Claim No. SCT 164/2020 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 NASSIR AL NASSER BETWEEN LANDRY Claimant and LARG BEAUTY CENTRE LLC Defendant Hearing : 15 June 2020 Further Submission

Claim No. SCT 164/2020

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 NASSIR AL NASSER

BETWEEN

LANDRY

Claimant

and

LARG BEAUTY CENTRE LLC

Defendant

Hearing	**: 15 June 2020**
Further Submission	**: 15 July 2020**
Judgment	**: 28 July 2020**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON the Claim Form being filed on 6 May 2020

AND UPON the Defendant filing an Acknowledgment of Service with an intention to defend all of the claim dated 13 May 2020

AND UPON the parties being called on 19 May 2020 for a Consultation with SCT Judge Delvin Sumo and the parties not having reached a settlement

UPON the Claimant filing an amended Claim Form dated 2 June 2020

AND UPON the Defendant filing a defence dated 9 June 2020

AND UPON a Hearing having been held before SCT Judge Nassir Al Nasser on 15 June 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 90,768.08.

2. The Defendant shall pay the Claimant the court fees in the sum of AED 1,815.36.

3. The Claimant shall serve her 1-month notice period or pay the Defendant the sum of AED 12,500.

Issued by:
Nassir Al Nasser
SCT Judge and Registrar
Date of issue: 28 July 2020
At: 12pm

THE REASONS

The Parties

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

2. The Defendant is Larg Beauty Centre LLC, a company registered in the DIFC, Dubai, UAE (the "Defendant").

The Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an employment contract dated 1 November 2018 (the "Employment Contract"). As per the Employment Contract, the Claimant's monthly salary was in the sum of AED 25,000. On 16 April 2020, the parties entered into an amended Employment Contract whereby the Claimant's total monthly remuneration was in the sum of AED 12,500 (AED 5,000 basic salary and AED 7,500 allowances).

4. On 6 May 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming her alleged pending salaries and other employment entitlements.

5. On 13 May 2020, the Defendant filed an Acknowledgment of Service with an intention to defend all of the claim.

6. The parties attended a Consultation on 19 May 2020 before SCT Judge Delvin Sumo but failed to reach a settlement.

7. On 2 June 2020, the Claimant amended the Claim Form, and on 9 June 2020, the Defendant filed its defence.

8. Thereafter, the parties attended a hearing listed before me on 15 June 2020.

9. At the hearing, the Claimant alleged that her signature as found upon a document entitled "Additional Temporary Annex" (the "Document") had been forged and that she never signed the said Document. Upon my direction, the Document was transferred to Dubai Police - Department of Criminal Evidence and Criminology. Subsequently, on 15 July 2020, the DIFC Courts received a report in relation to the Document (the "Report").

Claimant's submission

10. The Claimant is alleging that she is entitled to the sum of AED 205,866 which consists of the following:

(a) Salary from 1 December 2019 to 2 May 2020 in the sum of AED 125,753 - AED 5,600 (Cash advance received) - AED 11,506 (14 days' vacation) = AED 108,647.

(b) Refunds of alleged unauthorised deductions from salary in the sum of AED 30,385 consisting of (health insurance in the sum of AED 3,385 and utilities for accommodation in the sum of AED 27,000).

(c) End of service benefits in the sum of AED 66,834 consisting of (gratuity in the sum of AED 26,298, vacation leave of 45 days in the sum of AED 36,986, and an air ticket in the sum of AED 3,550).

11. At the hearing, the Claimant alleged that she was unaware of the status of her employment because she did not resign nor was she terminated, but the Defendant asked her to return the keys and handover the store which she completed on 4 May 2020. The Claimant also alleges that the Defendant cancelled her work mobile telephone number on 21 May 2020.

The Defendant's submission

12. The Defendant alleges that the Claimant was paid her November and December 2019 salaries. The only remaining sums relate to 23 days' salary for January 2020 in the sum of AED 17,435 from which the Defendant alleges that she is only entitled to the sum of AED 6,785, as she received the following amounts:

(a) AED 1,500 on 19 March 2020;

(b) AED 1,000 on 24 March 2020;

(c) AED 2,000 on 24 March 2020;

(d) AED 1,100 on 16 April 2020;

(e) AED 3,550 in lieu of an air ticket on 24 December 2019; and

(f) AED 1,500 utilities for April 2020

13. The Defendant alleges that the Claimant worked for 21 days only in the month of February 2020, and she is entitled to the sum of AED 17,015.

14. The Defendant also adds that the Claimant worked for 24 days in March 2020, and she is therefore only entitled to the sum of AED 18,190.

15. The Defendant alleges that the Claimant is not entitled to any salaries for the month of April to 2 May 2020 because she had been placed on unpaid leave as per the unpaid leave agreement signed by the parties.

16. In response to the Claimant's claim for a refund of the medical insurance in the sum of AED 3,385, the Defendant alleges that an agreement existed between the parties which provided the Claimant with a basic level of health insurance, but the Claimant requested for an upgraded insurance plan, for which she would pay the difference between the two plans.

17. The Defendant argues that the Claimant's claim for a refund of the utility bills in the sum of AED 27,000 must be dismissed. The Defendant alleges that the parties never agreed that the Defendant would bear the cost of DEWA, internet and telephone usage for her accommodation. In addition, the Defendant adds that since the commencement of the Claimant's employment, it has always been accepted by the Claimant that the Defendant would deduct `utilities' from her monthly salary. The Defendant also adds that since the beginning of her employment, the Claimant has always acknowledged and signed her pay slips wherein it is stated that the utilities would be deducted.

18. The Defendant also alleges that the Claimant is not entitled to the sum of AED 36,986 for 45 days' leave as she failed to specify the basis on which she is claiming payment in lieu for the 45 days' leave. The Defendant adds that the Claimant utilised 16 days from the period of 24 January 2020 to 9 February 2020.

19. The Defendant also alleges that the Claimant is not entitled to gratuity in the sum of AED 26,298, adding that the Claimant's contract has not been terminated by the Defendant nor has the Claimant resigned.

20. The Defendant alleges that the Claimant is entitled to the sum of AED 7,010 in lieu of leave from 1 November 2018 to 24 March 2020.

21. Therefore, the Defendant alleges that the Claimant is entitled to the sum of AED 49,000 consists of the following sums:

(a) January 2020 salary in the sum of AED 6,785;

(b) February 2020 salary in the sum of AED 17,015;

(c) March 2020 salary in the sum of AED 18,190; and

(d) Leave in lieu in the sum of AED 7,010.

22. The Defendant also alleges that on 16 April 2020, the parties signed a new employment contract whereby the Claimant's salary reduced from AED 25,000 to AED 12,500 (basic salary AED 5,000 and other allowances AED 7,500).

Discussion

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

24. I would first like to discuss the Document that the Defendant claims the Claimant signed, and further argues that within the document it was agreed that she would be placed on unpaid leave from 25 March 2020 to 1 April 2021. The Document consists of two pages; the first page sets out the dates of the unpaid leave, and the second page displays the signature, allegedly signed the Claimant. As stated at paragraph 9 above, the Document was subject to an allegation of forgery, following which I directed that the Document be examined by the Dubai Police - Department of Criminal Evidence and Criminology.

25. On 15 July 2020, the DIFC Courts received the Report from the Department of Criminal Evidence and Criminology. The outcome of the Report suggests that the signature found on page 2 of the Document is in fact the Claimant's signature but that the first page is not related to the same Document. The report concluded that there was a difference between the font, the ink and the degree of typography, between the two pages. The Report also concluded that the page displaying the Claimant's signature is different and has no relation to the Document.

26. The Defendant also argues that the Claimant, acknowledged the Document entitled "Additional Temporary Annex" by way of an email. However, upon reviewing the email correspondence, I find that the Claimant was referring to a different document that related to unpaid salary for March 2020, which the Claimant had signed but still continued to work during March 2020. Therefore, I am of the view that she cannot be deemed as being on unpaid leave at that time.

27. Therefore, I find that the Claimant did not sign the Document related to unpaid leave from 25 March 2020 to 1 April 2021.

28. The Claimant did not submit a notice of resignation during the course of her employment nor did the Defendant terminate the Claimant. However, I note that the Claimant was provided with a calculation in respect of her accrued end of service gratuity during both February and March of 2020. It appears that the calculations provided during February and March 2020 were later superseded by a document entitled "Leave salaries entitlements". In the absence of a termination letter or a notice of resignation, I will have to decide whether the Claimant resigned, or if she was terminated.

29. I will consider the Claimant filing a claim with the SCT seeking payment for her alleged unpaid salaries and end of service benefits as a resignation. Therefore, I deem the Claimant's the resignation date to be 6 May 2020 (being the date she filed the claim).

Salaries

30. The Claimant argues that the Defendant failed to pay her salaries from November 2019 to 2 May 2020 in the sum of AED 108,647 (as described in paragraph 10). However, in rebuttal, the Defendant argues that the Claimant received her salary for November and December 2019, and that the only remaining salaries are as follows:

(a) January 2020 salary in the sum of AED 6,785;

(b) February 2020 salary in the sum of AED 17,015; and

(c) March 2020 salary in the sum of AED 18,190.

31. As I have found that the Claimant worked until 6 May 2020 (the date of resignation), I find that the Defendant is entitled to her full salary of March, April and 6 days of May 2020.

32. The Claimant's salary from 1 April to 15 April 2020 shall be calculated as per the Employment Contract dated 1 November 2018 which reflects the monthly salary of AED 25,000. However, for the period from 16 April to 6 May 2020, the Claimant's salary shall be calculated as per the Amended Employment Contract which states the Claimant's monthly salary to be in the sum of AED 12,500.

33. Therefore, the calculation shall be as follows:

AED 25,000/30 = 833.33 x 15 = AED 12,500 from 1 April 2020 to 15 April 2020

AED 12,500/30 = 416.66 x 15 = AED 6,250 from 15 April 2020 to 30 April 2020.

34. The Claimant is entitled to salaries in the sum of AED 70,049.96 consisting of the following sums:

(a) January 2020 salary in the sum of AED 6,785;

(b) February 2020 salary in the sum of AED 17,015;

(c) March 2020 salary in the sum of AED 25,000;

(d) April salary in the sum of AED 18,750; and

(e) 6 days of May salary in the sum of AED 2,499.96.

35. The Claimant also claimed for an air ticket in the sum of AED 3,550, which the Defendant deducted from her January 2020 salary.

36. The Claimant is only entitled to an air ticket once every two years as per the Employment Contract. Since the Defendant provided the Claimant with an air ticket before the completion of a two year period, on the assumption that she would remain an employee of the Defendant, I find that the Defendant is entitled to deduct the cost of the air ticket from the Claimant's salary as she did not complete the stated period of two years.

Refunds

37. In relation to the Claimant's claims for the refund of alleged unauthorised deductions made by the Defendant, the Claimant argues that the Defendant deducted the cost of medical insurance in the sum of AED 3,385, and utilities of her accommodation for 18 months in the sum of AED 27,000.

38. In relation to the medical insurance, the Defendant argues that she was provided with a basic medical insurance plan, at a lower price, and that she requested for a premium medical insurance plan, for which the parties agreed that the Claimant would cover the additional cost of the plan.

39. The Defendant failed to provide any evidence of the agreement between the parties to show that the Claimant would pay the difference between the two the medical insurance plans.

40. Article 56 of the DIFC Employment Law stipulates that *"an employer is required to obtain and maintain health insurance cover for each of its Employees as may be pursuant to the regulations, Federal Law or Dubai Law"*.

41. In the absence of a written agreement between the parties to show that the Claimant would bear the cost of the premium medical insurance, I find that the Defendant shall refund the Claimant the sum of AED 3,385.

42. In relation to the Claimant's claim for a refund of the `utilities' deducted in the sum of AED 27,000. The Claimant argues that the Defendant, without the agreement of the Claimant, deducted the cost of the `utilities' in the sum of AED 1,500 each month.

43. The Defendant argues that the deductions have been made since the beginning of the employment relationship, and that the Claimant signed each pay slip which reflected the deduction and never raised an issue. The Defendant also adds that the utility bills related to the Claimant's accommodation.

44. I find that the deductions were made pursuant to the Claimant's agreement by signing the pay slip each month which acknowledged the deduction, and I further note that the Claimant had previously never raised concern over the said deduction. Therefore, I dismiss the Claimant's claim for a refund of the utility deductions.

End of Service entitlements

48. The Claimant argues that she is entitled to end of service benefits in the sum of AED 66,834 consisting of the following:

(a) Gratuity in the sum of AED 26,298;

(b) Vacation leave of 45 days in the sum of AED 36,986; and

(c) An air ticket in the sum of AED 3,550.

49. Since I have concluded that the Claimant's last working day was on 6 May 2020, the Claimant is entitled to gratuity pursuant to her salary received from the Defendant.

50. The Claimant's last monthly salary was in the sum of AED 12,500 which consists of AED 5,000 basic salary and AED 7,500 allowances.

51. Article 66(2)(a) of the DIFC Employment Law stipulates that "An Employee's gratuity shall be calculated as follows:

"An amount equal to twenty one (21) days of the Employee's basic wage for each year for the first five years of service prior to the qualifying scheme commencement date".

52. In the absence of any evidence that the parties are part of the Qualifying Scheme, I will decide the gratuity based on the below.

53. The Claimant worked for 1 year and 6 months, from 1 November 2018 to 6 May 2020, and her last basic salary was in the sum of AED 5,000. Therefore, the calculation shall be as follows:

AED 5,000 / 30 days = AED 166.66 daily basic salary x 31.5 days (21 days for the first year and 10.5 for the six months) = AED 5,249.79

54. In relation to the Claimant's claim for 45 days' vacation leave in the sum of AED 36,986. The Claimant failed to specify the basis on which she is claiming payment in lieu of 45 days' leave.

55. The Defendant argues that the Claimant utilised 16 days of her annual leave from 24 January 2020 to 9 February 2020.

56. As per the Employment Contract, the Claimant is entitled to 30 days' paid leave for each calendar year. The Claimant worked for 1 year and 6 months, therefore, the Claimant is entitled to 45 days' leave. however, the Claimant utilised 16 days of her annual leave, therefore, the remaining balance is 29 days' leave balance.

57. I find that the Claimant is entitled to 29 days payment in lieu of annual leave in the sum of AED 12,083.33

58. In relation to the Claimant's claim for an air ticket, I have discussed it in paragraph 36 of this Judgment.

59. The Defendant argues that the Claimant committed defamation and very dangerous untrue allegations towards her employer for forgery, and therefore, the Defendant should be entitled to consider her employment terminated with immediate effect and she should not be entitled to receive any payment of wages in lieu of her notice period pursuant to Article 63(1) (a) which stipulates that *"the employee shall not be entitled to receive any payment of wages in lieu of their notice period"*.

60. I find that there is no evidence that the Claimant committed defamation and untrue allegations.

61. Article 62(2)(b) of the DIFC Employment Law stipulates *"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) thirty (30) days, if the period of continuous employment of the Employee is in excess of three (3) months but less than five (5) years, including any period of secondment."*

62. Since I have considered that the Claimant resigned on 6 May 2020, I shall consider the period from 6 May 2020 to the date of this Judgment as unpaid leave. I find that the Claimant shall serve her notice period of 1 month as per Article 62(2)(b) of the DIFC Employment Law or shall pay the Defendant the notice period of 1 month in the sum of AED 12,500.

Conclusion

63. In light of the aforementioned, the Defendant shall pay the Claimant the sum of AED 90,768.08.

64. The Defendant shall pay the Claimant the court fees in the sum of AED 1,815.36

Issued by:
Nassir Al Nasser
SCT Judge and Registrar
Date of issue: 28 July 2020
At: 12pm