Claim No. SCT 136/2020 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 MAHA AL MEHAIRI BETWEEN LEIGHTON Claimant and LANEYL HOUSE HOSPITALITY. LUDEN RESTAURANT Defendant Hearing : 22 June 2020 Judgment

Claim No. SCT 136/2020

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 MAHA AL MEHAIRI

BETWEEN

LEIGHTON

Claimant

and

LANEYL HOUSE HOSPITALITY. LUDEN RESTAURANT

Defendant

Hearing **: 22 June 2020**
Judgment **: 1 July 2020**

JUDGMENT OF SCT JUDGE MAHA ALMEHAIRI

UPON this Claim being filed on 20 April 2020

AND UPON a Consultation having been held before SCT Judge Ayesha Bin Kalban on 2 June 2020 with the Claimant and the Defendant's representative in attendance

AND UPON the parties failing to reach a settlement

AND UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 22 June 2020, with the Claimant and the Defendant's representative in attendance

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 14,932.74?.

2. The Defendant shall pay the Claimant the Court fees in the sum of AED 367.50.

Issued by:
Maha Al Mehairi
SCT Judge
Date of Issue: 1 July 2020
At: 1pm

THE REASONS

The Parties

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

2. The Defendant is Laneyl House Hospitality. Luden Restaurant (the "Defendant"), a restaurant located in the 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 January 2019 (the "Employment Contract").

4. On 15 April 2020, the Defendant terminated the Claimant's employment due to the global crisis of Covid-19. The Claimant was terminated without notice nor payment in lieu of notice, in addition to other deductions without the Claimant's approval.

5. On 20 April 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming AED 12,000 which includes payment in lieu of her one-month notice period, end of service gratuity, accrued but untaken leave days, and her annual flight ticket.

6. The Defendant responded on to the Claim on 28 May 2020 and 21 June 2020.

Discussion

7. At the hearing, the Claimant argued that as per her Employment Contract she is entitled to the sum of AED 12,000 which consists of the following:

(a) Payment in lieu of her one-month notice period in the sum of AED 6,200;

(b) End of service gratuity in the sum of AED 2,800;

(c) Payment in lieu of annual leave accrued but untaken in the sum of AED 1,200; and

(d) Annual flight ticket in the sum of AED 1,800.

8. The Defendant did not contest the Claimant's entitlements as per the Employment Contract but argued that due to the pandemic of Covid-19 which has affected the business and the financial position of the Defendant, they are unable to pay the Claimant her notice period.

9. As per the Defendant's records, the Claimant is entitled to end of service gratuity in the amount of AED 2,940, annual leave for 7 days in the amount of AED 1,330, and the flight ticket back to Ukraine in the amount of AED 2,000.

10. At the hearing, the Defendant agreed to pay the Claimant her end of service gratuity, accrued annual leave, and an annual flight ticket.

Findings

11. I find that the Claimant is entitled to her claims in accordance with the DIFC Employment Law, No. 2 of 2019 (the "Employment Law"). However, the parties' calculations do not appear to be in accordance with the Employment Law. I note that the Claimant's monthly salary is in the sum of AED 6,200, with the following breakdown;

(a) Basic salary: AED 4,200

(b) Accommodation allowance: AED 1,500

(c) Transportation: AED 500

12. The Employment Law identifies the `daily wage' as an employee's annual wage divided by two hundred and sixty (260). Therefore, in this case, AED 6,200 x 12 months / 260 days = AED 286.15 (daily wage)

Annual Leave

13. As per the Defendant's records, the Claimant is entitled to 7 days' annual leave, as such, 7 days x 286.15 daily wage = AED 2,003.05

Gratuity payment

14. I find that the Employment Contract is an unlimited term contract, therefore, the Claimant is entitled to her end of service gratuity until her last working day, which I have determined to be 15 April 2020. Article 66.2 of the Employment Law reads as follows:

"An Employee's Gratuity Payment shall be calculated as follows:

(a) an amount equal to twenty one (21) days of the Employee's Basic Wage for each year of the first five (5) years of service; and

(b) an amount equal to thirty (30) days of the Employee's Basic Wage for each additional year of service"

15. The Claimant worked for the period from 10 February 2019 to 15 April 2020 which calculates to 1 year and 64 days (21 days / 12 months = 1.75 for each month) and 64 days (1.75 / 30 = 0.06 for each day x 64 = 3.84 days).

16. The gratuity shall be calculated as follows:

(a) AED 4,200 x 12 months / 260 days = AED 193.84 (daily rate)

(b) 21 days (first year) + 3.4 (64 days) = 24.4

(c) AED 193.84 x 24.4 days = AED 4,729.69

17. Therefore, I find that the Claimant is entitled to the sum of AED 4,729.69 as end of service gratuity.

Air Ticket

18. In relation to payment of the Air Ticket, the Employment Contract stipulates that:

"Air ticket entitlement: For every 1 year of service economy class ticket to Italy or similar destination will be provided by the company."

19. The Claimant completed 1 year in February 2020, as such she is entitled to an air ticket back to her home country which is Ukraine in the amount of AED 2,000 as per the Defendant's records.

Notice Period

20. In relation to payment in lieu of notice, the Employment Contract stipulates that:

> "Pre-confirmation, either party (the company or the Employee) can terminate employment during the six months' probation period at any time.
>
> Post-confirmation, two months' notice should the employee wish to resign, and one-month notice should employer wish to terminate the agreement."

21. On 15 April 2020, the Defendant terminated the Claimant's employment. Therefore, as per the Employment Contract, the Claimant is entitled to one-month notice in the sum of AED 6,200.

22. Although the Defendant argued that they are in financial difficulty due to the Covid-19 pandemic which had a negative impact on the business, I find that the Defendant is obliged to honour the agreed terms of the Employment Contract.

23. Therefore, I find that the Defendant shall pay the Claimant the sum of AED 14,932.74? as well as the Court fees in the sum of AED 367.50.

Issued by:
Maha Al Mehairi
SCT Judge
Date of Issue: 1 July 2020
At: 1pm