THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS

BEFORE H.E. JUSTICE SHAMLAN AL SAWALEHI

BETWEEN

FIRAT

Claimant

and

FIRUZ

Defendant

Hearing:**14 January 2015**

Judgment:**9 February 2015**

JUDGMENT OF H.E. JUSTICE SHAMLAN AL SAWALEHI

UPON hearing the Claimant and the Defendant

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

IT IS ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED **9,217.90.**

2. The Defendant shall provide the Claimant with an Air ticket from Dubai to Yervan.

3. The Defendant shall pay the Courts fee.

THE REASONS Parties

1. The Claimant Firat is a former employee of the Defendant.

2. The Defendant is Firuz in the DIFC.

Factual Background

3. On 7 August 2014 the Claimant signed an employment contract with the Defendant to work as restaurant staff; the contract contained all the Claimant's obligations and duties.

4. The Claimant worked with the Defendant for approximately four months. On 18 December 2014 the Defendant served a termination letter with immediate effect on the Claimant.

5. The Claimant filed a case against the Defendant on 18 December 2014, seeking two months' salary for the month of November and December in the amount of AED 4,400. She also requested accommodation for the period of 1 December to 18 December in the amount of AED 2,000 and 30 days' notice period before cancelation of her contract.

6. On 4 January 2015 the Defendant filed its Acknowledgement of Service intending to defend the entire claim, and addressed the Claimant's issues in its response.

7. The Defendant claims that the Claimant's termination was due to the misconduct of the Claimant under UAE Employment Law, the Defendant states that the Claimant had received several warnings for tardiness and absence from work without sick leave, and in addition to previously attending work while intoxicated, resulting in an unfit for work presence.

8. The Defendant further argues that it paid the Claimant's pending salary for the month of November by providing proof on paper but with no signature that she has received her salary for that month. The Defendant acknowledges that the salary for the month of December is still pending and will be paid. Moreover the Defendant terminated the Claimant in her probation period and therefore 30 days' notice need not be paid.

9. On 14 January 2015, an SCT hearing was held before H.E. Shamlan Al Sawalehi, both representatives attended the hearing.

Finding

10.	The questions that need to be answered are, whether the Claimant's employment was terminated for cause or not? And what sort of end of service benefits is the Claimant entitled to?

11. Before I start finding answers to these questions, I have to note that I disagree with the Claimant's argument to apply UAE Federal Labour Law, as Federal Law No.8 of 2004 concerning financial free zones excludes the application of the federal civil and commercial laws to financial free zones. Therefore, the applicable law in this case is DIFC Employment Law No.4 of 2005, as amended, which has no provisions governing claims for unfair dismissal.

12. Then I have examined all the submissions and supporting evidence in this case , and in the present case, I am satisfied that the Defendant has not justified its refusal to pay the Claimant her end of service gratuity and her termination notice in lieu, for cause in accordance with Article 59 (A) of the DIFC Employment Law.

13. It seems to me that, the Defendant has outlined the reasons for termination only, as detailed in the Defendant's submission on 4 January 2015. And in my view those alleged reasons might be accepted as administrative reasons for which to terminate the employee's services, but were neither sufficient nor reasonable enough to establish cause in circumstances where the conduct of one party warranted termination and where a reasonable employer or employee would have terminated the employment, since they were not supported by either written or verbal evidence nor admitted by the Claimant to approve that they occurred.

14. Then I have found that, the termination took effect prior to the end of one full year of employment, as the Claimant has worked since 7 July 2014 until 18 December 2014, that means she has worked for (5) months and (11) a total of (161 days) on the rate of (13.23) calculated as (161 * 30 / 365), and her daily wage calculated as (AED 2,200 * 12 = 26,400. / 365), in the sum of AED 72.32 per day. **Compensation**

15.	Therefore, the Claimant is entitled to compensation for end of service gratuity payment , compensation in lieu of termination calculated for (30) days per year on a proportionate basis (72.32 * 13.23), in accordance with Article 62 (3) of the DIFC Employment Law, in the sum of **AED 956.79.**

16.	Then I have found that, the Claimant is entitled to compensation in lieu of termination notice, calculated for (30) days for continuous working more than 3 months (72.32 * 30) , in accordance with Article 59 (2) (b) of the DIFC Employment Law, in the sum of **AED 2,169.60**.

17. Furthermore, the Claimant is entitled to compensation in lieu of vacation leave for (30) days in accordance with her employment agreement point 3 (c) , calculated on a pro rata basis (72.32 * 13.23) in accordance with Article 27 (1) of the DIFC Employment Law, in the sum of **AED 956.79.**

18.	As to the Claimant's claim for unpaid salary for November 7, December 7 and 11 days of December, I do not accept the evidence that was purportedly stamped and submitted by the Defendant to approve payment of two months' salary, as it was not signed by the Claimant as receipt of payment, moreover the same evidence was denied by the Claimant during the hearing. In these circumstances, I am of the view that the Claimant is entitled to payment in lieu for (71) unpaid days, in the sum of **AED 5,134.72**.

19. As to the Claimant's claim for an air ticket to go back home, the Defendant is obliged to pay for such a ticket, in accordance with the employment termination letter dated 18 December 2014.

20. Lastly, I have to bring the Defendant's attention to the point that, neither the DIFC Employment Law suggests any legal relationship between compensation for termination notice and the employee being terminated during her probation period, nor the employment agreement in this case provides the same.

21. For those reasons, the Claimant's total compensation is the sum of **AED 9,217.90,** in lieu of unpaid salary, gratuity payment, vacation leave and termination notice of the Claimant's Employment Contract. In addition, the Claimant is entitled to an Air ticket from Dubai to Yervan. 23. Accordingly, I dismiss any other claim advanced by the Claimant.

Issued by:

Maha Al Mehairi

Judicial Officer

Date of Issue: 9 February 2015

At: 3pm