Claim No. SCT 069/2018

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 NATASHA BAKIRCI

BETWEEN

IGRAINE

Claimant

and

IKALE ASSET MANAGEMENT

Defendant

Hearing: **8 March 2018**

Judgment: **19 March 2018**

JUDGMENT OF SCT JUDGE NATASHA BAKIRCI

UPON the Claim Form being filed on 11 February 2018;

AND UPON a Consultation having been held on 15 February 2018 before SCT Judge Ayesha Bin Kalban and the parties having failed to reach settlement;

AND UPON a Hearing having been held before me, SCT Judge Natasha Bakirci on 8 March 2018, with the Claimant and the Defendant's representative attending;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant AED 122, 955 in penalties under Article 18(2) of the DIFC Employment Law.

2. The Defendant shall pay the Claimant his court fee of AED 4,321.

Issued by:

Natasha Bakirci

SCT Judge

Date of issue: 19 March 2018

At: 4 pm

THE REASONS

The Parties

1. The Claimant, Igraine, is a former employee of the Defendant company.

2. The Defendant, Ikale Asset Management is a DIFC registered company.

The Claim

3. The Claimant lodged a claim against the Defendant company, alleging that following his termination from employment on 24 December 2017, the Defendant had failed to pay his full compensation pursuant to the terms of his employment contract and DIFC Employment Law. He claimed his salary for the months of November and December 2017, as well as three months' notice.

4. The Claimant further claimed that he was owed a penalty for each day the Defendant was in arrears in paying him, in accordance with Article 18(2) of the DIFC Employment Law.

The Defence

5. On 11 February 2018 the Defendant wrote to the SCT Registry stating that the amount which was the subject of the claim had already been paid to the Claimant. Although there had been a delay of a few days due to technical problems with the bank's website, the Claimant had been paid that morning. Therefore, the Defendant argued the Claimant's case should be dismissed.

DIFC Courts Jurisdiction

6. Rule 53.2 of the Rules of the DIFC Courts ("RDC") requires that the Small Claims Tribunal ("SCT") hears only cases that fall "within the jurisdiction of the DIFC Courts." The jurisdiction of the DIFC Courts is determined by Article 5(A) of the judicial authority law, Dubai Law No. 12 of 2004, as amended ("Judicial Authority Law"), which provides a number of limited gateways through which the DIFC Courts have jurisdiction over a claim, which are, as relevant:

> "(a) Civil or commercial claims and actions to which the DIFC or any DIFC Body, DIFC Establishment or Licensed DIFC Establishment is a party;
>
> (b) Civil or commercial claims and actions arising out of or relating to a contract or promised contract, whether partly or wholly concluded, finalised or performed within DIFC or will be performed or is supposed to be performed within DIFC pursuant to express or implied terms stipulated in the contract;
>
> (c) Civil or commercial claims and actions arising out of or relating to any incident or transaction which has been wholly or partly performed within DIFC and is related to DIFC activities; .
>
> (e) Any claim or action over which the Courts have jurisdiction in accordance with DIFC Laws and DIFC Regulations.
>
> (2) .civil or commercial claims or actions where the parties agree in writing to file such claim or action with [the DIFC Courts] whether before or after the dispute arises, provided that such agreement is made pursuant to specific, clear and express provisions."

7. It has not been disputed that the Defendant is a DIFC entity and that the Defendant's employment was governed by DIFC Employment Law.

8. Based on the above and given the value of the claim which falls below AED 500,000, I am satisfied that the DIFC Courts SCT has the jurisdiction to hear this case.

Discussion

9. During the Hearing, the Claimant confirmed that on 15 February 2018, the same day that a Consultation was scheduled at the DIFC Courts, the Defendant had paid him in full for his two months employment in November and December 2017 and the remaining sums owed to him for his three months' notice period.

10. The Claimant claimed that he was entitled to compensation for late payment from the date of his termination on 24 December 2017 until 15 February 2018, as per Article 18(2) of the DIFC Employment Law.

11. The Defendant explained the background surrounding the Claimant's termination, which appeared to concern his taking allegedly unauthorised leave when his wife was due to give birth in the UK. In any event, as the Claimant is not disputing his termination and at the date of the Hearing before me he had been paid all of his dues under his contract - the only matter which falls for consideration at this stage was whether the Claimant is entitled to penalties under Article 18 of the DIFC Employment Law.

12. The Defendant asserted that there was no bad intention and that the delay was due to technical problems she encountered during her attempts to make transfers to the Claimant's bank. To impose any further penalty in the circumstances of this case would be excessive and unfair. The Defendant further averred that the Claimant had not in fact given his bank account details or home address until 11 January 2018, which he appeared to accept may have been the case at the Hearing before me.

The Law

13. Article 18 of the DIFC Employment Law, DIFC Law No. 4 of 2005, as amended provides as follows:

> "**Payment where the employment is terminated**
>
> (1) An employer shall pay all wages and any other amount owing to an employee within fourteen (14) days after the employer or employee terminates the employment.
>
> (2) If an employer fails to pay wages or any other amount owing to an employee in accordance with Article 18(1), the employer shall pay the

employee a penalty equivalent to the last daily wage for each day the employer is in arrears."

14. In *Frontline Development Partners Limited v Asif Hakim Adil* [2016] DIFC CA 006, ("*Frontline*") judgment of 20 March 2017, the DIFC Courts of Appeal interpreted the application of Article 18 of the DIFC Employment Law, finding that it was clear that the purpose of the provision was to ensure that employers do not delay in paying employees their full entitlements by imposing a penalty on employers in conjunction with a benefit to employees. The Court of Appeal also highlighted that it is the employer that is responsible to calculate and make payments to their employees in compliance with the law. While the Appellant argued that the Court of Appeal should give Article 18 a "strained construction" due to the many circumstances in which the provision may become unfair, the Court of Appeal found no reason to apply a strained construction and instead found that the meaning of Article 18 was grammatically clear from a plain reading.

15. In *Frontline*, the Court of Appeal upheld Justice Giles' finding at first instance that:

> "Article 18 must be construed on its own terms, as a unique provision, and as part of the Employment Law. So far as reference to other jurisdictions may assist, it suggests that the strong terms of the Article were deliberately chosen. They are indeed strong terms: a strict time limit is stated (Article 18 (1)), and failure means that the employer "shall" pay what is described as a penalty. There is no alleviation by regard to wilfulness or reasonable excuse, in Article 18 or elsewhere in the Employment Law."

Conclusion

16. I note that the Claimant accepts that as of 15 February 2018, the date of the initial consultation listed before the DIFC Courts, he had been paid all his dues under his employment contract. The only remaining issue to be considered at the Hearing was the Claimant's outstanding claims under Article 18 (2) of the DIFC Employment Law.

17. Given the relevant case law I have cited, most recently from the DIFC Courts of Appeal, it is not open to me to weigh the fairness or reasonableness of the ultimate penalty imposed under Article 18(2), as it is drafted in a manner which allows for no judicial discretion.

18. Notwithstanding, I observed that the Claimant appeared to accept during the hearing that he may well have omitted to provide his bank account details to the Defendant until 11 January 2018, which would have rendered it impossible for them to pay him until then. I therefore find that the Article 18(2) penalty should be calculated as of 11 January 2018 and not 5 January 2018 as claimed by the Claimant until payment on 15 February 2018 - a total of 35 days.

19. It follows that the Defendant should pay the Claimant AED 122, 955 in penalties under Article 18(2) of the DIFC Employment Law, as well as his court fee of AED 4,321.

Issued by:

Natasha Bakirci

SCT Judge

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