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 SCT JUDGE MAHA AL MEHAIRI

BETWEEN

JAZMIN

Claimant

and

JEREMY CORPORATION (DIFC BRANCH)

Defendant

Hearing:**10 April 2019**

Judgment:**15 April 2019**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON the Claim Form being filed on 14 February 2019;

UPON the Applicant filing further particulars of claim on 11 March 2019;

UPON the Defendant filing submissions in response on 24 March;

AND UPONreviewing all documents and evidence submitted on the Court file;

IT IS HEREBY ORDERED THAT:

The Defendant shall pay the Claimant a total sum of AED 18,251.99 to include:

- AED 13,427.45 as unpaid expenses; and
- AED 4,824.54 as reimbursement of the SCT Court filing fee.
- The Claimant's claims as to penalties pursuant to Article 18(2) of the DIFC Employment Law are dismissed.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 15 April 2019

At: 9pm

THE REASONS

The Parties

1. Jazmin (hereafter the "Claimant") is an individual formerly employed as a Senior Project Manager at Jeremy (DIFC Branch) with offices located in DIFC (hereafter the "Defendant").
2. The Defendant is a telecommunications and information technology company which is listed both on the Hong Kong and Shenzhen Stock Exchange.

Preceding History

3. On 14 February 2019 the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for certain sums allegedly entitled to him as a result of his employment with the Defendant. The Claimant lodged `updated particulars of claim' on 11 March 2019.

4. The Defendant responded to the Claim with its submission filed on 24 March 2019.

5. A Consultation was listed on 10 March 2019 before SCT Judge Nassir Al Nasser, but the parties failed to reach an agreement, as such the matter was called for a hearing before myself, SCT Judge Maha Al Mehairi, on 10 April 2019.

The Claim

6. The Claimant contends he commenced his employment with the Defendant on 13 October 2013; handed in his resignation on 15 July 2018; and thereby finished his employment on 14 August 2018. The Claimant contends all salary, end of service gratuity and untaken holiday was paid in full.

7. The Claim concerns an unpaid expense claim in the sum of 13,477 AED. According to the Claimant this sum was for a travel expense submitted on 17 July 2018 (claim number HS201- 2018074939). On the Claimant's account this is yet to be paid even after `several reminders' to the Defendant.

8. Due to the abovementioned delay, the Claimant seeks Article 18(2) penalties, and contends that he is entitled to the significant sum of AED 227,800. The calculations made by the claimant are reproduced below:

   Penalty Calculation until date of filing the claim (14-Feb-2019)

   Last monthly wage = AED 40,200

   Last Daily Wage = 40,200 / 30 = AED 1,340

   Number of days from 29-Aug-2018 until 14-Feb-2019 (date claim filed) = 170

   Penalty for 170 days based on last daily wage = 1,340 x 170 = **AED 227,800**

9. The entirety of the claim is for the sum of no less than AED 241,227.45, which comprises of the following:

   (a) Original expense claim in the sum of AED 13,427.45;

   (b) Article 18(2) penalties in the sum of AED 227,800;

   (c) The continuous of the above Article 18(2) penalties, until the date full and final payment is made; and

   (d) Court fees.

The Defence

10. On the Defendant's account, the Claimant submitted a single travel request on 13 August 2018, a day before the last day of service of the Claimant and that the Claimant had submitted the request selecting the wrong project and financial category ("2017-MTN-RAN L2 OpCo Breakthrough Project-sales") on the company payment system belonging to the Defendant.

11. This alleged mistake prompted a bounce-back email from the software to the HR, whom in turn informed the Claimant of his duty to make amendments.

12. The Defendant, in its submission contends:

> "The request had gone to the wrong approver, owing to the Claimant's mistake; that the claim was hence rejected by the system and returned back to the Claimant on the 24th of August for corrections and resubmissions; that the Claimant did not make any efforts to correct the claim or resubmit the expense request."

13. The Defendant accepts that the payment for travel expenses is indeed due, however rejects that Article 18(2) penalties should be paid to the Claimant, for the reasons set out above.

Conclusion

14. This dispute is governed by the DIFC Employment Law No. 4 of 2005, as amended by DIFC Law No. 3 of 2012 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

15. The Claimant has claimed penalties under Article 18 of the DIFC Employment Law, which states as follows:

> "18(1) An employer shall pay all wages and any other amount owing to an employee within fourteen (14) days after the employer or employee terminates the employment.
>
> 18(2) if an employer fails to pay wages or any other amount owing to an employee in accordance with Article 18(1), the employer shall pay the employee penalty equivalent to the last daily wage for each day the employer is in arrears."

16. The drafting of Article 18 (2) of the DIFC Employment Law is indeed wide to include `any other amount' owing, which in this case, it is uncontested, there is a sum of AED 13,377. Such a paltry sum does not warrant such a significant sum as AED 227,800 in penalties to be

paid to the Claimant in this case.

17. Upon hearing oral submissions and reviewing the case file and correspondence between the parties, I find that the Defendant did not purposely withhold the amount to the Claimant. Furthermore, the Claimant did not make enough concerted effort to amend his claim within the software, and to bring the technical issue to his line manager's attention, using the proper mechanism to submit the claim. Moreover, he indeed did not file a claim until 6 months after termination of his employment.

18. In addition, when the Claimant needed to cancel his visa, he used direct messaging with his direct line manager through whatsapp to accelerate the process and failed to use this mechanism when it came to the expense claim.

19. It is not within the spirit of Article 18(2) to either punish the Defendant via penalties nor reward superfluous sums to the Claimant.

20. Consequently, I hereby order that the Defendant shall pay the Claimant a total sum of AED 18,251.99 to include:

    a. Original expense claim in the sum of AED 13,427.45; and

    b. Court fees AED 4,824.54

21. The Claimant's claims to Article 18(2) penalties are dismissed.

Issued by:

Maha Al Mehairi

SCT Judge

Date of issue: 15 April 2019

At: 9pm