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 MAHA AL MEHAIRI

BETWEEN

JUNNIA

Claimant

and

JUSS CAFE AND RESTAURANT

Defendant

Hearing: **4 July 2019**

Further Submissions: **15 July 2019**

Judgment: **22 July 2019**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 28 May 2019;

AND UPON the Defendant acknowledging service on 30 May 2019;

AND UPON the parties being called on 11 June 2019 for a Consultation before SCT Judge Hayley Norton;

AND UPON the parties not having reached settlement;

AND UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 4 July 2019, with the Claimant's representative and the Defendant's representative attending; and

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 AED 5,021.92 for sums due in accordance with his Offer Letter.
2. The Defendant shall pay the Claimant an additional amount of AED 98.63 per day, starting from 23 July 2019 until the day that the judgment amount is paid to the Claimant.
3. The Defendant shall pay the Claimant's Court fees in the amount of AED 183.75.
4. The Defendant shall pay the DIFC Courts the outstanding suspended filing fee in the amount of AED 183.75.
5. The Defendant shall cancel the Claimant's visa and return his passport immediately.

Issued by:

Maha AlMehairi

SCT Judge

Date of issue: 22 July 2019

At: 12pm

THE REASONS

The Parties

1. The Claimant is Junia ("Claimant"), an individual formerly employed by the Claimant company.

2. The Defendant is Juss Cafe and Restaurant ("Defendant"), a Restaurant registered in the DIFC.

Background and the Preceding History

The Claim

3. The Defendant's employment commenced on 1 July 2018 in accordance with the offer letter signed on 2 June 2018 ("Offer Letter") as "Chef Assistant". The Offer Letter which was signed by the Claimant and the Defendant, was issued based on a total salary of AED 3,000 per month as set out below:

    (a)������ basic salary in the sum of AED 1,200;

    (b)������ monthly housing allowance in the sum of AED 1,000; and

    (c)������ transportation in the sum of AED 800.

4. The Claimant submits that although the Offer Letter states a commencement date of 1 July 2018, the Claimant actually started working with the Defendant when he signed the Employment Contract on 2 June 2018. The Defendant asked the Claimant to begin work that same day by undertaking tasks which were preparatory to setting up the Defendant's DIFC restaurant. For example, the Claimant and other employees were asked to set up furniture and equipment, procure name badges and various other tasks. The Claimant submits that he worked throughout the month of June 2018 but was not paid for this work.

5. The Defendant's DIFC restaurant opened in August 2018 and the Claimant was employed as an Assistant The Claimant was sponsored and employed by the Defendant and worked from the Defendant's DIFC premises until October 2018.

6. The Claimant submits that during the period of the Claimant's employment, he was paid in cash and was not provided with any payslips. The Defendant's practice was to require each employee to sign a document to confirm receipt of wages. The Claimant was not provided with a copy of the signed document.

7. In October 2018, the Defendant opened another restaurant in Dubai (the "Dubai Branch"). The Defendant instructed the Claimant to work from the Dubai Branch. From February 2019, the Claimant was the most senior member of kitchen staff at the Dubai Branch. As such, he was responsible for the kitchen roster.

8. In May 2019, the Claimant scheduled the kitchen roster in such a way as to provide himself with two days of leave. The Defendant had no reporting or recording system for leave and the practice was that the staff responsible for rostering were entitled to determine their team's leave requests and whether they could be accommodated. The Claimant therefore decided to take 9 May 2019 as annual leave.

9. On 9 May 2019, the Claimant saw that there were messages on the WhatsApp group that was set up for the Defendant's most senior employees. The messages referred to allegations that the Dubai Branch had served expired food products which had led to an incident of food poisoning. Very shortly after, the Claimant was removed from the WhatsApp group. The Claimant went into a panic afraid that this was going to lead to the termination of his employment. The Claimant decided not to return to work which lasted for seven days.

10. On 13 May 2019, the Claimant contacted Mr Jimbu, the Defendant's HR. The Claimant informed Jimbu that he was ready and willing to return to work. Jimbu told the Claimant to return to work the following day. The Claimant attended work on 14 May 2019 at the Defendant's DIFC restaurant to meet with Mr Jimbu. At that meeting, the Defendant presented the Claimant with a final written warning letter dated 14 May 2019. In that letter, the Defendant addressed that issue of the Claimant's unauthorised absence. The Defendant also proposed to making deductions from the Claimant's wages for "damages caused to the company and to the poisoned guests".[illegible] The Claimant refused to sign the letter and instead tendered his notice of termination orally. Jimbu instructed the Claimant to leave and to stay at home until further instruction. It is the Claimant's position that, from 14 May 2019, the Defendant's decision not to allow the Claimant to return to work amounts to an instruction to place the Claimant on garden leave and that this period of garden leave ought to be considered as suspension with full pay.

11. The Claimant received a call from Jimbu on 18 May 2019 requesting that he return to the DIFC restaurant the following day. On 19 May 2019, the Claimant attended at the DIFC restaurant to meet Mr Jimbu. At that meeting, the Claimant was presented with another final written warning letter dated 19 May 2019, stating that the Claimant acknowledge that his actions had led to the violations described and that those actions caused damages. Again, the Claimant refused to sign the letter and was directed to leave the Defendant's restaurant.

12. On 22 May 2019, the Claimant prepared a resignation letter addressed to the Defendant, which was sent to the Defendant by email, the resignation letter records the fact that the Claimant verbally resigned at the meeting on 14 May 2019. In the resignation letter, the Claimant indicated that he was willing to work out his notice period (30 days). It is the Claimant's position that the Defendant did not respond to the resignation letter and therefore it should be deemed to have accepted its content and, accordingly, the Claimant's employment remained ongoing until 13 June 2019.

13. The Claimant submits that he is entitled to receive a penalty payment in accordance with Article 18 of DIFC Employment Law and that payment should be calculated as one day's wages for each day that the amounts owing remain unpaid. The Claimant relies upon the DIFC Court of Appeal authorities of *Adil v Frontline* and *Pierre-Eric Lys v Elseco* in respect of the application of Article 18. The Claimant submits that there is no element of discretion in the application of Article 18 and that the penalty must be awarded if the Court finds that there were any wages or other amounts owing as at the termination date which remain unpaid on 27 June 2019.

14. The Claimant requests from the Defendant the following claims:

    a. Wages for the month of June 2018 in the amount of AED 3,000;

    b. Wages from the period of 1 May to 31 May 2019 (less 4 days for unauthorised absence) in the amount of AED 2,600;

    c. End of Service Gratuity in the amount of AED 828; and

    d. Payment in lieu of vacation leave in the amount of 1,846.08

The Defence

15. In reply to the Claimant's submissions the Defendant alleges that the fit-out completion certificate provides evidence to demonstrate that the restaurant was only ready for operations from 16 August 2018, in contradiction to the claimant's assertion that he attended work in June 2018.

16. In addition, the Defendant refutes the Claimant's assertion that he assisted in carrying furniture to the shop in June 2018. The Defendant seeks to rely upon a Tax Invoice that was provided from the Defendant's client responsible for shipping the furniture. It is the Defendant's position that the Tax Invoice demonstrates that the shipment was only shipped to the DIFC Restaurant on 30 June 2018, so how could the Claimant have been involved in carrying the furniture which only arrived on the last day of June.

17. The Defendant submits that the Claimant did not work for his notice period and was absent for 7 unauthorised days without informing his manager.

The Discussion

18. This dispute is governed by DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 ("DIFC Employment Law") in conjunction with the relevant Offer Letter.

Commencement of Work

19. I will first establish the commencement of the Claimant's employment. The Court is satisfied that the joining date as stated on the Offer Letter stands, being 1 July 2018. The Court has taken into consideration the evidence that was submitted by the Defendant in relation to the fitout and furniture arrival and the witness statements provided by the Defendant's ex-employees but in the absence of any signed evidence to the contrary, the Court will rely upon the signed Offer Letter which states that the Claimant's joining date be 1 July 2018.

Unauthorized absence

20. In relation to the annual leave that the Claimant scheduled for himself, the Court is satisfied that the days of absence are not be considered as annual leave due the nature of the incident at that time. The Claimant failed to inform his management about his annual leave in contravention to the Law and the company's policy. It would have been sufficient if the Claimant had informed another senior member of the Defendant's company that he would be absent, but in the absence of such evidence, the Court will consider this day as unauthorised leave. In addition, the Claimant was also absent from work for the period of 9 to 22 May 2019, being 14 days absence from work.

21. This amount will be deducted from his final settlement in the amount of AED 1,380.82

    AED 3,000 per month x 12 / 365 = AED 98.63 daily wage

    14 x 98.63 = 1,380.82

Claimant's Resignation

22. In the absence of any termination letter from the Defendant, the Court has determined that the Claimant's written resignation letter dated 22 May 2019 be treated as his official notice of termination, and as such the Claimant first started his notice period on 23 May 2019.

Notice period

23. The Court is satisfied that the Claimant sent the resignation letter to the Defendant informing them that he was willing to work the notice period although he had been requested by the Defendant to not attend work:

    > "I repeat my resignation given to you verbally on may 14 2019. I am wiling to attend work for my one month notice period, but you have asked me not to attend."

    The Court finds that the Defendant provided no response to the resignation letter and as such the Defendant shall pay the Claimant his notice period starting from 23 May 2019 to 23 June 2019, in the amount of AED 3,000.

Annual leave

24. The court has determined that the Claimant's employment is from 1 July 2018 to 23 June 2019. The Court notes that the Offer Letter provided to the Claimant fails to provide any mention of annual leave, therefore, the Court will rely upon the Employment Law for guidance in respect of the Claimant's annual leave allowances.

    > "25. Annual Vacation Leave

(1) Subject to Article 28, an employer shall give an employee an annual vacation of twenty (20) working days to accrued pro rata for employees who have been employed for at least three (3) months.

(2) ."

25. In light of the above, the Claimant's annual leave shall be calculated pro rata to the period that the Claimant worked for the Defendant, with 20 days' leave permitted in one year.

    20/365 x 357 days of work = 19.5 days annual leave

    AED 3,000 per month x 12 / 365 = AED 98.63 daily wage

    19.5 x 98.63 = AED 1,923.29

Other Claims

26. As established above the Claimant's employment started on 1 July 2018 and ended on 23 June 2019. As such the Claimant has not satisfied the requirements of completing 1 years' service of employment as required by Article 62 of the DIFC Employment Law and therefore is not eligible for end of service gratuity. I also note that the Offer Letter signed by the Claimant states that an air ticket back home will only be provided to the Claimant upon completing 1 years' service with the company. Therefore, I find that the Claimant is not eligible for the air ticket.

Article 18 Penalties

27. The Claimant is found to be in arrears as to wages or any other amounts owing to the Defendant. It is therefore appropriate to require the Defendant to pay to the Claimant the penalty articulated in Article 18(2) of the DIFC Employment Law.

28. At the Hearing, the Claimant confirmed that he sought the penalty under Article 18 of DIFC Employment Law to be activated which provides that:

    "(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."

29. Article 18 penalties are contingent upon "wages or any other amount owing" failing to be paid by the Defendant within 14 days of the termination date. As the Claimant's termination date was 22 May 2019, the Claimant has not shown any attempts to pay the Defendant what he was owed within 14 days of his termination. Therefore, in accordance with the DIFC Courts precedent set by the judgment of Justice Roger Giles in *Asif* Hakim *Adil v Frontline Development Partners Limited* [2014] DIFC CFI 015 and the judgment of H.E. Justice Ali Al Madhani in *Pierre-Eric Daniel Bernard Lys v Elesco Limited* [2014] DIFC CFI 012, the Defendant is entitled to Article 18 penalties running from 14 days after his official date of termination until the date payment is made. For the purpose of Article 18, the relevant date to calculate the 14 days from is that of termination. Accordingly, the Defendant has been in arrears since 8 July 2019 (14 days following termination on 23 June 2019) and the penalty began to accrue at the daily rate of AED 98.63 from this date.

30. As of the date of this Judgment, the penalty is owed for 15 days from 8 July 2019 until 22 July 2019, totaling AED 1,479.45 with the daily penalty of AED 98.63 continuing to accrue until the date of payment.

Court fees

31. I find that it is reasonable in this case, as the Claimant has been successful on most claims, to require the Defendant to reimburse the Claimant for his SCT Court fees in the amount of AED 183.75. The Defendant shall also pay the DIFC Courts the outstanding suspended filing fee in the sum of AED 183.75. The parties shall otherwise bear their own costs.

Conclusion

32. The Defendant shall pay the Claimant AED 5,021.92 for sums due according to his Offer Letter.

33. The Defendant shall pay the Claimant an additional amount of AED 98.63 per day, starting from 23 July 2019 until the day that the judgment amount is paid to the Claimant.

34. The Defendant shall pay the Claimant's Court fees in the amount of AED 183.75.

35. The Defendant shall pay the DIFC Courts the remaining suspended filing fee in the amount of AED 183.75.

36. The Defendant shall cancel the Claimant's visa and return his passport immediately.

Issued by:

Maha Al Mehairi

SCT Judge

Date of Issue: 22 July 2019

At: 12pm