Claim No. SCT 144/2018

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

ISOBELLE

Claimant

and

THE IEAUN RESTAURANT

Defendant

Hearing:**17 May 2018**

Judgment:**21 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 50,000 in respect of unpaid salary for February 2018 and March 2018.

2. The Defendant shall pay the Claimant AED 13,024.95 in respect of untaken annual leave.

3. The Defendant shall cancel the Claimant's employment visa.

4. All other claims are dismissed.

5. The Defendant shall pay the Claimant the Court Fees in the sum of AED 1,240.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 21 May 2018

At: 10am

THE REASONS

The Parties

1.The Claimant is Isobelle (herein "the Claimant"), an individual filing a claim against the Defendant regarding his alleged employment with the Defendant.

2. The Defendant is The Ieaun Restaurant (herein "the Defendant"), a company registered in the DIFC located at DIFC, Dubai.

Background and the Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant in the position of "General Manager" by a Job Offer Letter dated 12 September 2017 (the "Offer Letter").

4. Pursuant to the Offer Letter, the Claimant's total salary was AED 25,000 per month and annual vacation of thirty days (30) calendar days for every completed year of service.

5. On 1 April 2018, the Claimant resigned from his position with the Defendant with immediate effect.

6. On 1 April 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of an allegedly unpaid salaries for February 2018, in the sum of AED 25,000, March 2018 salary in the sum of AED 25,000, annual leave payment equivalent to 12 days in the sum of AED 12,000, cancellation of visa and DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 (the "DIFC Employment Law").

7. The Defendant responded to the claim on 16 April 2018 defending part of the claim.

8. The parties met for a Consultation with SCT Officer Ayesha Bin Kalban on 19 April 2018 but were unable to reach a settlement.

9. Both parties attended the hearing before me listed on 17 May 2018.

The Claim

10. The Claimant's case is for payment of allegedly unpaid salaries of February and March 2018 in the sum of AED 50,000, 12 days annual leave payment in the sum of AED 12,000, cancellation of visa and Article 18 of the DIFC Employment Law.

11. The Claimant alleges that due to the Defendant's failure to pay the salaries of February 2018 and March 2018, the Claimant resigned with immediate effect and the last day of employment was on 1 April 2018. On the same day, by way of an email the Defendant acknowledged the resignation and arranged for a handover.

12. In addition, the Claimant alleges he has not been paid 12 days' salary in lieu of annual leave, in the sum of AED 12,000, he also seeks for his visa to be cancelled and Article 18 of the DIFC Employment Law to be applied.

The Defence

13. The Defendant filed an acknowledgment of service and intended to defend part of the claim. The Defendant alleges in his submissions that not all of the Claimant's allegations are true.

14. The Defendant admits that the Claimant is entitled to two months' salary for the months February and March 2018 in the sum of AED 50,000. However, the Defendant in his submissions rejects the Claimant's claim for 12 days salary in lieu of annual leave and that as per the offer letter signed by the Claimant is only entitled for 30 days' vacation after completing one year of employment.

15. At the hearing the Defendant admitted the sum of AED 50,000 for the payment of the February and March 2018 salary. However, he was confused about whether the Claimant is entitled to 12 days annual leave even though he did not complete one year of employment to be entitled to 30 days annual leave.

Discussion

16. 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 Offer Letter.

17. In relation to the Claimant's claim for two months' salary for the months February and March 2018 in the sum of AED 50,000, the Defendant admitted that the Claimant is entitled to such amount.

18. In relation to the Claimant's claim for 12 days annual leave for the period of work from 12 September 2017 to 1 April 2018. The Defendant argues that the Claimant is not entitled to the annual leave because as per the Offer letter he is only be granted 30 calendar days upon completion of each year of service.

19. Article 28(1) of the DIFC Employment Law, stated the following:

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

20. The Claimant is entitled to 30 calendar days per year which is equivalent to 2.5 days per month. The Claimant commenced work with the Defendant on 24 September 2017 until his resignation on 1 April 2018, which is a total of 190 days. This is equivalent to 6.25 months (190/365 x 12). Therefore, as the Claimant is entitled to 2.5 days per month, he is entitled to his salary in lieu of 15.63 days annual. I am not satisfied with the calculation made by the Claimant.

21. Article 28(2) of the DIFC Employment Law, stated the following:

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

22. The Claimant's monthly salary was AED 25,000, accordingly, his daily wage was AED 833.33. Therefore, the Claimant is entitled to 15.63 days x 833.33 per day = AED 13,024.95.

23. In relation to the Claimant's claim for Article 18 of the DIFC Employment Law, at the hearing the Claimant withdrew his claim for a remedy under Article 18 of the DIFC Employment Law and indicated that he will only claim his 2 months' salary, payment in lieu of annual leave and cancellation of visa.

24. Since the employment relationship between the Claimant and the Defendant ended, the Defendant should cancel the Claimant's visa.

Conclusion

25. In light of the aforementioned, I find that the Claimant is entitled to his salary for February 2018 and March 2018 in the sum of AED 50,000, 15 days annual leave in lieu in the sum of AED 13,024.95 and cancellation of his employment visa.

26. All other claims are dismissed.

27. The Defendant shall pay the Claimant the Court Fees in the sum of AED 1,240.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 21 May 2018

At: 10am