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 H.E. JUSTICE NASSIR AL NASSER

BETWEEN

LABONI

Claimant

and

LAHIT

Defendant

Hearing : **24 June 2021**
Judgment : **4 July 2021**

JUDGMENT OF H.E. JUSTICE NASSIR AL NASSER

UPON the Claim Form being filed on 6 June 2021

AND UPON a Hearing being held before H.E. Justice Nassir Al Nassir on 24 June 2021, with the Claimant and the Defendant's representative in attendance.

AND UPON reviewing the documents 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 57,645.40.

2. The Defendant shall pay the Claimant the Court fees in the sum of AED 1,152.90.

Issued by:
Nassir Al Nasser
SCT Registrar
Date of issue: 4 July 2021
At: 10am

THE REASONS

The Parties

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

2. The Defendant is Lahit (the "Defendant"), a company registered and located at the DIFC, Dubai, UAE.

Background and the Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an employment contract dated 1 June 2020 (the "Contract").

4. On 6 June 2021, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking payment of amounts allegedly owed to him pursuant to the Contract and penalties in accordance with Article 19 of the DIFC Employment Law in the sum of AED 118,665.

5. On 13 June 2021, the Defendant filed an Acknowledgment of Service setting out its intention to defend part of the claim.

6. On 17 June 2021, a consultation was held before SCT Judge Delvin Sumo, however, the parties failed to settle.

The Claim

7. The Claimant's case is that he joined the Defendant company on 1 June 2020. As per the terms of the Contract, the Claimant was provided with a fixed salary of AED 13,000, Medical Insurance for himself and his family, and an Incentive/Bonus.

8. The Claimant submits that due to the Covid-19 Pandemic, he was unable to fly to Dubai from India in June 2020 as flights were non-operational at that time. Following his commencement of employment with the Defendant, in June 2020, the Claimant was informed by the Defendant that

based upon a consultation with a certain compliance team, he would only receive approximately 60% of his salary as he had been working remotely and in addition he not be provided with medical insurance nor the incentives as set out within the Contract. The Defendant notified the Claimant that the remaining 40% of his salary would be accrued by the company and paid to the Claimant once his visa was processed and he physically entered Dubai.

9. The Claimant continued to work remotely without a Dubai visa and without receiving his employment benefits until August 2020, after which point the Defendant requested that he immediately move to Dubai and apply for his tourist visa. The Claimant informed the Defendant that he would not be able to move to Dubai immediately as his spouse was moving to London for work in September 2020 and he wanted to accompany her for the move to help her settle in these COVID times.

10. The Claimant suggested to the Defendant that he would visit Dubai for a few months towards the end of October 2020 to complete his visa formalities, and thereafter, every 2 months, he would work remotely from London for a period of 1 month. The Claimant submits that times were difficult due to the Pandemic, and he did not want to stay away from his spouse for a long period of time. The Defendant did not agree to the Claimant's proposed remote working arrangement. The Claimant tendered his resignation by way of email on 29 August 2020, but he did not receive any acceptance of the resignation. The Claimant submits that, as per his contract, he was required to serve a 7 day notice period, however, he asserts that the Defendant requested that he serve a 1 month notice period, until 30 September 2020. As a good gesture, the Claimant submits that he conceded to this request and continued his employment with the Defendant until 30 September 2020. On 30 September 2020, he sent a goodbye email informing everyone that it was his last working day.

11. On 1 October 2020, the Claimant received a call from the then Managing Director (Mr. Lekh) of the Defendant stating that he was not expecting him to leave the company and it was suggested that an agreement be reached that suited both parties. Both, the CEO and the Managing Director agreed that the Claimant could delay his travel to Dubai until November or December 2020 to complete the visa formalities. It was also agreed that the Claimant would work remotely from London every few months for some time. A new salary structure was also suggested, wherein the incentive scheme would be removed, and the fixed salary would be increased to AED 18,000 per month, with the same condition that 60% of it would be paid and the remaining 40% would only be paid once the Claimant received his work visa and was physically present in Dubai at the end of 2020. The Claimant agreed to this and asked them to start his visa formalities for November travel.

12. The Claimant submits that he constantly checked on his visa status. However, the Defendant's CEO informed him that there was an audit ongoing and that his visa process would be completed once the audit was finalised. The Claimant also submits that the CEO confirmed that after the audit he would receive his full salary from December 2020.

13. The Claimant alleges that he did not receive his full salary in December 2020 but was informed that the visa would be completed in April 2021.

14. On 13 April 2021, the Claimant resigned from the Defendant and requested that the Defendant clear all his accrued salary arrears. However, in response, the Defendant notified the Claimant that following his failure to enter Dubai, and to get his visa processed, he was not entitled to receive his accrued salary arrears.

15. Therefore, the Claimant filed a claim with the SCT claiming the following:

(a) Accrued salary arrears from June 2020 to September 2020 in the sum of AED 20,000;

(b) Accrued salary arrears from October 2020 to December 2020 in the sum of AED 21,000

(c) Unpaid salary for the month of April 2021 in the sum of AED 7,800;

(d) Penalties pursuant to Article 19 of the DIFC Employment Law in the sum of AED 39,877;

(e) Medical insurance cost in the sum of AED 11,000;

(f) Vacation leave (20 vacation leave accrued but unutilised at a daily wage rate) in the sum of AED 16,615; and

(g) Court fees in the sum of AED 2,373.

The Defence

16. In response to the Claimant's claim, the Defendant submits that, on 30 June 2020, the Claimant acknowledged and agreed to the Defendant's email which states as follows:

> "hope you are well. We are aware that you have been onboard on 2 June 2020, but were unable to join due to Covid-19 as you are staying in Mumbai and there is currently a lockdown hence, you are unable to travel to the UAE. Therefore as agreed, we are paying you a salary of AED 8,000 per month and the remaining AED 5,000 when you officially join Lahit (legally as per DIFC Rules and Regulations). Your accumulated salary will be paid to you in the same month of joining the Lahit Office. Kindly acknowledge this email stating that you have understood our terms and agreed to them"

17. The Defendant submits that during August 2020, the Defendant issued the Claimant a visit visa to come to Dubai in order to proceed with processing his employment visa. However, instead, the Claimant went to London, and via WhatsApp informed the Defendant that "he wants to support his wife in the Pandemic".

18. The Defendant submits an agreement was set out by way of an email dated 4 October 2020 between the parties, confirming as follows:

> "revision of salary to AED 18,000 per month without incentive. Out of this AED 11,000 to pe paid as usual and AED 7,000 will get accrued and will be paid once my Dubai Employment Permit is done. Once permit is in place the full salary will be paid as usual on monthly basis. My salary for the month of September 2020 would be released at the earliest possible. My previous dues accrued (AED 13,000 - AED 8,000=

AED 5,000 per month) for 4 months from June 2020 to September 2020 will also be paid once my Dubai Employment Permit is done".

19. The Defendant alleges that since January 2021 the Claimant received his full salary each month in the sum of AED 18,000, and on 13 April 2021, the Claimant resigned.

20. The Defendant alleges that the Claimant failed to fulfil his commitment for joining in person in DIFC, Dubai.

21. The Defendant alleges that they are willing to pay the Claimant 13 days of salary for the month of April 2021 in the sum of AED 7,800.

Discussion

22. This dispute is governed by DIFC Law No. 2 of 2019, as amended by DIFC Law No. 4 of 2020 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

The Claimant's claim for Accrued salary arrears from June 2020 to September 2020 and October 2020 to December 2020

23. As discussed above, the Claimant joined the Defendant on June 2020 for a salary of AED 13,000. However, it was later agreed between the parties that the Defendant would pay the Claimant the sum of AED 8,000, and the remaining sum of AED 5,000 would be paid once the Claimant's employment visa was issued, and he settles in Dubai.

24. The same payment arrangement applies to the Claimant's salary from October 2020 to December 2020, albeit the Claimant's salary had increased to AED 18,000. In addition, the parties also agreed that the Claimant would receive AED 11,000 per month and the remaining AED 7,000 would be paid once the Claimant's employment visa had been issued, and he settles in Dubai.

25. The Claimant failed to come to Dubai during the period from June 2020 to December 2020, although a visit visa was issued by the Defendant in August 2020 and was valid until October 2020. By the end of December, the Defendant informed the Claimant that the visa would be issued post the audit of the company.

26. In January 2021, the Defendant paid the Claimant his full salary of AED 18,000 and informed him that the visa process would be completed by April 2021. However, on 13 April 2021, the Claimant resigned from his employment with the Defendant.

27. I find that the parties entered into an agreement in relation to the payment of partial salary. The email dated 30 June 2020 and 4 October 2020 reflect the parties' agreement and the terms of the agreement, whereby it was agreed that the Defendant would paid the Claimant once the visa process had been completed. However, the Claimant resigned prior to coming to Dubai and having the visa process completed.

28. I find that the Claimant failed to perform the agreement between the parties and therefore, he is not entitled to the accrued salary as he never came to Dubai or have his visa process completed.

Claimant's salary from 1 April 2021 to 13 April 2021

29. The Claimant claims his salary from 1 April 2021 to 13 April 2021 in the sum of AED 7,800.

30. In the Defendant's submission, they have agreed that the Claimant is entitled to receive his April 2021 salary in the sum of AED 7,800. Therefore, this claim no longer requires judicial determination.

Medical Insurance

31. The Claimant claims the sum of AED 11,000 in relation to Medical Insurance.

32. The Claimant failed to complete his visa process in order to be issued medical insurance in the United Arab Emirates as an employee of the Defendant.

33. I am of the view that, if during the course of his employment, the Claimant had received medical treatment, he would have receipts to that same effect. No such evidence was provided by the Claimant, therefore, I am not satisfied with the Claimant's claim of AED 11,000 in relation to Medical insurance as it is not supported by any evidence on how the Claimant's claims such an amount.

34. I shall dismiss the Claimant's claim for Medical insurance in the sum of AED 11,000.

Vacation Leave

35. As per the Article 3 of the Contract, the Claimant is entitled to obtain paid vacation leave of twenty (25) working days in each vacation year, after completing one hundred and eighty (180) days of employment.

36. I have determined that the Claimant completed 11 months of employment and therefore, I find that the Claimant is entitled to receive paid vacation leave.

37. The Claimant claims payment in lieu of 20 days' vacation leave in the sum of AED 16,615 calculated on a daily wage basis.

38. Article 27(1) and (2) of the DIFC Employment Law, states the following:

"(1) subject to Article 30, an Employee who has been employed for at least ninety (90) days is entitled to paid vacation leave of twenty (20) work days in each vacation leave year.

(2) an Employee is entitled to be paid their Daily wage during vacation leave."

39. The Claimant's salary is AED 18,000 x 12/260 days = AED 830.76 x 20 days = AED 16,615.20. However, the Claimant has claimed AED 16,615 and I am satisfied with the Claimant's calculation. Therefore, I find that the Claimant is entitled to the sum of AED 16,615.

Penalties pursuant to Article 19 of the DIFC Employment Law in the sum of AED 39,877

40. Article 19 of DIFC Employment Law stipulates the following:

"(1) An Employer shall pay to an Employee, within fourteen (14) days after the Termination Date:

(a) all Remuneration, excluding, where applicable, any Additional Payments deferred in accordance with Article 18(2);

(b) where applicable, any Gratuity Payment that accrued prior to the Qualifying Scheme Commencement Date under Article 66(1) not transferred to a Qualifying Scheme under Article 66(6);

(c) a Daily Wage for each day of accrued Vacation Leave not taken; and

(d) all outstanding amounts due in respect of the Employee under Article 66(7) not yet paid to a Qualifying Scheme.

(2) Subject to the provisions of Article 19(3) and 19(4), an Employee shall be entitled to and the Employer shall pay a penalty equal to an Employee's Daily Wage for each day the Employer is in arrears of its payment obligations under Article 19(1).

(3) A penalty pursuant to Article 19(2) may only be awarded to an Employee if the amount due and not paid to the Employee in accordance with Article 19(1) is held by a Court to be in excess of the Employee's Weekly Wage.

(4) A penalty pursuant to Article 19(2) will be waived by a Court in respect of any period during which:

(a) a dispute is pending in the Court regarding any amount due to the Employee under Article 19(1); or

(b) the Employee's unreasonable conduct is the material cause of the Employee failing to receive the amount due from the Employer."

41. The Claimant resigned on 13 April 2021, and submits that, in accordance with Article 19 of the DIFC Employment, the Defendant is obligated to settle the Claimant's end of service entitlements by 28 April 2021. Following the Claimant's resignation, he requested that the Defendant pay his accrued salaries.

42. In line with my finding at paragraph 27 above, it follows that the Claimant is not entitled to his claim for accrued salaries as I have found that the parties agreed that the Claimant would only receive such payment upon his employment visa being issued.

43. I am of the view that the Defendant was required to settle the Claimant's salary for April 2021, and well as payment in lieu for his annual leave, following 14 days from the date of his resignation, and that failure to pay these sums has triggered daily penalties pursuant to Article 19 of the DIFC Employment Law.

44. The Defendant failed to provide any evidence to demonstrate that the Claimant received his end of service final settlement within the 14-day period from the Claimant's resignation.

45. Therefore, I find that the Claimant is entitled to penalties from 28 April 2021 to 6 June 2021, the day the Claimant filed a claim with the SCT. The penalties shall be calculated pursuant to the Employee's daily wage in accordance with Article 19(2) of the DIFC Employment Law.

46. The Calculation shall be made as follows: AED 18,000 x 12/260 days= AED 830.76 daily wage x 40 days = AED 33,230.40.

47. I find that the Claimant is entitled to penalties pursuant to Article 19 of the DIFC Employment Law in the sum of AED 33,230.40.

Conclusion

48. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 57,645.40.

49. The Defendant shall pay the Claimant the Court fees in the sum of AED 1,152.90.