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

IZZET

Claimant

and

IVORY CAPITAL MANAGEMENT

Defendant

Hearing:**11 June 2018**

Judgment: **4 July 2018**

Re-issued Judgment: **8 July 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 264,402 for the remaining notice period salary, amount in lieu for vacation leave accrued but not taken and end of service gratuity

2. All other claims are dismissed.

3. The Defendant shall reimburse the Claimant for the DIFC Courts' Fees in the sum of AED 5,148.04.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 4 July 2018

At: 2pm

THE REASONS

The Parties

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

2. The Defendant is IVORY Capital Management (herein "the Defendant"), a company registered in the DIFC and located at DIFC, Dubai.

Background and the Preceding History

1. The underlying dispute arises over the employment of the Claimant by the Defendant in the position of "Senior Portfolio Manager" by an Employment Agreement dated 1 June 2016 (the "Employment Agreement").

2. Pursuant to the Employment Agreement, the Claimant was entitled to receive a monthly draw of AED 120,000 ("Draw") against fees during the agreement from the commencement date on or around the 24th day of each month by direct bank transfer subject to the following conditions:

a. The draw is an advance against fees which have been paid from the commencement date to the employee as well as all future fees until termination of this Agreement;

b. The draw is repayable by the employee against all fees received by the employee; and

c. Draw recovery will continue until the draw balance is reduced to zero.

3. In addition, the Employment Agreement provides a medical benefit, 30 days holiday with full payment during each calendar year and a one-way economy air ticket to the Claimant's country of citizenship upon termination of the Agreement.

4. On 22 April 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") stating that the Defendant terminated the Claimant's Employment Agreement 3 weeks after the Claimant had already submitted his written resignation. The Claimant alleged that the Defendant fabricated misconduct allegations against him in order to terminate his employment for cause and to avoid certain payment and compensation obligations under the Employment Agreement.

5. The Defendant responded to the Claim on 30 April 2018 defending against the claim.

6. The parties met for a Consultation with SCT Judge Ayesha Bin Kalban on 6 May 2018 but were unable to reach a settlement.

7. Both parties attended the Hearing before me listed on 11 June 2018.

The Claim

8. The Claimant alleges that on 21 December 2017 he submitted his signed, written resignation to the Defendant giving six months' notice in accordance with his Employment Agreement. In total, the Claimant alleges that the Defendant owed him over AED 883,000 in legal and contractual obligations after he had resigned. The Claimant added that the Defendant, however, refused to accept his resignation, falsely claiming they had served termination notice to him in August 2017. Despite multiple requests, the Defendant had been unable to provide any evidence to support its claim of serving earlier notice. However, the Defendant has now provided an email correspondence dated 17 August 2017.

9. The Claimant alleges that thirteen days after he resigned, when the office was empty and closed for Christmas and New Year, misconduct allegations emerged against him. Furthermore, the Claimant adds that it had become clear to the Defendant the size of its obligations to him upon his resignation. The Defendant then allegedly decided that the only way it could avoid paying the Claimant the sums due was to invent or fabricate misconduct, which is what the Defendant allegedly proceeded to do having previously threatened just this course of action on 17 December if the Claimant did not agree that he was served his notice. The Claimant contends that he has had no disciplinary matters, warnings, verbal or written, nor any misconduct allegations made against him throughout his entire employment with the Defendant, and the Defendant has not provided any evidence to the contrary. The Claimant also contends that all of the allegations of misconduct against him, including the four that were summarily dropped, are untrue and denied. He also adds that the termination email dated 17 August 2017, subject: "*As we discussed*", was never received by him nor, he argues, was it ever sent.

10. The Claimant also alleges that the defence is the first time the Defendant has referred to the termination email. Furthermore, the notice is not on company-headed paper, unlike every piece of correspondence sent to him in the investigation, nor is it signed as claimed in the defence. Crucially, it is also not valid as it does not provide the Claimant with six months' written notice as per Clause 2.2 of the Employment Agreement. The alleged termination notice only gave four and a half months of notice. Furthermore, the Defendant admits that this 17 August 2017 email was the first notice of termination. Therefore, the Defendant's failure to give a full six months' notice as contractually required renders the notice invalid. The Claimant contends that any allegation that a "verbal" notice was given is false and, in any event, verbal notice is also not contractually compliant. In sum, the only contractually compliant written notice served on either party came from the Claimant on 21 December 2017 via his resignation letter.

11. The Claimant alleges that it is critical that the notice dated 17 August 2017 was never served to him. This purported termination notice was to result in the Claimant's termination effective 31 December 2017, however the parties were still discussing a potential settlement via email in December 2017. The Claimant argues that had he been validly terminated, effective at the end of December 2017, the parties would not have been engaging in settlement discussions in December. Further, there was disagreement as to whether the Claimant had indeed been served notice in December, as evidenced by emails between the Claimant and Mr Isahi (the Chairman of the Defendant Company), where the Claimant states

"*I am no clearer what the position of the company is in respect of my employment and I have been advised by my lawyers that I am employed with a company, no notice given, no termination."* Had there been clear notice of termination effective on 31 December 2017, the Claimant continues, the Defendant would have highlighted this as its main defence. However, the uncertainty surrounding the 17 August 2017 email has made this argument impossible.

12. The Claimant also contends that had he been scheduled with an effective termination date of 31 December 2017, the Defendant's investigation into alleged misconduct would not have begun until after he was scheduled to leave. However, the investigation began on 2 January 2018, further evidence that there was no confirmed termination date in December.

13. The Claimant also adds that the addendum, signed by both parties, that served to reduce his salary by half, mentions nothing about any alleged termination on 31 December 2017. The Claimant also referred to a letter dated 25 July 2017 which stated that "*With reference to your monthly pay, this amount will reduce to AED 60,000 per month for the entirety of 2017. All other aspects of the employment contract remain unchanged.*" These two documents are further evidence that there was no scheduled termination effective 31 December 2017.

14. The Claimant argues that he received a different email from the Defendant on 17 August with the subject being his Employment Agreement. This email was sent when he was in the UK, it acknowledges that he is on a trip, but goes on to state that "*I don't want to disturb [your trip] with formalities. We do hope that we might find an alternative. Upon your return, I think it is best to mutually confirm terms and obligations." The Claimant points out that the tone of this email is quite friendly. However, the tone of the alleged termination notice, which is claimed to have been sent on the same day by the Defendant, states "You are being terminated due to redundancy and performance."*

15. The Claimant also alleges that the Defendant provided an email dated 20 December 2017 from Mr Isahi, which states that the Claimant's last day will be 17 February 2018 and the last day for which the Claimant was required to work at the office was to be 20 December 2017.

16. In conclusion, the Claimant alleges that the termination notice dated 17 August 2017 was not served on him and is therefore invalid. Furthermore, he argues that even if the alleged termination was served on him, which he denies, it was invalid due to its failure to comply with the terms of the Employment Agreement. Therefore, the Claimant argues he is owed certain employment entitlements as per his Employment Agreement and the DIFC Employment Law, considering that he gave valid notice of termination on 21 December 2017 with an effective termination date on 20 June 2018.

The Defence

17. The Defendant alleged that documentary evidence will prove that the Claimant was served ample termination notice and that his contract was terminated in 2017. In addition, the Defendant alleges that the Claimant requested that the Defendant illegally extend his employment visa sponsorship for several months after termination, which the Defendant reasonably refused to do based on advice.

18. The Defendant also alleged that the Claimant attempted to retaliate and destroy large volumes of company files and records, which prompted an inquiry and investigation into potential wrongdoing, along with his submitting a spurious resignation. An investigation into wrongdoing found that the Claimant not only destroyed company records but that the Claimant had also been involved in illegal criminal gambling activities from the company's premises and had concealed his outside dealings. Furthermore, the Defendant alleged that the Claimant's destruction of records included an attempt to destroy HR records in an apparent attempt to seek undue benefits and falsely extend his employment visa sponsored by the Defendant Company.

19. The Defendant alleged that it has acted or reacted throughout the process as a reasonable employer and the Claimant has unreasonably refused to comply with or participate in the investigation into his misconduct or the disciplinary process. Furthermore, the Claimant at no stage denied any of the allegations against him. The Defendant also adds that the Claimant was reasonably dismissed for cause under Article 59A of the DIFC Employment Law and that he was paid all of his entitlements accordingly. However, the Defendant alleges that the Claimant continued to be obstructive throughout the visa cancellation process and filed this Claim, which the Defendant believes to be spurious and frivolous, and has further sought to obstruct the process throughout the SCT proceedings.

20. The Defendant alleged that the Claimant had misled the Defendant Company as to his previous employment experience from the start. The Claimant had represented himself as the head of proprietary trading at Idiso Bank, managing the bank's proprietary capital and balance sheet, which would have given him the correct experience to become a portfolio manager at the Defendant Company. However, the Claimant's performance, which began in June 2016, quickly revealed that he did not have competence as a portfolio manager, nor prior experience as a proprietary trader.

21. The Defendant also argued that the Claimant proceeded to generate substantial losses for the company. From 1 June 2016 until March 2017 the Claimant generated approximately $120,000 in net losses from trading, which led to $237,000 in net losses overall. Eight clients of the company were lost as a result of the Claimant's performance, with seven of those clients being permanently lost. The Defendant alleges that the Claimant did throughout his employment receive multiple verbal warnings and his monthly and weekly reports indicating his negative performance, which he received on a written basis throughout his tenure, were also demonstrative of his poor performance. He began to receive quite a number of verbal warnings during the final months, however written records of these warnings were not kept.

22. The Defendant alleged that the Claimant's Employment Agreement was varied, so until 31 December 2016 he had been on a draw of AED 120,000 per month, rather than a basic salary. The Defendant does acknowledge that there were drafting issues with the Claimant's contract. Due to the Claimant's generation of losses, his draw was reduced as of 1 January 2017. The parties later entered into a mutual agreement by which the Claimant's draw was officially reduced to AED 60,000, but the Claimant only signed that agreement in February 2017. The Claimant's final trade was made on 15 March 2017, as evidenced in the trading report. The Claimant had not made any trades for the fund beyond that point in time.

23. The Defendant argues that the Claimant was informed that he would remain on an AED 60,000 draw until the end of 2017, at which time his

employment would end. He was required to continue to attend work at the office.

24. In terms of written notice, the Defendant argues that it served written notice of the Claimant's termination on Ivante and the Claimant himself. The Claimant was served with and received written notice on 17 August 2017 via email, as shown in the correspondence records provided by the Defendant. This notice served to confirm the Claimant's effective termination date of 31 December 2017. The notice was not served in an email on company letterhead, it was generated from a template document. The Claimant acknowledges that two forms of notice were served via email: the first was presented by the Claimant and does not include the specific termination date and the second was presented by the Defendant and includes mention of 31 December 2017 being the effective termination date. The fact that such emails were not signed do not invalidate them as effective notice.

25. The Defendant argued that during the period of December 2017 there were several discussions of the Claimant's departure during which the parties attempted to negotiate an amicable solution. During these discussions, the parties agreed that the last day of the Claimant's notice period would be 17 February 2018 rather than 31 December 2017, as per the Employment Agreement.

26. The Defendant alleges that on 20 December 2017 the company's CFO observed the Claimant behaving erratically by searching through company files, consulting with a lawyer, and planning to bring an outside IT professional to assist with his work computer. Irami, an employee of the Defendant Company, has submitted a sworn witness report of his observations in which he states that "*On 20 December when [the Claimant] was requested to leave the office he was behaving strangely. [The Claimant] indicated he continued to need to access his computer and it was apparent that he was waiting for someone to assist him."* Mr Irami became suspicious of the Claimant's behavior and informed the CEO and the Chairman. The Chairman responded that company personnel should "*Get [the Claimant] out of the office. Get him away from the computer, lock it up*."

27. The Claimant refused to leave the office, stating that he could stay until 6:00pm. When the Claimant finally vacated the premises, Mr Irami locked the computer in company storage and locked the Claimant out. Along with the email that the Claimant sent the following day, this behaviour ultimately instigated a formal inquiry into the Claimant's conduct.

28. An investigation was carried out into the potential misconduct of the Claimant. The initial inquiry was based on the Claimant's behaviour and his false statements which included his arbitrary resignation notice. Upon initial review of the evidence, it became very evident that the Claimant had been destroying large swathes of company files, including HR records, and that he was now denying having received the termination notice of 17 August 2017.

29. Based upon legal advice, the Defendant then initiated a formal investigation into the Claimant's misconduct, which would have begun around 20 December 2017. The Defendant claims that the Claimant was served notice of this in a formal investigation letter on 2 January 2018 by the company's Chairman, who informed the Claimant that he was required to return company files on 4 January.

30. The Defendant alleges that a reasonable investigation process was then commenced with which the Claimant refused to comply. On 4 January 2018, the investigative officer invited the Claimant to attend an investigative meeting scheduled for 7 January 2018 at which the investigative officer wished to discuss the allegations with the Claimant and understand the Claimant's position. The Claimant refused to confirm his attendance at this meeting, stating that he needed to seek the advice of legal counsel. The Claimant did not ultimately attend the meeting.

31. Due to the Claimant's failure to comply with the investigation, the Defendant scheduled a disciplinary meeting and requested that the Claimant confirm attendance at the same. The Defendant concluded that the disciplinary meeting was necessary to adjudicate the findings that the Claimant attempted to destroy company files, that the Claimant participated in illegal gambling on company computers, that the Claimant failed to disclose certain personal account dealings, and that the Claimant filed inaccurate and incomplete annual declarations in 2016 and 2017 in order to mislead the Defendant Company. The Claimant was invited to a disciplinary hearing scheduled for 10 January 2018 at which he could, again, have the opportunity to explain his position and defend himself to the disciplinary committee. However, the Claimant did not attend.

32. Therefore, the Claimant was terminated for cause. Following this termination for cause, pursuant to Article 59A of the DIFC Employment Law, the Claimant was entitled to salary up until 14 January 2018 and he was entitled to any of his accrued and unused leave. The Defendant calculated the amount owed to the Claimant from 1 to 14 January 2018 to be AED 28,000 and concluded that the Claimant had 9.74 remaining leave days, totaling AED 30,358. The Defendant argues that the Claimant is incorrect in claiming his salary at the rate of AED 120,000. Furthermore, the Claimant seems to have no objection to the leave calculation.

33. Therefore, shortly after 14 January 2018, all entitlements were paid to the Claimant. Due to the Claimant's termination for cause, there was no obligation to pay gratuity or any remaining notice period. The Defendant contends that although the Claimant owed the Defendant AED 612,000, the Defendant sought to avoid dispute and thus did not file a claim against the Claimant.

The Claimant's Response to the Defence

34. The Claimant points out that the Defendant has admitted to failing to provide contractually compliant written notice of termination. The Claimant argues that the only correct notice was given by him on 21 December 2017, as he was not given any verbal notice.

35. Furthermore, the Claimant alleged that the Defendant has admitted that the investigation began only after the Claimant had served his resignation. This supports the Claimant's contention that the only reason for the investigation was to avoid paying substantial end of service obligations to the Claimant, especially considering that the Defendant had failed to validly terminate the Claimant at an earlier point.

36. During the settlement negotiations, the Claimant refused to agree in an MOU that he was already serving his notice period and he argued that the addendum that reduced his draw expired on 31 December 2017 and thus his pay increased back to AED 120,000 after that date. He refused to sign the statement confirming notice was given on 17 August 2017. The Claimant argues that the Defendant was aware of this fact. For these reasons, the Claimant alleged that the Defendant fabricated an investigation in order to terminate the Claimant for cause. The reason for settlement negotiations in the first place was due to the fact that the Defendant failed to realise that insufficient notice had been given.

37. The Claimant also pointed to inconsistencies in the witness statement of Irami, especially as to when he exited the office premises and when he had opportunity to tamper with company computers. Furthermore, the amicable email he received from Mr Isahi contradicts the idea that the Claimant had been reported just hours before for strange behaviour.

38. The Claimant also alleges that the inquiry into his misconduct and behaviour began on 21 December 2017, however from 21 December 2017 until 2 January 2018 the office was closed. This makes it very unlikely that the investigation actually began during this period, as no one was in the office to begin the process.

39. Furthermore, the Claimant contests any allegations that he destroyed HR files, as they are locked, and he would not be able to get access to them. As to other files that he is accused of destroying, the Claimant contends that he did empty his email trash but did not otherwise destroy company files. The files contained within his email trash folder were outdated, not confidential and of no import to the company. The Claimant also argues that there is no DIFC Law prohibiting the deleting of old emails containing economic research, nor is there anything in his contract that prohibits this action.

40. As to the allegation that the Claimant was gambling, the Defendant has not provided any proof of this claim. None of the deleted documents were related to gambling, contrary to the letter provided from the Defendant's lawyer of 14 February 2018. Furthermore, the two statements provided from Idama Banks and Winning Post show accounts held legally by the Claimant in the UK and none of the activity shown was placed on company computers. Bets were likely placed in the UK and via phone, not computer. These statements were contained only in the Claimant's personal email, not his company email. The Claimant also points out that the evidence of Mr Ivet is dated 10 September 2016, and therefore cannot be referring to the last three months of 2017. Finally, the Claimant argues that the Defendant has provided no real proof that any bets or gambling activity took place on company computers. Any websites related to horse racing or other sports visited by the Claimant on company computers were for news purposes only, not for gambling.

41. The Claimant denies the allegation that the Claimant's disclosure statements were inaccurate in any way. The savings plan for his children was not required to be declared. Furthermore, the Claimant contends that the Defendant should not be keeping his private and confidential account and tax documents in its records. The Claimant contends that he genuinely forgot about a 2004 investment in Guernsey, however this small error did not affect the Defendant and certainly was not a dismissible offence. It was merely a minor human error in his disclosure.

42. The Claimant reiterated that the allegations against him only came up after his own resignation, leading him to believe that they were fabricated. None of these allegations are true and therefore they do not constitute reason for termination for cause.

The Defendant's Reply

43. The Defendant argues that the Claimant admitted to placing bets but claimed that those bets were made while he was outside the UAE and on non-working days. However, the Defendant argues that the Claimant's leave record show that he was in the office, in the UAE, on working days when the vast majority of these bets were made.

44. The Defendant also argues that the Claimant claimed that the websites he accessed using his work computer were not gambling sites. However, the Defendant argues that the websites themselves as well as their Wikipedia pages identify them as betting sites.

45. The Defendant also argues that the Claimant was engaged in criminal activity in the UAE and used company property and facilities for such purposes.

Discussion

46. The DIFC Courts and the Small Claims Tribunal have jurisdiction over this case as it concerns employment within the DIFC and the amount in question is AED 500,000 or less. While the Claimant had articulated sums due greater than AED 500,000, he has confirmed his waiver of any sums potentially owed above AED 500,000 to remain within the jurisdiction of the SCT. This dispute is governed by the 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 Agreement and other agreements between the parties.

47. There are two main issues in this case: first, what is the Claimant's effective termination date and second, was the Claimant validly terminated for cause, pursuant to Article 59A of the DIFC Employment Law. I must also address the Claimant's claims for salary, vacation time, and end of service gratuity.

A. Effective Termination Date

48. The Claimant's case is that he resigned on 21 December 2018 by submitting a written resignation to the Defendant, giving six-months' notice period in accordance with the Employment Agreement. This would make his effective termination date 21 June 2018 and thus his entitlements would reflect this date. The Claimant also argues that the Defendant's attempts to terminate the Claimant for cause, after he had already resigned, were disingenuous and that the prior alleged attempt of termination without cause via email on 17 August 2017 was not received by him and was in any event invalid.

49. On the other hand, the Defendant's case is that the Claimant was initially terminated via an email and attached letter sent on 17 August 2017. The Defendant provided a copy of this communication along with a screenshot showing that the email was received by the Claimant. While the Defendant argues that this termination notice was valid, the Defendant's main case is that the Claimant was later terminated for cause, pursuant to Article 59A of the DIFC Employment Law, for misconduct to include destroying company documents, gambling on company premises, and inaccurate disclosures revealed during an investigation that took place in late December 2017, after the parties had agreed to extend the Claimant's notice period until 17 February 2018.

50. The 17 August 2017 termination letter attached via email stated:

"Dear Inge,

As previously discussed in recent months, you are further notified that your employment with this company will be terminated effective 31st December 2017. You are being terminated due to redundancy and performance.

Due to the length of your notice period, you will be required to continue to attend the office and remain available.."

51. While the Claimant contends that he did not receive this email notice and that in any event the notice was contractually insufficient, I am satisfied with the evidence provided by the Defendant and therefore I find that the Claimant was terminated on 17 August 2017. As the Claimant argues, the notice period provided by the Defendant in this emailed letter was contractually insufficient, however the parties later agreed to extend the notice period until 17 February 2018, bringing it in line with the contractual requirements. Thus, I find that the Claimant was given notice of termination on 17 August 2017 with an ultimate effective termination date of 17 February 2018.

B. Termination for Cause

52. However, after this termination notice was given, an investigation was carried out by the Defendant regarding the Claimant's alleged misconduct, resulting in the Defendant purporting to terminate the Claimant for cause, pursuant to Article 59A of the DIFC Employment Law after a 10 January 2018 disciplinary meeting. This secondary termination was enacted after the Defendant had already terminated the Claimant on 17 August 2017 and after the Claimant had attempted to independently resign on 21 December 2017.

53. Article 59A of the DIFC Employment Law states "*An employer or an employee may terminate an employee's employment for cause in circumstances where the conduct of one party warrants termination and where a reasonable employer or employee would have terminated the employment."* As a consequence of being terminated pursuant to Article 59A, minimum notice entitlements are waived via Article 59(5) and entitlement to end of service gratuity is also waived via Article 62(4).

54. Due to the fact that termination for cause, under Article 59A, deprives an employee of significant entitlements under the DIFC Employment Law and considering that the DIFC Employment Law allows employers to terminate employees, without cause, for nearly any reason, the bar for termination for cause is understandably high. The standard by which to assess an alleged termination for cause is that any "*reasonable employer . . . would have terminated the employment."*

55. In the circumstances where an employee has already been terminated or otherwise resigned, is serving his proposed notice period, and is already on garden leave, a reasonable employer would require an unusually strong reason to attempt to terminate the employee for cause, reason well beyond depriving the employee of his end of service gratuity.

56. In this case, prior to the termination of the Claimant on 17 August 2017, the Defendant did not raise any accusations against the Claimant for misconduct and the Defendant did not investigate or issue a warning to the Claimant. The Claimant was made aware of the investigation and the outcome around one month before the end of his notice period when he was already placed on garden leave and had already been terminated due to redundancy and performance. As the Claimant was already well on his way out of the company, the Defendant has a high bar to show that its termination for cause was, in fact, valid and not an attempt to deprive the Claimant of entitlements that otherwise would be due to him.

57. The Defendant's investigation of the Claimant's conduct resulted in three findings: first, that the Claimant had destroyed company records; second, that the Claimant had been gambling on company premises and company computers; and third, that the Claimant had failed to disclosure certain outside dealings and interests. However, upon careful review of the Defendant's provided evidence as to these findings, I am not satisfied that these allegations reach the level to justify a termination for cause, especially in this case where termination had already been served months prior and the Claimant had already stopped attending work.

58. The records allegedly destroyed were emails including research contained in the Claimant's inbox, rather than HR files as alleged. The Defendant was not able to show that the Claimant was actually gambling during work hours and using company computers. Furthermore, the documentation provided was from 2016, well before the Claimant was initially terminated on 17 August 2017, and further evidence of subsequent violations during the notice period were not provided. While the Defendant did show that the Claimant visited several gambling websites from his work computer, there was no showing that visiting the sites was on its own a violation. Finally, the alleged omissions from the Claimant's disclosures were minor and on their own, not sufficient to justify termination for cause.

59. For these reasons, I find it disingenuous for the Defendant to attempt to terminate the Claimant for cause after the Claimant had already been terminated, having failed to provide the Claimant with additional warning and having failed to investigate the Claimant's actions at an earlier time. There is little reason to attempt this termination for cause, other than to relieve the Defendant of the responsibility to pay the Claimant his end of service gratuity.

60. This is not to say that there are no circumstances upon which an employer can reasonably terminate an employee for cause after that employee has already resigned or otherwise been terminated, however the circumstances in this case do not reach this standard. The Defendant's attempted termination for cause accomplishes little, seeing as the employee was already not attending work and was on garden leave. All this attempted termination for cause accomplishes is to relieve the Defendant of monetary responsibilities. This singular goal cannot meet the standard that any "reasonable employer . . . would have terminated the employee." Therefore, I find that the Claimant was not successfully terminated for cause, pursuant to Article 59A of the DIFC Employment Law.

61. In conclusion, the Defendant terminated the Claimant on 17 August 2017 due to redundancy and performance and I am not satisfied with the allegations of misconduct. Therefore, I find that the Claimant is entitled to salary, payment in lieu for untaken annual leave and gratuity as per the Employment Agreement, the addendum and the DIFC Employment Law, with an effective termination date of 17 February 2018.

62. However, it is important to note that the Defendant had already made a total payment of AED 58,358 paid in two installments: AED 28,000 paid on 21 January 2018 and AED 30,358 paid on 28 January 2018. The paid amounts are as the Defendant admits, in relation to the Claimant's

salary from 1 to 14 January 2018 in the sum of AED 28,000 and unused annual leave of 9.74 days amounting to AED 30,358.

C. Salary

63. The Claimant was served his notice from 17 August 2017 up to 17 February 2018. The Claimant received his dues for the period of 17 August 2017 to 31 December 2017. The Claimant also received a partial amount of AED 28,000 for the period of 1 to 14 January 2018 based on his salary of AED 60,000.

64. While it is important to note that the Claimant was receiving what was called a "draw" in his Employment Agreement, this amounted to a proxy for salary as has essentially been accepted by the Defendant. Thus, I will refer to this draw as the Claimant's salary. Pursuant to the addendum signed by both parties, the Claimant's salary would be reduced from AED 120,000 to AED 60,000 for the entirety of 2017 only. The parties did not sign any further agreements as to salary. Therefore, the Claimant is entitled to the salary of AED 120,000 per month as per the Employment Agreement as the addendum signed was for 2017 only.

65. The Claimant is entitled to the remainder of the salary for January 2018 in the sum of AED 92,000 (120,000 - 28,000 = 92,000). The Claimant is also entitled to his salary from 1 to 17 February 2018 being his last day of his notice period in the sum of AED 68,000 (120,000/30 x 17 = 4000 x 17 = 68,000). Therefore, the Claimant is entitled to AED 92,000 + 68,000 = AED 160,000 as salary owed to him for his remaining notice period.

D. Amount in lieu of vacation leave accrued but not taken

66. Pursuant to Article 28 of the DIFC Employment Law:

"Where an employee's employment is terminated, the employer shall pay the employee an amount in lieu of vacation leave accrued but not taken."

67. Clause 11.1 of the Employment Agreement states:

"in addition to National holidays, you will be entitled to 30 days' holiday with full pay during each calendar year. Such holiday is to be taken at times and for periods agreed with the Firm in advance of taking such leave as defined by company policy."

68. Clause 11.2 of the Employment Agreement states:

"On termination of this Agreement, if you have holiday entitlement still owing, the Firm will pay you a sum in lieu of accrued holiday based on your normal rate of basic salary."

69. Pursuant to the leave record provided by the Defendant for the period of 1 June 2016 up to 14 January 2018, the Claimant is entitled to 9.74 days accrued but not taken. However, the calculation did not include the remaining period from 14 January 2018 to 17 February 2018. Therefore, the right calculation is:

a. 9.74 - 1.16 (for the period of 1 January to 14 January 2018) = 8.58

b. 2.5 days (January 2018) + 1.41 (2.5 each month / 30 = 0.083 x 17 (17 days of February 2018) = 3.91 days.

c. 8.58 days + 3.91 days = 12.49

70. Therefore, the Claimant is entitled to the leave for 12.49 days. However, due to the difference in the Claimant's salary in 2017 and 2018, I will calculate as following:

a. 2017 = 8.58 days x 2,000 (60,000/30) = AED 17,160

b. 2018 = 3.91 days x 4,000 (120,000/30) = AED 15,640

c. 17,160 + 15,640 = AED 32,800

71. However, the Defendant has already paid the sum of AED 30,358, in which I will deduct from the calculation above. As such the Claimant is entitled to AED 32,800 - AED 30,358 = AED 2,442 for untaken leave.

E. End of Service gratuity

72. Article 62(1) of the DIFC Employment Law states that:

"an employee who completes continuous employment of one year or more is entitled to a gratuity payment at the termination of the employee's employment".

73. Due to the difference in the Claimant's salary from 1 June 2016 to 17 February 2018, I will calculate each year's gratuity based on the salary of that year.

74. For the period from 1 June 2016 to 31 December 2016:

a. Daily rate of 2016 = 120,000/30 = AED 4,000.

b. Gratuity per month = 21(days)/12(months) = 1.75 the Claimant worked for 6 months in 2016, 1.75 x 7 = 12.25.

c. 4,000 x 5 = AED 42,000 for 2016.

75. For the period from 1 January 2017 to 31 December 2017:

a. Daily rate of 2017 = 60,000/30 = AED 2,000.

b. AED 2000 x 21 = AED 42,000 for 2017.

76. For the period from 1 January 2018 to 17 February 2018:

a. Daily rate of 2018 = 120,000/30 = AED 4,000.

b. 75 days for January 2018 + 0.99 days for February 2018 (1.75 days / 30 = 0.058 x 17 = 0.99 days) = 2.74 days.

c. AED 4000 x 2.74 days = AED 10,960 for 2018.

77. Therefore, the Claimant is entitled to gratuity in the sum of AED 49,000 + AED 42,000 + 10,960 = AED 101, 960 pursuant to Article 62(1) of the DIFC Employment Law.

78. 42,000 + AED 42,000 + 10,960 = AED 94,960 pursuant to Article 62(1) of the DIFC Employment Law.

Conclusion

79. In light of the aforementioned, I find that the Defendant is liable to pay the Claimant his dues in the amount of AED 257,402 264,402 for the remaining notice period salary, amount in lieu for vacation leave accrued but not taken and end of service gratuity. All other claims are hereby dismissed.

80. The Defendant shall reimburse the Claimant's Court Fees in the sum of AED 5,148.04 being 2% of the portion of the Claim for which the Claimant was successful.





Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 4 July 2018

At: 2pm

