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

IOKUA

Claimant

and

THE INDU GROUP LTD

Defendant

Hearing:**8 November 2018**

Judgment: **13 November 2018**

Amended Judgment:**13 November 2018**

AMENDED 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 1,376.24 being the difference in the salary.

2. The Defendant shall pay the Claimant penalties under Article 18 of the DIFC Employment Law in the sum of AED 77,333.33 from 18 September 2018 to 17 October 2018.

3. The Defendant shall not use the Claimant's signature in any document related to audited financial statements and letter of representation to any entity or organisation.

4. The Defendant shall not send emails in the name of the Claimant.

5. All other claims shall be dismissed.

6. The Defendant shall pay the Court Fees to the Claimant in the sum of AED 1,574.19.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 13 November 2018

THE REASONS

The Parties

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

2. The Defendant is The Indu Group Ltd (herein "the Defendant"), a company registered in the DIFC located at, DIFC, Dubai.

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 22 March 2018 as a "Chief Financial Officer" with a commencement date of employment on 15 April 2018. The Claimant's total salary was AED 80,000 which consists of 60% of basic wage and 40% for allowances for housing, transportation, return ticket to home country for his annual leave, children's education and mobile telephone.

4. On 16 July 2018, the Defendant gave the Claimant notice of the termination of the Employment Contract.

5. On 24 September 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payment of AED 320,000 which consists of his unpaid salaries, compensation for loss of income to join the Defendant as well as retaliation, damaging the Claimants reputation as a result of the Defendant's false police report accusing the Claimant of stealing the Defendant's laptop, 3 months' bonus, air ticket for the Claimant and his family to San Francisco and for the Defendant to provide evidence that the letter of representation to Isai that he signed was never used by the Defendant as he signed it in good faith, but later was told there were fraud and forgeries in the financials which the Claimant is not endorsing or aware of their content.

6. On 15 October 2018, the Defendant filed an Acknowledgment of Service intending to defend all of this claim.

7. On 30 October 2018, the Claimant amended the claim and claimed unpaid salaries from 1 July 2018 to 16 July 2018 in the sum of AED 42,667 which the Defendant did not pay in full, the sum paid by the Defendant was only 41,290.32. The Claimant also claimed as follows; penalty for non-payment of claimed wages pursuant to Article 18(2) of the DIFC Employment Law from 30 July 2018 to 22 October 2018 for 84 days based on the Claimant's monthly salary of AED 80,000 per month; the amount of AED 224,000 and for the penalties to continue until the payment of full wage; the DIFC Courts Fee; that the Defendant shall not use the Claimant's signature in any documents related to the representation of the company; that the Defendant shall not use the Claimant's email without his knowledge; and other compensation resulting from the Defendant's behavior causing him and his family pain and suffering as a result of their false criminal and misrepresentations to the Court and the police as the Court deem appropriate.

8. The parties met for a Consultation with SCT Judge Ayesha Bin Kalban on 18 October 2018 but were unable to reach a settlement.

9. Both parties attended the hearing before me listed on 8 November 2018.

The Claim

10. the Claimant amended the claim and claimed unpaid salaries from 1 July 2018 to 16 July 2018 in the sum of AED 42,667 which the Defendant did not pay in full, the sum paid by the Defendant was only 41,290.32, therefore, the Claimant claimed the difference of AED 1,801.48.

11. The Claimant also claimed as follows - penalty for non-payment of claimed wages pursuant to Article 18(2) of the DIFC Employment Law from 30 July 2018 to 22 October 2018 for 84 days based on the Claimant's monthly salary of AED 80,000 per month; the amount of AED 224,000 and for the penalties to continue until the payment of full wage; the DIFC Courts Fee; that the Defendant shall not use the Claimant's signature in any documents related to the representation of the company; that the Defendant shall not use the Claimant's email without his knowledge; and other compensation resulting from the Defendant's behavior causing him and his family pain and suffering as a result of their false criminal and misrepresentations to the Court and the police as the Court deem appropriate.

The Defence

12. The Defendant alleges that they had paid all amounts owed to the Claimant under the terms of the Employment Contract for the period of employment from 15 April 2018 to 16 July 2018.

13. The Defendant provided evidence of payments during the course of employment which is as follows:

(a) On 3 May 2018, the Defendant's bank transferred the Claimant's salary for the period from 15 April 2018 to 30 April 2018 in the amount of AED 42,667 to the Claimant's account.

(b) On 31 May 2018, the Defendant's bank transferred the Claimant's salary for the period from 1 May 2018 to 31 May 2018 in the amount of AED 80,000 to the Claimant's account.

(c) On 5 July 2018, the Defendant bank's bank transferred the Claimant's salary for the period from 1 June 2018 to 30 June 2018 in the amount of AED 80,000 to the Claimant's account.

(d) On 17 October 2018, the Defendant's bank transferred to the Claimant's account the Claimant's salary for the period from 1 July 2018 to 16 July 2018 in the amount of AED 41,290.32 plus five days of accrued vacation pay in the amount of AED 18,390.80 for a total of AED 59,681.12.

14. The Defendant also alleges that in the Amended Claim Form the Claimant incorrectly calculated the amount owed to him for salary for this period, this mistake appears to be based on a miscalculation of the number of days in the month of July.

15. The Defendant alleges that the Employment Contract contained the following express term requiring the Claimant upon the termination of his employment to return all property belonging to the Defendant. Clause 9.4 states that:

> "Upon termination of your employment, you agree to return to the company equipment, keys, passes, correspondence, records, specifications, software, discs, hardware, notes, reports and other documents and any copies thereof and any other property belonging to the company or any of its subsidiaries or affiliates, which are in your possession or under your control, including any company car. You will, if required by the company, confirm in writing that you have complied with your obligations under this clause."

16. The Defendant alleges that the Claimant breached and continues to breach Clause 9.4 of the Employment Contract by failing to return all property belonging to the Defendant, including his DIFC identification card issued by the Dubai International Financial Centre Authority ("DIFCA") and the medical health insurance cards issued to the Claimant and his dependents.

17. Furthermore, the Defendant alleges that under the terms of a Personnel Sponsorship Agreement between the Defendant and the DIFCA, following the termination of the Claimant's employment, the Defendant became obligated to take all reasonable steps to ensure that the DIFC identification card and health cards issued by the Department of Health or any other official documents issued by the DIFCA were returned to the DIFCA within thirty (30) days from the date of termination of the Employment Contract. The Claimant's continuing breach of Clause 9.4 of the Employment Contract has caused the Defendant to be in default of the Defendant's obligations to the DIFCA.

18. The Defendant alleges that it had notified the Claimant numerous times of the Claimant's entitlement to his salary payment provided that the Claimant comply with clause 9.4 of the Employment Contract, but that the Claimant continues to breach Clause 9.4 by failing to turn over all of the Defendant's property. The Defendant also asserts that the notice of termination stated in part:

> "All Group-owed property, including ID and access cards, keys, laptops and other electronic equipment, personal protective equipment, stationary and business cards, and all information, data, records, documents and files in written or electronic form made by you or which came into your possession during your employment should be handed over immediately."

19. The Defendant alleges that the Claimant failed to comply with the notice of termination dated 16 July 2018.

20. On 20 July 2018, by way of an email sent by Mr. Iole (the Defendant's General Counsel), the Claimant was informed that he would be paid any salary owing in accordance with the DIFC Employment Law, but the Claimant still needed to return without any further delay the Defendant's laptop and all information, data, records and files in the Claimant's possession belonging to the Defendant.

21. The Defendant also alleges that on 19 August 2018, lawyers acting for the Defendant sent a letter to the Claimant stating that "*upon returning all of our client's property (including the laptop, documents and all financial data) and cooperating in the cancellation of your visa, our client will tender to pay the amount of your final salary for the 16 days worked in July 2018*".

22. The Defendant alleges that the Claimant failed to respond to any of the correspondence above in which the lawyers acting for the Defendant filed a complaint with the Dubai Police against Claimant on 25 August 2018 for failing to return the laptop owned by the Defendant despite the Defendant's repeated request for the return of the property. Finally, on 4 September 2018, the Defendant received the Defendant's laptop from the Dubai Police.

23. In response to the Claimant's Claim for penalties under Article 18(2) of the DIFC Employment Law. The Defendant alleges that they had repeatedly tendered to pay the Claimant his final salary of 16 days in July 2018, subject to the return of all of the Defendant's property and upon the Claimant cooperating in the cancellation of his residence visa and work permit. The Defendant claims that the Claimant has to date failed to return all of the Defendant's property and failed to cooperate in the cancellation of his residence visa and work permit.

24. The Defendant alleges that it would be unconscionable and against the public policy for the Claimant to be awarded any penalty under Article 18(2) of the DIFC Employment Law, especially such an unreasonable and exorbitant penalty, for a time period when the Claimant was (and continued to be) in breach of Clause 9.4 of the Employment Contract and the Claimant's obligation to cooperate in the cancellation of his residence visa and work permit.

25. The Defendant denies that the audited financial statements of the Irmhild and the letter of representation provided to Isai by the Irmhild were signed by the Claimant.

26. The Defendant also denies that any emails were sent by the Defendant in the name of the Claimant without the Claimant's knowledge and authorisation.

27. The Defendant also denies and asserts that the Claimant failed to prove that any damages were suffered by the Claimant and any false criminal claims or misrepresentations were made to the Court and the Police.

Discussion

28. 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.

29. The Claimant's claim is on the basis that he commenced work on 15 April 2018, however, the Defendant terminated his Employment Contract on 16 July 2018 which was during his probation period.

30. The Claimant's claim was on the basis that the Defendant failed to pay his salary for the period from 1 to 16 July 2018, therefore, such a delay triggers penalty under Article 18 of the DIFC Employment Law, which states the following:

> "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."
>
> On the other hand, the Defendant argued that payments were not made within 14 days as the Claimant was in breach of Clause 9.4 which states that:
>
> "Upon termination of your employment, you agree to return to the company equipment, keys, passes, correspondence, records, specifications, software, discs, hardware, notes, reports and other documents and any copies thereof and any other property belonging to the company or any of its subsidiaries or affiliates, which are in your possession or under your control, including any company car. You will, if required by the company, confirm in writing that you have complied with your obligations under this clause."
>
> In addition, the Defendant argues that the Claimant was contacted on numerous occasions to return the Defendant's properties in the Claimant's possession, however, the Claimant failed to comply with the Defendant's request.

31. The Defendant also presented evidence that the Claimant was contacted by way of an email on 20 July 2018. On 19 August 2018 the Defendant's lawyers responded to the Claimant's email sent on 15 August 2018 claiming the payment of his dues.

32. On 25 August 2018, the Defendant's lawyers filed a claim with the Dubai Police against the Claimant for the possession of the Defendant's properties without any right. On 4 September 2018, in Dubai Police Department the Claimant returned the Defendant's properties to the Defendant.

33. On 17 October 2018, the Defendant settled the Claimant's dues in the sum of AED 59,681.12 which consists of his salary for the period from 1 to 16 July 2018 and 5 days of accrued untaken holidays in the sum of AED 18,390.80.

34. Pursuant on the evidence filed by both parties, I find that the Defendant terminated the Claimant's Employment Contract on 16 July 2018, following which the payments of his entitlements should be made within 14 days to avoid penalties under Article 18 of the DIFC Employment Law. However, the Defendant argues that he had two reasons to delay the payment which are the Claimant's breach of Clause 9.4 of the Employment Contract and the Claimant's delay in the visa cancellation process.

35. I am satisfied with the Defendant's argument with regard to the breach of Clause 9.4 of the Employment Contract, in that, the Claimant, upon his termination, should have returned properties belonging to the Defendant. However, I am not satisfied that payments should be delayed on the basis that the Claimant failed to cooperate to cancel his visa, as the cancellation process should be made after the employee receives his monies as the visa cancellation application requires that the Claimant sign a confirmation that he has received all his dues.

36. I find that the Claimant is not entitled to penalty under Article 18(2) of the DIFC Employment Law from the period of 30 July 2018 up to 4 September 2018.

37. However, the Claimant shall be entitled to the penalties under Article 18(2) of the DIFC Employment Law from 18 September 2018 which is 14 days from the day the Claimant returned the Defendant's property at the Dubai Police on 4 September 2018 up until 17 October 2018.

38. Therefore, I find that the Claimant is entitled to Article 18(2) of the DIFC Employment Law from 18 September 2018 to 17 October 2018 in the sum of AED 77,333.33

39. The Claimant in his Amended Claim Form also argues that he has worked from 1 to 16 July 2018 in which he is entitled to the sum of AED 42,666.56. However, the Defendant only paid the sum of AED 41,290.32 which is less AED 1,376.24. The Claimant also claimed penalties under Article 18(2) of the DIFC Employment Law for the shortage of the amount paid to him.

40. The Defendant in his submission argued that the Claimant miscalculated the amounts.

41. However, at the hearing I have made the calculation pursuant to the following (AED 80,000/30 days= 2666.66 per day) (2666.66 per day x 16 days = AED 42,666.56), in which I find that the Claimant was paid less 1,376.24.

42. I find that the Defendant did not intentionally made a mistake in the calculation, however, it was miscalculated based on a different equation. However, I find that the Defendant became aware of the mistake during the hearing held and has 14 days to settle the difference in the sum of AED 1,376.24 from the date of the hearing when the Defendant became aware of the mistake.

43. Therefore, I find that the Claimant is not entitled to Article 18(2) of the DIFC Employment Law from 17 October 2018 up to the date of full payment, as there was a miscalculation and the Defendant only became aware of it at the hearing. However, the Claimant will be entitled to penalties under Article 18(2) if the Defendant fails to settle the difference of AED 1,376.24 within 14 days of the hearing held on 8 November 2018.

44. The Claimant also argued that the Defendant shall not use the Claimant's signature on audited financial statements and the letter of representation toIsai.

45. The Defendant denies that the audited financial statements of the Irmhild and the letter of representation provided to Isai by the Irmhild were signed by the Claimant.

46. Therefore, I find that the Defendant shall not use the Claimant's signature on any document related to the audited Financial Statements or a letter of representation to any entity or organisation.

47. The Claimant also claimed that the Defendant shall not send emails in the name of the Claimant without the Claimant's knowledge.

48. The Defendant also denies that any emails were sent by the Defendant in the name of the Claimant without the Claimant's knowledge and authorisation.

49. I also find that the Defendant shall not send emails in the name of the Claimant without the Claimant's knowledge.

50. The Claimant also claimed compensation resulting from the Defendant's behaviour causing him and his family pain and suffering as a result of the Defendant's false criminal claim and misrepresentation to the Court and the Dubai police as the Court deem appropriate.

51. The Defendant argues that the Claimant failed to prove that any damages were suffered by the Claimant and any false criminal claims or misrepresentations were made to the Court and the Dubai Police.

52. I am satisfied with the Defendant's argument that the Claimant failed to provide any evidence that the Claimant and his family suffered pain. Therefore, I dismiss the Claimant's claim for compensation.

Conclusion

53. In light of the aforementioned, I find that the Defendant shall pay the Claimant the total sum of AED 78,709.57 being penalties under Article 18 of the DIFC Employment Law and the difference in the Claimant's salary from 1 July 2018 to 16 July 2018. I also find that the Defendant shall not use the Claimant's signature in any document related to audited financial statements and letter of representation to any entity or organisation and the Defendant shall not send emails in the name of the Claimant.

54. All other claims shall be dismissed.

55. The Defendant shall pay the Court fee to the Claimant in the sum of AED 1,574.19.



Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 13 November 2018

Re-issued at: 4pm