Claim No. SCT 363/2019

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

KAZUKI

Claimant

and

KAZUKI

Defendant

Hearing: **1October 2019**

Further Submission: **31 October 2019**

Judgment: **4November 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant's Representative

AND UPON reading the submissions and evidence filed and recorded on the Court file

IT IS HEREBY ORDERED THAT:

1. The Claimant's claim is dismissed.

2. Each party shall bear its own costs.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue:4November 2019

At: 2pm

THE REASONS

The Parties

3. The Claimant isKazuki (herein "the Claimant"), an individual filing a claim against the Defendant regarding his employment at the Defendant company.

4. The Defendant isKaprice& Co. (herein "the Defendant"), a company registered in the DIFC located Dubai, UAE.

Background and the Preceding History

5. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an offer letter dated 5November2017(the "Agreement") with a joining date on 1 November 2019.

6. On 10 April 2019, the Claimant was terminated for gross misconduct by way of a termination letter signed and acknowledged by both parties.

7. On 22July 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming his end of service entitlements in the sum of AED 10,000.

8. On23July 2019, the Defendant filed anacknowledgment of service with the intention to defend the claim and filed a defence.

9. The parties met for a Consultation with SCT MemberDelvin Sumo on 29 July 2019 and 16September2019 but were unable to reach a settlement.

10. Both parties attended the hearing before me listed on 1October2019.

11. At the hearing, the Defendant informed the DIFC Courts that a criminal case was filed by the Defendant against the Claimant and other employees.

12. I decided at the hearing to adjourn the judgment until the DIFC Courts receives the outcome of the criminal case that was being heard in Dubai Courts.

13. On 31 October 2019, the DIFC Courts received the verdict of the Dubai Courts, Criminal Court.

The Claim

14. The Claimant's case is that he was employed with the Defendant as a `General Cook'from 1November2017 to 10April 2019,being the Claimant'stermination date.

15. The Claimant alleges that he was terminated for gross misconduct without a warning letter and that he was terminated because of giving scrap food to other employees.

The Defence

16. It is the Defendant's case that the Claimant joined as a chef in charge, where he was assigned to manage the kitchen and his fellow employees in a professional manner. After a few months, it is alleged by the Defendant that they received several complaints from the employees against the Claimant and that he verbally and physically abused them, after which a verbal warning was given to him in order to respect the employee code of conduct and refrain from mistreating the staff.

17. The Defendant alleges that a few months later, they received a complaint of sexual harassment from a lady member of the team, who accused the Claimant of trying to take advantage of his position by making sexual advances against her, and when she tried to stop him, he started verbally to insult her. After checking the CCTV cameras and hearing witnesses in the restaurant, the Defendant immediately issued the Claimant with a first official warning letter on 10 January 2019, which he signed and acknowledged and was aware that his next offense will be faced with termination.

18. It is asserted by the Defendant that, on 4 April 2019, the restaurant manager, while routinely checking the staff rest area found that the employees had stolen the restaurant's food for their lunch which was intended to be served to customers. Upon investigating and reviewing the CCTV cameras, the Defendant found that five employees were involved in stealing from the restaurant, both cash and food items.

19. The Defendant alleges that the CCTV footage clearly shows the Claimant cutting up fresh produce items while trying to hide from the cameras and putting them into a plastic bag held open by the female supervisor which she then hides in her bag to take it out of the restaurant.

20. Therefore, it is alleged by the Defendant that, after conducting an investigation, it turned out that five employees were stealing from the restaurant and that the food stolen was not `scrap food' as alleged by the Claimant.

21. After confronting the five employees in question, including the Claimant,they admitted to being involved and signed their termination letter.

22. The Defendant alleges that they have conducted an audit (by a Dubai Court approved auditor) in order to evaluate the exact amount of food and cash stolen, and that the report found that the theft evaluated at around AED 100,000.

23. Subsequently, a police case was filed under Case No. 18175/2019, and the case was transferred to public prosecution, which was later transferred to Dubai Courts (evidence provided in the case file).

24. The Defendant notified the DIFC Courts of the Dubai Courts decision which determined that the five employees were found guilty.

Discussion

25. 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 Agreement.

26. Article 59A of the DIFC Employment Law stipulates that:

> "An employer or an employee may terminate an employee's employment for cause in circumstances where the conduct of one-party warrants termination and where a reasonable employer or employee would have terminated the employment."

27. Article 59(5) of the DIFC Employment Law stipulates that:

> "Article 59(2) does not apply where either party terminates the employment for cause in accordance with Article 59A.

28. Article 62(4) of the DIFC Employment Law stipulates that:

> "An Employee is not entitled to a gratuity payment where the employee has been terminated for cause as defined in Article 59(4)."

29. The Defendant in support to his allegation provided the DIFC Courts with the CCTV footage and a copy of the final warning letter dated 10 January 2019 (signed and acknowledged by the Claimant) and a copy of the termination for cause dated 10 April 2019 (signed and acknowledged by the Claimant).

30. The Defendant also provided the DIFC Courts with the verdict of Dubai Courts dated 31 October 2019 in relation to the subject matter alleged by the Defendant, which determined that the Claimant and other employees were found guilty of stealing at the Defendant's premises.

31. Therefore, pursuant to the evidence provided, I am satisfied to dismiss the Claimant's claim for his end of service entitlements as he was terminated for cause, and thus not entitled to receive such an entitlement

Conclusion

32. In light of the aforementioned, I dismiss the Claimant's claim.

33. Each party shall bear its own costs.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue:4November 2019

At: 2pm