to which my attention was drawn should be regarded as having significantly increased the costs that have been incurred to a point I should regard paragraph 3.2(a) of the practice Direction as having been engaged by reference to this point. Whilst it would also be fair to say that the skeleton argument is significantly longer than it need have been, and that it addresses a number of points other than those which were centrally relevant to the case, these failings are not so egregious a lengthy skeleton as to justify the conclusion that its provision was unreasonable to a high degree.

32. The real point which is made in the circumstances of this case is that I should conclude that the Claimant's case lacked merit in relation to the bonus claim, that it should never have been made and in those circumstances, I ought to award some or all of the costs of the application to strike out and for summary judgment.

33. The difficulty in this case is that the points made on behalf of the Defendant were made by reference not merely to two decisions of the DIFC Court of Appeal but that both had been decided many years ago and have remained good law ever since. The principles that are set out in the DIFC Employment Law are entirely clear and have not been altered materially for many years. The principle that the Contract Law can be relied on to support the implication of a term that qualifies what is provided for in the DIFC Employment Law, and/or to qualify the rights which are governed by a contract of employment subject of DIFC law, are simply unarguable once the principles set out in the Court of Appeal decisions I referred to in the main judgment are understood.

34. Whilst the general rule is, that merely because someone has lost, that does not generally lead to the conclusion that cost orders should be made, there comes a point at which the proceedings have turned out to be so totally without merit, as to justify the Court taking appropriate action. There is a particular difficulty about this case in that but for the bonus claim, it would have been issued in the Small Claims Tribunal and would probably have been disposed of on its merits by now or would be close to being disposed of on its merits by now. As things stand, these proceedings were issued in the Court of First Instance. This Application has so far taken a better part of two hours to resolve, and therefore Court resources have been expended in attempting to resolve the issues that arise when that could have been avoided. Significant costs have been incurred by the Defendant in ensuring that a claim which is unarguable has been disposed of, and in the result, with respect to all concerned, there has been a significant avoidable waste of time, cost and of resource to no useful purpose.

35. Whilst I fully accept that there is a need to facilitate access to justice, in particular by employees whose contracts of employment have been terminated and who may be under-resourced by comparison to the other parties in the dispute, that is not a licence to advance claims which have no possible merit in the expectation that there will be no costs consequences that follow. For the reasons I gave in the main judgment delivered a moment ago, I am satisfied that the part of this claim with which the immediate judgment application is concerned, is not merely one that the Claimant was bound to fail on. It was one that with respect to all concerned, was totally without merit in the sense that it should never have been brought. And in those circumstances, the Court must consider making and in my judgment must make a costs order.

36. The generous proposal made on behalf of the Defendant is that the costs recovery by the Defendant should be capped at 50% of the costs of the application otherwise assessed due. In those circumstances, I propose to make an order that the Claimant pay 50% of the Defendant's costs to be assessed on the standard basis.

Summary Assessment

37. This is the summary assessment on the standard basis of the Defendant's costs of and occasioned by the application . The principles which apply in this area are now well established by Rules 38.17, 38.18 and 38.21 of the Rules of the DIFC Courts. Where costs are to be assessed on the standard basis, the Court is to have regard to all the circumstances in deciding whether costs were (a) proportionately and reasonably incurred, or (b) were proportionate and reasonable in amount.

38. In applying those principles, the principles which have been applied in the past by the English courts are relevant because of the close similarity between the DIFC rules, Court rules, and the Civil Procedure Rules in relation to these costs - see the decision of this Court in *Al Khorafi against Bank Sarasin-Alpen ([2009] DIFC CFI 026)*.

39. In relation to proportionality, the guideline principle is that there should be recovery permitted only for the lowest sum that the receiving party could reasonably have been expected to spend in order to have its case conducted and presented proficiently - see the decision in *Kazakhstan Kagazy PLC against Zhunus [2015] EWHC 104(Comm.)* at paragraph 13, which has been followed by the English Court of Appeal twice, and, more pertinently for present purposes, by the Court of Appeal of the DIFC Courts in *Industrial Group v. Hamid ([2022] DIFC CA 005)*, and is therefore the principle to be applied in this area.

40. Against those general principles, I turn to the sums which are claimed in this case. The grand total claimed is USD 47,821.92, broken down between Counsel's fees in the form of a brief fee of USD 13,722.05, with the remainder being solicitor time costs. In relation to the question whether or not the sums charged are in excess of what is reasonable and proportionate, the starting point is the hourly rates fixed by the Registrar's Direction No. 1 of 2023. In all respects, the sums which have been claimed by the solicitors acting for the Defendants are lower than the guideline average rate expressed in dollars in the practice direction, and therefore, I conclude that the sums which are being charged by the solicitors, insofar as it concerns hourly rates, are both reasonable and proportionate.

41. I turn first to the attendances. So far as that is concerned, the first section appears to be attendances on the client, for which a total of in excess of 5.5 hours are claimed, spread between the Senior Associate or Counsel, Mr. Mellett, and Ms. Lonsdale, the Associate. So far as that is concerned, the level of detail which is provided necessarily means that I must approach the assessment of whether the work is reasonable and proportionate on a broad brush and broad axe basis. Adopting that approach, I consider that Mr. Mellett's hours, broadly speaking, are both reasonable and proportionate, having regard to the issues that arose, as identified by Mr. Doherty in his submissions, including the need to consider the risks of making an application, the proportionality of making an application, given the potential difficulty in recovering costs. I allow Mr. Mellett's attendances on the client, therefore, at 4 hours.

42. So far as Ms. Lonsdale is concerned, I do not at the moment understand what additional attendances will be required by her above and beyond those I have identified, and therefore I disallow that.

43. As far as attendances on others, again, so far as that is concerned, there are 4 hours which appear to be focused on attendances on the Court and on attendances on those advising the Claimant. On the face of it, this appears excessive, but by the same token, I have not heard any specific challenge to the suggestion that these sums are justified by reference to attendances, at least in part, on the Claimant. Therefore, I am prepared to allow those as asked, Ms. Lonsdale's attendance being modest, and 4 hours 30 minutes in aggregate striking me as reasonable and proportionate.

44. Where I part company with the Claimant is in relation to the work done on documents. So far as that is concerned, Mr. Mellett claims, 18 hours and 48 minutes, Ms. Lonsdale a further 12 hours and 20 minutes, with the trainee a further 2 hours and 6 minutes. In my judgment, this is plainly in excess of what is reasonable and proportionate, particularly when regard is had to the evidence which has been filed in support of the application, which, whilst necessary and helpful, is short at 10 pages and 38 paragraphs, and largely consists of identifying the material which is in the possession of the Defendant, and setting out, at least in part, some arguments in relation to the claim, which is to be avoided. The exhibits are a further 100-odd pages, which very largely consist either of documents filed in the proceedings, that is to say, the claim form, particulars of claim and the defence, a copy of the employment contracts and various employment handbooks, all of which are in the possession of the Defendant and can be produced with relative ease.

45. In those circumstances, I consider the sums which have been charged in respect of the preparation of this evidence to be in excess of what is reasonable and proportionate. I accept that there was a bundle to be prepared, and I accept that bundles take time to prepare, particularly if they are to be done correctly in an electronic format with the relevant bookmarks in place, and I take full account of that. In the circumstances, I allow Mr. Mellett at 18 hours and 48 minutes. I allow the trainee at 2 hours and 6 minutes. I do not see what Ms. Lonsdale adds to the in excess of 18 hours expended by Mr. Mellett, and I disallow that, applying the reasonableness and proportionality test I identified.

46. The next thing to consider is attendances at the hearing. With some hesitation, I am prepared to accept that Mr. Sharratt's attendance at this hearing was reasonable and proportionate, although in most cases attendances on Counsel will be justified only by a relatively junior fee earner. Mr. Sharratt's attendance is justified both by reason of the importance of this case so far as the Defendant is concerned, having regard to the size of the claim which was under challenge, and also it is not to be overlooked that Mr. Sharratt was the deponent of the Witness Statement used in support of the application, and therefore there may have been issues which would have to have been asked of him directly as the hearing went on. I allow his attendance, and I allow it as claimed.

47. I am not satisfied that it would normally be reasonable and proportionate to have any other attendances at the hearing, other than perhaps a trainee to assist Mr. Sharratt in relation to any administrative issues that might arise during the hearing. I am prepared to allow, therefore, the 2 hours by a further attendee, but that must be at the rate applicable to the trainee, that is to say USD 210 an hour.

48. As far as Counsel's fees are concerned, those are both reasonable and proportionate, not least because they include not merely the preparation for and the conduct of the hearing, but also the preparation of the entirely helpful skeleton. Those are allowed as asked.

49. In the result, with those relatively modest adjustments, I assess the sums that the Defendant is entitled to recover in principle. In the course of his submissions, Mr. Doherty accepted that there should be a reduction from the sum otherwise due. He suggested there should be a 50% recovery of the sum otherwise as assessed due. I accept that is the appropriate way to approach it, and I so direct.

Issued by:
Delvin Sumo
Assistant Registrar
Date of issue: 30 October 2026
At: 10am