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 H.E. JUSTICE MAHA AL MHEIRI**

BETWEEN

LACT

Claimant

and

LOUTIV

Defendant

Hearing : **31 August 2022**
Further submissions : **6 September 2022**
Judgment : **15 September 2022**

JUDGMENT OF H.E. JUSTICE MAHA AL MHEIRI

UPON this Claim being filed on 28 June 2022 and amended on 15 July 2022 (the "Claim")

AND UPON the Defendant filing a Counterclaim on 22 July 2022 (the "Counterclaim")

AND UPON a Second hearing having been listed before H.E. Justice Maha Al Mheiri on 31 August 2022, with the Claimant and the Defendant's representative attending

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

IT IS HEREBY ORDERED THAT:

1. The Claimant's claim shall be dismissed.

2. The Claimant shall pay the Defendant the sum of AED 23,815.12.

3. The Claimant shall pay the Defendant a portion of the Court fee in the sum of AED 476.30.

Issued by:
Hayley Norton
SCT Judge
Date of issue: 15 September 2022
At: 4pm

THE REASONS

The Parties

1. The Claimant is Lact (the "Claimant"), an individual filing a claim regarding his employment at the Defendant company.

2. The Defendant is Loutiv (the "Defendant"), a company registered in the DIFC located at DIFC, Dubai, UAE.

Background and the Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an employment contract dated 23 March 2017 (the "Employment Contract").

4. On 30 November 2021, the Claimant resigned from the company with a 30-day notice period. The Claimant's last working day was on 31 December 2021.

5. On 15 July 2022, the Claimant filed an amended claim with the DIFC Courts' Small Claims Tribunal (the "SCT") claiming various sums set out as follows:

a) Payment in lieu of untaken annual leave in the amount of AED 16,615.20.

b) Article 19 penalty in accordance with the DIFC Employment Law No. 2 of 2019 (the "DIFC Employment Law") in the amount of AED 95,814.32.

6. On 22 July 2022, the Defendant filed an Acknowledgment of Service and Counterclaim in the amount of AED 35,456 in relation to alleged unauthorised sick and annual leave.

7. The parties met for a Consultation with SCT Judge Hayley Norton on 8 August 2022 but were unable to reach a settlement. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a hearing held on 17 August 2022 (the "Hearing"). Following the hearing, I wanted to address certain clarifications with the parties in respect of their calculations in respect of the Claimant's sick leave and annual leave, and I directed that a second hearing be listed for 31 August 2022 to address these points ("the Second Hearing").

The Claim

8. The Claimant's case is that he was employed with the Defendant as an `Executive Assistant' from 1 April 2017 until 31 December 2021. As provided above, the Claimant resigned on 30 November 2021, and provided a 30-day notice period to the Defendant.

9. The Claimant, pursuant to his resignation, had sought to agree an amount to be paid to him by the Defendant in lieu of his untaken annual leave. The amounts proposed by the Claimant were denied by the Defendant and therefore the Claimant proceeded to file his Claim with the SCT. The Claimant's Claims are set out in the Discussion below.

10. In addition to the Claimant's Claim for annual leave the Claimant is requesting to be paid sums that he alleges to have fallen due pursuant to Article 19 of the DIFC Employment Law. The total sum claimed by the Claimant as set out in the Claim Form is AED 112,429.52.

The Defence and Counterclaim

11. The Defendant refutes the Claimant's allegations arguing that the Claimant had availed all of his entitled leave for 2020 and 2021, and had also taken unjustified extra days.

12. Further to the above, as part of the Defendant's Counterclaim, they argue that the Claimant is in breach of the Employment Contract by availing excess annual leave and claiming the annual leave as sick leave. After the Defendant's investigation with the Immigration Department, the Defendant cross-referenced the Claimant's sick leave days with their own HR records, and found that the Claimant travelled outside of the UAE on the days that he claimed to be sick. As a result, the Defendant is claiming reimbursement of the alleged 64 days excess from the Claimant (35 days of wrongly taken sick leave and 29 days of excess annual vacation leave).

13. At the Second Hearing, I requested detailed submissions in relation to the Defendant's Counterclaim, the Defendant filed their submissions on 1 September 2022. The Defendant sought to amend its Counterclaim by reducing its Counterclaim of reimbursement of 64 days to 62 days on the basis that 2 days fell as a public holiday and therefore were excluded the from Counterclaim.

14. As part of the Defendant's submissions, each of the Claimant's claims and reply to the Counterclaims are set out in the Discussion below.

Discussion

15. This dispute is governed by the DIFC Employment Law in conjunction with the relevant Employment Contract.

16. I shall set out below each of the Claimant's claims, the Defendant's Counterclaim and the parties reply, and accordingly, the Court's reasoning and finding.

<u>The Claimant's Claims</u>

<u>Payment in lieu of untaken annual leave in the amount of AED 16,615.20</u>

17. The Claimant is claiming 30 days untaken annual leave from 2020 and 2021 in the amount of AED 16,615.20.

18. In reply, the Defendant argues that, as per the communication it received from the Claimant and the travel history report received from the Immigration Department, the Claimant has taken 17 days of annual leave in 2020 and 29 days of annual leave in 2021. As per the Defendant's records, in total, this amounts to 46 actual days of leave taken over a 2 year period (i.e. 4 days more than the entitled 42 days annual leave available to the Claimant).

19. Clause 3.3 of the of the Employment Contract, sets out that:

> "3.3 Annual/sick Leave
>
> : You shall be entitled to 21 working days of leave per calendar year upon completion of probation period, in addition to public holidays of your Host Country. In the event of being unable to work for medical reasons You shall be entitled to sick leave as per the Company policy and the Labor (sic) Law as defined in section 5.5 of this Agreement. You will also be governed by Leave Policy of the company.
>
> .
>
> 5.5 Applicability of Labour Law
>
> Your Employment shall be governed by the DIFC Labour law."

20. Upon review of the Defendant's submissions, the Court finds that the Claimant availed his annual leave entitlement for the years 2020 and 2021, and there is no outstanding leave to be claimed by the Claimant.

21. In light of this, I have determined that the Claimant's claim for unpaid annual leave shall be dismissed, which by virtue dismisses the Claimant's claim for Article 19 of the DIFC Employment Law.

The Counterclaim

62 days of unjustified annual leave

22. The Defendant is claiming an amount of AED 34,338.08 as the amount accrued against 62 unauthorised days taken by the Claimant.

23. In reply, the Claimant refutes that the Defendant's counterclaim and presented sick leave certificates as evidence for his absence from work for a number of the days that the Defendant claims to be `unauthorised. In relation to excess annual leave taken by the Claimant, the Claimant argues that it is the HR Department is responsible to monitor its employees' annual leave records and it should have informed the Claimant if he has taken excess leave.

24. In support of its Counterclaim, the Defendant provided the below table to the Court which sets out the Claimant's entitled annual leave days for each year compared with the additional days availed by the Claimant, in addition to a breakdown of the sick leave and annual days from the total number.

Year	Eligibility of leaves as per Employment contract (A)	Actual leaves taken (B)	Excess/ (Short) in leaves (C) =(B-A)	Wrong Sick leave/ miscommunication (D)	Excess Annual vacation leave taken (E) =(C-D)
2017	21	24	3	0	3
2018	21	49	28	6	22
2019	21	49	28	24	4
2020	21	17	-4	0	-4
2021	21	28	7	5	2
Total	**105**	**167**	**62**	**35**	**27**

25. After review of the parties' written and oral submissions, the Court has reached a conclusion that it is the Defendant's responsibility to keep track of the Claimant's annual leave days. In addition, with the absence of a system to keep track of the employees' annual leave it is very easy to lose track of the days, putting that in mind and the fact that the Claimant worked closely with the Defendant's partner that is residing in the UK and, on some occasions, the Claimant obtained approval for his annual leave and sick leave through WhatsApp which is not an official method of approval.

26. In review of Clause 10 of the staff manual, I note that the Defendant has set out a mechanism for sick leave for its employees, which, as provided below, was set out within the Contract. The Clause stipulates that an employee reporting in sick shall be paid 100% of the daily wage for the first 10 days, 50% for the next 20 days and no pay for the rest of the sick days. The Contract does make mention as Clause 10 of the staff manual is identical to Article 34 of the DIFC Employment Law but the only difference between the clauses is that the DIFC Law require a sick leave certificate, as set out below:

Staff Manual 2021

"10. Sickness and payment policy

10.1 Unless stated otherwise in your contract of employment, after you have completed your probationary period you will be entitled to receive payment for periods of absence during any consecutive 12-month period calculated from the first day of absence, as per the employment agreement.

10.2 Employees are entitled to sick leaves of Sixty days (60) consecutive or intermittent Work Days in aggregate in twelve (12) months period. Employee must notify as soon as possible to Employer for the leaves and if Employer required, provide the sick leave certificate from medical practitioner registered with Competent Authority covering the entire period of absence.

10.3 Employee is entitled to sick pay one hundred percent (100%) of the employee's daily wage for the first ten (10) working days of sick leave taken in twelve (12) month period and employee is entitled to sick pay fifty percent (50%) of the employee's daily wage for next twenty (20) working days of sick leave taken in same twelve (12) month period. Employee shall not be entitled to receive any wages for additional sick leaves taken in same twelve (12) month period."

Article 34 of the DIFC Employment Law

"34. Sick Leave

(1) An Employee is entitled to Sick Leave of sixty (60) consecutive or intermittent Work Days in aggregate in a twelve (12) month period. Any references in Articles 35 and 36 to a twelve (12) month period shall be deemed to be the same period as referred to in this Article 34(1).

(2) An Employee who needs to take Sick Leave shall personally, or have someone on their behalf:

(a) notify the Employer of their absence as soon as reasonably practicable on the first day of absence and at least once every three (3) days thereafter during the same period of absence; and

(b) if required by the Employer, provide a sick leave certificate from a medical practitioner registered with a Competent Authority covering the entire period of absence."

27. Although the Defendant has put a mechanism in place for handling sick leave requests made by its employees, the Defendant's HR Department failed to keep track of the annual leave and sick days taken by its employees, which was not in accordance with the mechanism put in place. Pursuant to the DIFC Employment Law, the Claimant was required to provide a sick leave certificate for any sick leave lasting more than 3 days, but failed to do so.

28. The staff manual states that for the first 10 days of sick leave the employer shall pay one hundred percent of the employee's daily wage, as per the table submitted by the Defendant, the Claimant did not exceed the 10 day period, except in 2019 the Claimant took 24 sick leave days. The Court shall apply the rule as per the staff manual being 100% pay for the first 10 days and 50% pay for the following 10 days, and no pay for the remaining 4 days.

Daily wage = AED 12,000 x 12/260 = AED 553.84

10 days x (553.84/2) = AED 2,769.2

4 days x 553.84 = AED 2,215.36

29. As such, I find that the Claimant shall pay the Defendant an amount of AED 4,984.56 in relation the excess sick leave taken in 2019.

30. In relation to unauthorised annual leave, the Court does take the view that it is the Defendant's duty to monitor the number of annual leave days taken by the Claimant, and with the absence of an automated system to keep track of the annual leave taken, the Defendant has a greater duty to keep track of the annual leave days taken by its employees. The Defendant seeks to rely upon on emails and WhatsApp messages between the Claimant, the HR Department and his line manager, which I find to be an insufficient way of keeping a formal record of the annual days taken by the Claimant. The Employment law states that it is the responsibility of the employer to keep record of such information as stated below.

Article 16 of the DIFC Employment Law

16. Payroll records

(1) An Employer shall keep records of the following information:

(a) the Employee's name, date of birth, job title, telephone number and contact address;

(b) the Employee's date of commencement of employment;

(c) the Employee's Remuneration (gross and net, where applicable), and the applicable Pay Period;

(d) the hours worked by the Employee on each day if the Employee is paid on an Hourly Rate;

(e) each deduction made from the Employee's Remuneration and the reason for it;

(f) the dates of the Public Holidays taken by the Employee and the Daily Wages paid by the Employer in respect thereof;

(g) the dates of Vacation Leave taken by the Employee and the Daily Wages paid by the Employer in respect thereof and the Vacation Leave balance owing;

(h) any Parental Leave taken by the Employee (and any pay received by the Employee during such leave, if applicable); and

(i) any Sick Leave taken by the Employee and Sick Pay paid to the Employee.

(2) The records referred to in Article 16(1):

(a) shall be in English and the English language shall have precedence over any other language used in the records;

(b) shall be kept, or be electronically accessible at or from, the Employer's principal place of business in the DIFC;

(c) shall be retained by the Employer during the Employee's employment and until six (6) years after an Employee's Termination Date; and

(d) may be retained in electronic format.

31. Nonetheless, the Claimant has a duty to inform HR about the days that he is planning to take as annual leave and utilise those days without taking any extra unauthorised days. In review of the emails between the parties, I find that the Claimant informed the HR Department that he would be taking annual leave for a number of days and that he exceeded those days without any prior approval by the Defendant.

32. It is also noticed that when the Claimant emailed the HR Department and informed them that he is planning to take annual leave, the HR Department never once rejected his request due to an insufficient balance of annual leave.

33. Further to the table above at paragraph 24, I have reviewed the correspondence between the Claimant and Defendant and have reached the conclusion that for the days that the Claimant did not obtain any prior approval from the HR Department for extra annual leave nor provide prior notification about the days that he would not be attending work, I shall consider these days as unpaid leave. Further, I find that, in the event the Claimant has exceeded his annual leave allowance as permitted by his Employment Contract, he will be liable to reimburse the Defendant for the

excess days taken.

34. For the year 2020, the Claimant did not avail all of his annual leave and accrued a balance of 4 days which was carried over to 2021. Although the Claimant did not take prior approval for the days that he went on annual leave, the court shall deduct them from his annual leave balance.

35. Moreover, for the days that the Claimant took annual leave without any balance but notified the HR Department of his intention to take leave and such a request was not rejected by the HR Department, I have determined that the Claimant will not be liable to reimburse the Defendant, as, it is the HR Department's responsibility to reject those days on the basis that the Claimant had exceeded his annual leave balance. The HR Department must keep a record of the employee's annual leave balance for each year. In light of the above, I find that the Claimant is required to reimburse the Defendant for the below listed days:

2017: 3 days

2018: 22 days

2019: 6 days

2021: 3 days

36. Accordingly, I find that the Claimant is ordered to pay the Defendant the sum of AED 18,830.56 for 34 days absence from work without any approval by the Defendant (34 days x 553.84 daily wage = AED 18,830.56).

Conclusion

37. In light of the aforementioned, I find that the Claimant's claim shall be dismissed.

38. The Claimant shall pay the Defendant the sum of AED 23,815.12.

39. I am of the view that, as the Defendant has been unsuccessful on some of its claims, it should be entitled to recover a portion of the fee in respect of the claims for which it has been successful. The Claimant shall pay the Defendant the amount of AED 476.30 being 2% of the judgment sum owed to the Defendant.