Claim No. SCT 201/2017

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 SCT JUDGE NASSIR AL NASSER

BETWEEN

HARSHAD

Claimant

and

HENA

Defendant

Hearing: **17 September 2017**

Judgment: 19 **September 2017**

JUDGMENT OF SCT JUDGE 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 pay the Claimant the sum of AED 1,375.00 in respect of vacation leave.

2. All other claims are dismissed.

3. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 19 September 2017

At: 10 am

THE REASONS

The Parties

1. The Claimant is Harshad (herein "the Claimant"), an individual filing a claim against the Defendant regarding her alleged employment at the Defendant company.

2. The Defendant is Hena (herein "the Defendant"), a company registered in the DIFC located in DIFC, Dubai.

Background and the Preceding History

1. The underlying dispute arises over the employment of the Claimant by the Defendant in a restaurant by an employment contract dated 18 January 2017 (the "Employment Contract").

2. Pursuant to the Employment Contract, the Claimant's total salary was AED 3,000 per month. Accommodation and transportation was provided by the Company, in addition to staff meals (twice daily) when on duty and health insurance. The Claimant was also entitled to 30-days annual leave. In addition, the Claimant was entitled to one economy ticket every 2 years from the start date. Clause 5 of the Employment Contract states that if the employee resigns from her position before the expiration of her visa, the company reserves the right to recover the cost of the visa, medical insurance, air ticket and any other expenses provided to the Claimant.

3. On 25 July 2017, the Claimant resigned following 5 months and 15 days of continuous employment with the Defendant.

4. The Claimant stated that the HR of the Defendant informed her that she is required to pay visa, medical and uniform expenses in the sum of AED 5,135 as she resigned before the completion of one year of employment.

5. The parties met for a Consultation with SCT Officer Lena Hatem on 15 and 21 August 2017 but were unable to reach a settlement.

6. The Defendant responded to the claim on 2 August 2017 defending the claim.

7. Both parties attended the hearing before me listed on 17 September 2017.

The Claim

8. The Claimant's case is that she was employed by the Defendant from 10 February 2017 onwards, she resigned on 25 July 2017, with her last working day being 25 July 2017.

9. The Claimant now seeks payment of the amounts deducted from her by the Defendant for visa expenses in the sum of AED 4630, medical insurance in the sum of AED 275, uniform expense in the sum of AED 230 and her accrued leave of 12 or 13 days in the sum of AED 1200 or 1300.

The Defence and Counterclaim

10. The Defendant intended to defend all the claim and filed along with their Acknowledgement of Service, the DIFCA Employment Permit Cancellation in which the Claimant signed a declaration on 2 August 2017 to certify that she had received all her dues in respect of her salary and leave from the company and confirming that she has no rights to make any claims after this date. They have also attached the Final Settlement agreement.

Discussion

11. This dispute is governed by DIFC 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.

The Claim

12. The Claimant now seeks payment of the amounts deducted from her by the Defendant for visa expenses in the sum of AED 4630, medical insurance in the sum of AED 275, uniform expenses in the sum of AED 230 and her accrued leave of 12 or 13 days in the sum of AED 1200 or 1300.

13. The Claimant alleges that she was forced to sign the DIFCA Employment Permit Cancellation. However, she did not provide any evidence that she was under pressure or forced to sign.

14. The Defendant also filed the Final Settlement Agreement which the Claimant also signed and received the sum of AED 2515 which was the remaining balance after deducting the expenses.

15. On the other hand, the Claimant argues that she is eligible to 12 or 13 days accrued leave to be paid to her which amounts to the sum of AED 1200 or 1300.

16. Pursuant to Article 28 of the DIFC Employment Law states that:

> *"Where an employee's employment is terminated, the employer shall pay the employee an amount in lieu of vacation leave accrued but not taken."*

17. The Claimant commenced working in February 2017 until she resigned in July 2017. Pursuant to the Employment Contract she is entitled to 30 working days per annum as annual leave. The Claimant alleges that she is eligible to the accrued leave for the period she worked for the Defendant.

18. I am satisfied that pursuant to Article 28 of the DIFC Employment Law, the Claimant is entitled to an amount in lieu of untaken vacation accrued between 10 February 2017 and 25 July 2017 (5 months and 15 days). The Claimant's monthly salary was AED 3000, therefore, her daily wage would have been AED 100. Accordingly, the Defendant shall pay the Claimant for 13.75 days' worth of annual leave which has accrued but not taken [(30 working days / 12 months = 2.5 days per month) x 5 months and 15 days = 13.75)]. This amounts to AED 1,375 (13.75 x AED 100).

19. Although the Claimant signed the final settlement agreement and the DIFCA Employment Permit Cancellation. I am of the view that there was a mistake made by the Defendant in the calculation of the final settlement. I believe that the Claimant is entitled to be paid the days in lieu of vacation.

Conclusion

20. In light of the aforementioned, I find that the Defendant is liable to pay the Claimant in respect of 13.75 days in lieu of vacation; this amounts to AED 1,375.

21. All other claims are hereby dismissed.

22. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 19 September 2017

At: 10am