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

BEFORE JUDICIAL OFFICER NASSIR AL NASSER

BETWEEN

FERKO

Claimant

and

FERMANDO LIMITED

Defendant

Hearing: **2 November 2015**

Judgment: **8 November 2015**

JUDGMENT OF JUDICIAL OFFICER NASSIR AL NASSER

UPON hearing the Claimant and the Defendant

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

IT IS HEREBY ORDERED THAT:

1. The Defendant shall provide the Claimant with a Certificate of Experience.

2. The Claimant's other claims be dismissed.

3. Each party shall bear their own costs.

Background

1. The Claimant is Ferko ("the Claimant"), an employee of Fermando Limited, a company registered in the DIFC.

2. The Defendant is Fermando Limited, ("the Defendant"), a company registered in the DIFC.

3. The Claimant entered into an Employment Contract ("the contract") with the Defendant for the period of one year from February 2013 to February 2014 with a basic salary of AED 8,500, housing allowance of AED 10,000 and transport allowance of AED 1,500. The Claimant and the Defendant upon the expiry of the contract agreed to renew it for one more year from February 2014 to February 2015 with a change in the basic salary to AED 8,925 but with the same terms of the first contract signed between the parties. Later upon the expiry of the second contract, the parties again renewed the contract for one more year from February 2015 to February 2016 with the same terms but with a difference in the salary and monthly allowance (basic salary AED 9,461, housing allowance of AED 12,000 and transport allowance of AED 1,700).

4. On 31 August 2015, the Claimant resigned and the Defendant accepted his resignation by a letter dated 2 September 2015. On 6 September 2015, the Claimant communicated with the Defendant by email inquiring about his obligations and rights to leave the company, as alleged it has been communicated that the Claimant should comply with the exit checklist form. The Claimant alleged that he is eligible for a one way ticket back home, remaining 6 days annual leave, September 2015 salary and end of service gratuity.

5. The Claimant then alleged that on 7 September 2015, the Defendant provided him with the amount of AED 3,974 as the amount due for the end of service gratuity. However, at a meeting held on 13 September 2015 the Defendant provided a different amount which was AED 5,021 as the final calculation for the end of service gratuity received by the Claimant. But the Claimant alleges that the remaining end of service he is entitled to is in the sum of AED 12,198 calculated from the first year of employment from February 2013.

6. On the other hand, the Defendant alleges that the end of service gratuity was paid on a yearly basis after the end of each employment contract prior to the renewal which occurred every year. But the Claimant alleges that he was never informed that the payments received every year were considered end of service gratuity and was not aware of any of the Defendant's policies.

7. The Claimant also alleged that he is entitled to a one way ticket to his home country as per the contract and requested that since he did complete seven months, he is entitled to a proportionate payment of the ticket amounting to AED Subsequently, the Claimant also alleged that he is entitled to compensation of two months' salary (the sum of AED 23,161 for each month) and accommodation payment in the sum of AED 4,500 because

his lease expired on 30 September 2015 and due to the Defendant's failure to resolve the matter. The Claimant also requested for a shipping expense in the sum of AED 3,250.

8. The Defendant decided to defend its position, and alleged that the Claimant received his end of service gratuity for the years 2013/2014 and 2014/2015 and the Defendant rejected all the Claimant's other requested remedies.

The Hearing

9. The parties failed to settle at the consultation before Judicial Officer Maha Al Mehairi. Therefore, on 2 November 2015, both the Claimant and the Defendant's representative appeared before me for a hearing.

Discussion

10. The first question to be considered is whether the Contract between the parties is in continuance from 2013 to 2016? As mentioned above in paragraph 3 of this judgment, the Claimant entered into an Employment Contract with the Defendant for the period of one year from February 2013 to February 2014 with a clause that stated that the parties upon their agreement had the right to renew the contract. The Claimant and the Defendant upon the expiry of the contract agreed to renew for one more year from February 2014 to February 2015, with a slight change in the basic salary but with the same terms of the first contract signed between the parties. Later upon the expiry of the second contract, the parties again renewed the contract for one more year from February 2015 to February 2016 with the same terms but with a difference in the salary and monthly allowance.

11. Therefore, the contract continued with the same terms for 3 years from 2013 to 2016 but with a change in the salary and monthly allowance each year. As a result, I am satisfied to consider the 3 Employment Contracts as one contract starting from February 2013 with expiration in February 2016. As such, the discussion below will cover the period from the starting date of employment on 24 February 2013 to 30 September 2015 when the Claimant resigned.

End of service gratuity

12. Article 62(1) and (2)(a) of the DIFC Employment Law (DIFC Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012) provides the following:

> *"(1)Subject to Article 62(5), and (6), an employee who completes continuous employment of one (1) year or more is entitled to a gratuity payment at the termination of the employee's employment.*
>
> *1. The gratuity payment shall be calculated as follows:*
>
> *Twenty one (21) days' basic wage for each year of the first five (5) years of service."*

13. The Claimant in his submissions alleged that he is entitled to the end of service gratuity for the first 2 years of employment in the amount of AED 12,198. On the other hand, the Defendant argues that the company's policy is that the end of service gratuity is paid once in respect of each employment contract and provided via the pay slip which was handed to the Claimant at the end of each year. Although the word "arrear" was mentioned in the first year's slip, the payment was calculated as the end of service gratuity. The Defendant also provided the company memo dated August 2012 which states that the gratuity will be paid each year as per the contract of each employee and this approach will be followed in future cases. In regards to the second year the word "gratuity" was clearly mentioned in the pay slip given to the Claimant upon the completion of the second year and the amount paid as gratuity was AED 6,248.

14. Moreover, the Claimant did not provide any evidence that the end of service benefit was not paid in the previous years, and he also failed to provide any evidence that the payments made during the first and second years were not end of service gratuity.

15. Therefore, I am satisfied that the payments made in the first year 2013/2014 in the amount of AED 5950 and in the second year 2014/2015 in the sum of AED 6,248 are to be considered as end of service gratuity. Therefore, a difference should be added to the first and second year gratuity as each year was calculated on the basis of the salary at that year. As such the calculation should be the sum of AED 9,461/30= AED 315.36 per day * 21 days = AED 6,622.70. Therefore, the calculation should be the following:

a. AED 6,622.70 - AED 5950= AED 672.70 for the first year 2013/2014

b. AED 6,622.70 - AED 6,248= AED 374.7 for the second year 2014/2015.

c. AED 315.36 per day * 12.25 for 7 months = AED 3,863.16 for the period of February 2015 to September 2015.

The Claimant is entitled to AED 4,910.56 as the final payment of end of service gratuity including the remaining payments for 2013/2014 and 2014/2015. However, the Defendant paid the sum of AED 5,021 to the Claimant by cheque received on 30 September 2015 which is AED 110.44 more than what the Claimant is entitled to.

Therefore, the end of service gratuity has been paid by the Defendant to the Claimant on 30 September 2015.

One way ticket to home country

16. The Claimant argued that he is entitled to a one way ticket to his home country pursuant to Article 131 of the Federal Labor Law No.8 of 1980. He also argued that the Federal Labor Law No.8 of 1980 stipulates that all employees are subject to it, in practice employees in the free zones are subject to the rules and regulations of the free zone concerned and maintain their own employment contract. Furthermore, the Claimant added that pursuant to the above the law will still apply and the provisions in the employment contract must be in accordance with the law. Moreover, the Claimant referred to Article 10 of the DIFC Employment Law which provides that the requirement of this law are minimum

requirements and a provision in an agreement to waive any of those requirements, except where expressly permitted under this law, has no effect.

17. On the other hand, the Defendant argued that it is a company registered and operating under DIFC Laws and regulations. Moreover, the Federal Law relied upon by the Claimant is not applicable in the DIFC and the only law applicable is the DIFC Employment Law.

18. Relevant case law emanating from the DIFC Courts of Appeal, and relating to the applicability of Federal Laws in the DIFC, namely ***CA 003/2015 Marwan Lutfi v The Dubai International Financial Centre Authority*** (at page 16 of the Judgment) held that:

> *"The relationship between the Appellant and the Respondent is regulated by the unamended Employment Law, which is a DIFC Law. It sets out at Article 3 all the statutory rights and protection of the employee, and at Article 8 the minimum standard and requirements of employment which the parties cannot contract out of. In substance then, the Employment Law has a regulatory content, and is the only law that governs the employee who works for any entity having a place of business in the DIFC. Therefore, there is no basis to adopt any other law than the DIFC Employment Law to determine the right of the Appellant and his contractual relationship with the Respondent is regulated by the DIFC Employment Law."*

19. Furthermore, the contract between the parties expressly states that any entitlement to demobilization (one direct economy class air ticket from work base to home country) benefits, including flight ticket back to home country, is forfeited if the contract is terminated before the contract period is completed. Item 6.2 of the benefit schedule of the contract reads as follows:

> *"The company shall not bear all demobilization costs if:*
>
> *The termination is made due to early resignation prior to expiry of the contract, misconduct or breach of common terms of employment."*

20. Therefore, for the reasons stated above I am satisfied that pursuant to the contract the Claimant is not entitled to a one way ticket to his home country.

Shipping Expenses

21. The Claimant referred again to the Federal Labor Law No. 8 of 1980 in arguing that the employer is liable for returning the employee to their home country and the shipping expenses, also referring to Article 10 of the DIFC Employment Law No.3 of 2012.

22. Therefore, for the same reasons mentioned above in paragraph 18, the Claimant is not entitled to shipping expenses.

False Representation

23. The Claimant argued that he had accepted the job offered by the Defendant based on the assertion that the vacancy promised career progress and job security as the company had contracts for 20 years. Furthermore, the Defendant had intentionally misrepresented this statement after being in the recruitment process for two years.

24. The Defendant denied the allegations made by the Claimant. The Claimant did not provide any evidence in support of such allegations made in relation to misrepresentation. Therefore, I dismiss the Claimant's claim in relation to false representation.

Accommodation

25. The Claimant argued that the Defendant had provided the employee two weeks' accommodation upon hiring for the mobilization process and was providing their employees with accommodation in the beginning or end of the contract, and that the Defendant had failed to respond to the emails sent by the Claimant on 3 September, 13 September, and in the meeting on 30 September 2015, but had only responded on 4 October 2015 which had put the Claimant in a position of having no place to stay as his last day of employment was on 30 September 2015 and the Claimant left his accommodation on the same day of 30 September 2015 due to his plan to exit the country on the same day.

26. Furthermore, the Claimant also demanded the application of Article 58 of the DIFC Employment Law which deals with discrimination.

27. The Defendant argues that the Claimant was informed on 4 October 2015 by email that he was not entitled to demobilization pursuant to the Contract as he did not complete his employment with the company. Moreover, the Claimant failed to prove the relation between his medical condition that he should avoid neck movement and the claim, and has failed to provide any evidence of discrimination.

28. I am satisfied that the Claimant has no basis in claiming accommodation for the period after the termination of his contract as he knew by way of email dated 4 October 2015 that he was not entitled to an air ticket. The Claimant also failed to provide any proof of discrimination or the relationship between discrimination and accommodation. Therefore, I dismiss the Claimant's claim in relation to accommodation.

Return flight ticket amount

29. The Claimant referred to the benefit package schedule at item No. 2 titled "home leave passage", which provides the following:

> *"in the event that your service period is extended, you will be eligible for one return economy class air ticket between work base and home country."*

30. The Claimant argued that he is entitled to a return flight ticket amount pursuant to the above item in the Contract. However, it is clearly stated that the employee is entitled only in the event where his contract has been renewed.

31.The Defendant argued that the entitlement to such a ticket is for the following year, when the employee renews his contract with the company. And for the year 2014/2015 when the Claimant renewed his contract he received his return ticket to his home country.

32. As per item No. 2 "home leave passage" of the benefit package schedule of the contract, the Claimant is not entitled to a return flight ticket amount. Therefore, I dismiss the Claimant's claim in relation to the return flight ticket amount.

Salary for October 2015 and November 2015

33. The Claimant claims two months' salary as compensation for the Defendant's actions of not complying with the contract. However, the Defendant argues that the Claimant has not provided any legal justification for this claim.

34. I am not satisfied with the arguments made by the Claimant. Furthermore the Claimant did not provide any justification or evidence that he is entitled to compensation. For the reasons above I dismiss the Claimant's claim for two months' salary.

Certificate of experience

35. The Claimant argues that according to Article No. 125 of the Federal Labor Law No. 8 of 1980, he shall receive a certificate of experience for the working period from February 2013 to September 2015.

36. The Federal Labor Law does not apply in the DIFC for the same reasons mentioned above in paragraph 18. However, there is no harm in providing the Claimant with a certificate of experience, and the Defendant is requested to provide the Claimant with such a certificate.

Issued by:

Nassir Al Nasser

Judicial Officer

Date of issue: 8 November 2015

At: 11am