IN THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURT

IN THE COURT OF FIRST INSTANCE

N/A

AND IN THE MATTER OF THE INSOLVENCY LAW (DIFC LAW NO. 1 OF 2019)

MURTAZA KHUZEMA BHURIWALA

Applicant

and

FWU TAKAFUL GMBH

Company

and

PAUL LEGGETT AND YUNGDUNG GURUNG AS JOINT LIQUIDATORS OF FWU TAKAFUL GMBH (IN LIQUIDATION)

Respondents

ORDER WITH REASONS OF H.E. JUSTICE SIR JEREMY COOKE

UPON the Applicant's Application No. SCT-173-2025/1 dated 11 August 2026 (the "Application")

AND UPON the Application being re-allocated to the Court of First Instance under Case No. CFI-018-2025

AND UPON the Respondent's evidence in answer dated 24 September 2026

AND UPON the Applicant's evidence in reply dated 30 September 2026

AND UPON the Applicant's further submissions dated 9 October 2026

AND UPON the Respondent's further submissions dated 9 October 2026

AND UPON the Applicant's further submissions in reply dated 14 October 2026

IT IS HEREBY ORDERED THAT:

1. The Application is dismissed.

2. The Applicant shall pay the costs of the Respondents on the standard basis, such costs to be the subject of summary assessment if not agreed in accordance with the following timetable.

(a) The Respondents shall serve a Schedule of Costs in the normal form for summary assessment within 7 days of the date of this Order;

(b) The Applicant shall respond in 10 days thereafter in written submissions of not more than 8 pages;

(c) The Respondents shall reply in written submissions of not more than 8 pages within 7 days thereafter.

Issued by:
Hayley Norton
Assistant Registrar
Date of issue: 26 October 2026
At: 11am

SCHEDULE OF REASONS

Introduction

1. The Parties have advanced a series of arguments in relation to the Applicant's claim against the Respondents, the liquidators of the Company which is in liquidation but in my judgment, it is unnecessary to deal with the majority in any detail. There is now no dispute over the amount which is due to the Applicant by way of remuneration and the proof of debt for the balance due has been accepted by the Respondents. The sole issue for the Court is whether or not any penalty payment is due under Article 19(2) of the 2019 Employment Law and whether it should therefore be admitted as a proof of debt in the liquidation.

2. The Applicant, a litigant in person, has produced lengthy written submissions, which show clear signs of legal assistance and which contain a series of sophisticated and articulate legal arguments. I deal with those which appear to me to matter in the light of the disputes raised by the Respondents. There is no dispute over the qualifying threshold for a penalty payment by reference to the Applicants' weekly wage. There is no issue about any unreasonable conduct on his part being causative of the absence of payment by the Company or the Respondents of salary and

other benefits due to him under his contract of employment.

3. Article 19 of the 2019 Employment Law provides as follows:

> *"Payments following termination*
>
> *(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."*

4. There are essentially four points taken by the Respondents, of which two appear to me to be without foundation.

Article 19(4)(a)

5. The first of these arguments which I do not accept, is based on Article 19(4)(a). It is said that, because the Applicant had to bring proceedings in the Small Claims Tribunal (the "SCT") to obtain judgment in relation to sums due under his employment contract, there was a dispute regarding an amount due to him under Article 19. The position is however that there was no such dispute.

(a) In an End of Term Statement of 30 October 2024, which followed from the Applicant's termination of his employment on 10 September 2024, the Company accepted that he was owed AED 642,585.47.

(b) He had by this stage commenced two sets of proceedings in the SCT; the first of these, namely SCT-315-2024, was instituted on 12 September, before the expiry of the 14 day period to which Article 19(1) refers; the second, SCT-469-2024, was commenced on 16 October 2024. Neither of these proceedings was defended and judgment was obtained in each on 10 October 2024 and 28 November 2024 respectively. This was followed by enforcement proceedings resulting in recovery on 12 December 2024 and 19 March 2025 respectively of the sums of AED 459,158 and AED 174,082.87 (a total of AED 633,240.87). It is clear therefore from the End of Term Statement issued by the Company on 30 October 2024, albeit after the commencement of the second set of proceedings, that there was in reality no dispute pending in the Court regarding any amount due under Article 19(1) because none was asserted in those proceedings and, in the course of the second set, it became plain that it was accepted that a larger sum was owing than had been claimed. Where admissions are made, the DIFC Court of Appeal has decided in *Expresso Telecom Group Ltd v Tarig H.A.G. Rahamtalla* [2022] DIFC CA 002 that it cannot be said that there is a dispute for the purposes of Article 19(4)(a) just because proceedings were commenced to enforce what was due and the same point applies here, though no formal admissions were made.

The Court's Inherent Powers

6. The second such argument put forward by the Respondents was that the Court has an inherent power to waive payment of the penalty under Article 19(2) in circumstances where the insolvent status of the Company in Germany made it impossible or difficult to pay sums due under the Applicant's employment contract.

(a) That argument must fail because the penalty arises in the circumstances for which the statute provides, without any fault on the part of the employer and the statute itself contains an express statutory provision requiring the Court to waive the penalty in two situations, as set out in Article 19(4)(a) and (b), the first of which is considered above and the second of which is not relied on by the Company. There is no other statutory power to waive outside that provision.

(b) In any event the Insolvency Law provides for recognition of a foreign based liquidation with the consequent potential impact of a stay of existing proceedings and preventing future proceedings without the sanction of the Court.

(c) Here the Company was put into liquidation on 28 March 2025, which is the only relevant date for assessment of the effect of indebtedness and the institution of the insolvency regime set out in the Insolvency Act and the imposition of the stay.

The Absence of any Liability at the date of the Liquidation

7. The primary argument which the Respondents have taken is that, at the date of liquidation, there was no debt due which was capable of being

accepted as a proof in the liquidation. The point is a simple one, based on construction of Article 19(3) which provides that "*a penalty pursuant to Article 19(2) may only be awarded 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.*"

8. The Applicant himself says that he does not contend "*that the Joint Liquidators were themselves required to substitute for the Court and make the judicial determination contemplated by Article 19(3)*" and that his challenge is made to the consequences of the absence of that determination in the rejection by the Respondents of the penalty claim. He appears to accept that an Award is necessary but must be taken as arguing that the Respondents can proceed on the basis of such an Award where none exists.

9. Whilst there is no issue now that the amount due as contractual remuneration was in excess of the weekly wage at the expiry of 14 days from the Termination Date, the Respondents have maintained waiver arguments, as set out above, in relation to any claim for a penalty. Whilst the Applicant refers to the penalty liability as a contingent liability, there remain issues as to the calculation of the penalty. More fundamentally, the SCT had made no award and had not grappled with those issues at the date of liquidation and stay and was not able to do so in the third set of SCT proceedings launched by the Applicant on 9 March 2025 because they were stayed by the winding up later in the month. The SCT has therefore not imposed a penalty and this Court, in the current proceedings, cannot do so. In short there is no award of a penalty.

10. It is said by the Respondents that the penalty provisions are not self-executing but require a Court decision and in the absence of such a decision prior to the date of liquidation, there could be no liability which the Liquidator could accept. That seems to me to be unanswerable as such. No penalty can be payable absent the Court's determination of that issue. An award is required for the debt to come into existence. As at the date of liquidation, there was no actual debt or existing liability to pay a penalty which only the Court could impose and where arguments were set to arise as to the conditions set out in Article 19(4).

11. Liability is defined in Schedule 1 paragraph 3 of the Insolvency Law as "*a liability to pay money or money's worth, including any liability under an enactment, any liability for breach of trust, any liability in contract, tort or bailment and any liability arising out of an obligation to make restriction or as otherwise defined in the Law of Obligations DIFC Law No.5 of 2005*." In my judgment, absent a Court decision imposing a penalty prior to the date of liquidation it could not be said that there was a liability as such- since any liability depended on a future court decision to impose it. The difference between that and a claim in contract, tort or bailment is that the liability exists in relation to the latter prior to any Court so determining, whereas the liability for the penalty expressly depends on a Court decision for the liability to exist. The Court's decision is not just a contingency for the liability to accrue but an essential requirement for the liability to exist at all.

12. It may well be thought that this is a technical point but the process of making a claim for a penalty in a Court is different from the present action which is a challenge to the Respondents' decision to reject the claim for the penalty payment. This Court is not seized of a claim for the penalty and any such claim in this Court would now be out of time (6 months from termination being the time limit).

13. A claim for unliquidated damages in contract, tort or bailment or even a claim for liquidated damages which was rejected might fall to be substantiated in Court proceedings, but the existence of the liability, once established in Court, would be seen to exist at the time of the liquidation, whereas here there could, ex hypothesi, be no liability without a Court decision imposing it. That jurisdiction was vested in the SCT in litigation commenced just within the 6 month time limit, it would appear but stayed as a result of the liquidation.

The Rule in *Henderson v Henderson*

14. The further argument taken by the Respondents is one of abuse of process based on the rule in *Henderson v Henderson.* The Respondents submit that any claim for a penalty should have been brought in the second set of proceedings in the SCT which commenced on 16 October 2024, after the expiry of the 14 day time limit set in Article 19(1). It is not said that it should have been brought in the first SCT proceedings because these were commenced before the expiry of that time limit, and so no cause of action could be said to have accrued by then.

15. The Applicant submits that there is an inconsistency between the Company's argument that there was no liability capable of being pursued in the liquidation, absent a Court's decision to impose a penalty, and the argument that the Applicant should have included his claim for payment in the second SCT claim. There is no such inconsistency because, once the 14 days had expired, it was open to the Applicant to seek a Court decision to impose the penalty and judgment was given in that action on 28 November 2024, several months before the Company went into liquidation on 28 March 2025. The penalty claim could readily have been included in that action.

16. It was on 9 March 2025 that the Applicant filed SCT-173-2025 seeking determination of his Article 19 claim for a penalty and claiming the further sum of AED 9,344.60 arising from the End of Term Statement issued by the Company. The penalty sought was to be based on the sums outstanding, which were calculated by reference to that Statement. This action was stayed when the Company went into liquidation on 28 March 2025. Implicitly it was recognised by the Applicant, in bringing this further set of proceedings, that the SCT's decision was required, as indeed is obvious from the terms of the statute. The reason for taking the present proceedings in relation to the Respondents' refusal to accept a proof of debt in respect of the penalty payments which are claimed, is the stay of that action which was intended to result in the Court imposing a penalty, which is the pre-requisite for the existence of a liability to pay it. What the Applicant is seeking to do, is to find a way around that requirement.

17. I was referred to a number of authorities on the application of the rule in *Henderson v Henderson* and have borne in mind the terms of the judgment in *Amira C Foods International DMCC and IDBI Bank Ltd* [2021] DIFC CA 004 and in particular paragraphs 5, 7 and 9-18. The question which arises is whether the claim under Article 19 should have been brought in the second set of SCT proceedings on 16 October 2024 and whether a further set of proceedings in the current form against the Respondents is abusive. A party should not be vexed twice with same claim and a claimant is bound to bring forward his whole claim in any action. A failure to do so requires explanation. Here the Applicant could have brought his penalty claim in the second SCT action and launched a third set of proceedings in the SCT without good reason to do so. He has now made a further application to this Court in order to escape the effect of the decisions made by him as to what to claim in the SCT and the effect of the liquidation.

18. The only excuse for not bringing the penalty claim in the second SCT claim back in October 2024 is that the Applicant is a litigant in person. He says that he was unaware of the penalty provisions in the Employment Law, which I find inherently implausible as they are well known and

readily ascertained, whether by searching on the internet or from general enquiry. The Applicant is sophisticated and not impoverished. He could have sought legal advice then had he wished to do so and has plainly done so since. He has shown himself to be more than capable of marshalling arguments on issues of law. If he chose to conduct proceedings as a litigant in person in the SCT, he accepts that he cannot pray in aid his professed ignorance of the law.

19. The other factor which is prayed in aid in his favour is the apparent absence of any good defence to the claim for the penalty itself in the SCT proceedings, at least in some amount, though the calculations of the amount in question are the subject of dispute and the claim itself is also said to be abusive in the SCT by reason of the application of the *Henderson v Henderson* rule. The absence of a good defence to part of the penalty claim, if pursued in the right place at the right time does not appear to me to be a good reason not to apply the rule in these proceedings and not just in the light of my findings in the previous section of this judgment. Whatever latitude may be extended to litigants in person in SCT proceedings and however strong the case might be in such proceedings, those were matters for the SCT to determine in the third set of SCT proceedings and not matters which can avail the Applicant in these proceedings which are an attempt to find a way round the stay of those proceedings on the winding up of the Company. The bringing of these proceedings is thus more abusive than simply seeking to pursue the penalty claim directly in the SCT and the rule in *Henderson v Henderson* ought to apply in all its fulness.

20. In these circumstances, I can see no good reason for allowing the Applicant a second or third bite of the cherry in these proceedings, particularly as he must have deliberately proceeded to obtain judgment in the second SCT action on 28 November 2024 for a lesser figure than that which appeared in the End of Term Statement of 30 October 2024, without including the additional sum in it and without claiming the penalty. It is to be inferred that he did so in the hope of executing a speedy judgment without the Company taking any point, which it was likely to do if a claim for a penalty had been included, since arguments in relation to it have surfaced in these proceedings. The additional figure from the Statement has rightly been admitted as a proof of debt in the liquidation because it is an undisputed debt but the penalty claim remains a source of dispute, although I have dismissed some of the arguments which the Respondents have advanced.

Costs

21. In these circumstances and for these reasons, the Applicant's claim fails and he must bear the costs of the Application, which if not agreed are to be the subject of assessment by the Court on a summary basis with the Respondents to serve a Schedule of Costs in the normal form within 7 days, the Applicant to respond in 10 days in written submissions of not more than 8 pages and the Respondents to respond in written submissions of not more than 8 pages within 7 days thereafter.

22. Although, in general, in employment claims, each party bears its own costs, this is an insolvency claim in the Court of First Instance and not an employment claim in the SCT, as were the previous three claims launched by the Claimant. In such circumstances, the general body of creditors of the insolvent company should not be prejudiced by the liquidators having to pay costs of a failed claim (with consequent liability for such costs falling on the company itself).