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

ITSUO

Claimant

and

INARA HOLDINGS LIMITED

Defendant

Hearing: **5 July 2018**

Judgment: **11 July 2018**

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 148,899.12 which consists of annual airfare allowance, one month notice for May 2018, and compensation in lieu of vacation and gratuity.

2. All other claims are dismissed.

3. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 11 July 2018

At: 12pm

THE REASONS

The Parties

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

2. The Defendant is Inara Holdings Limited (herein after "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 1 July 2017 (the "Employment Contract"). However, the date of joining was on 2 January 2015 pursuant to Addendum 1 signed by both parties.

4. The Claimant was an employee of the Defendant from 2 January 2015 as a Chief SCF Officer. The Claimant received a total salary of AED 49,000 per month which consisted of AED 24,000 basic salary plus allowances in the sum of AED 25,000. The Claimant was also entitled to paid leave of thirty (30) calendar days per calendar year, medical insurance and annual airfare allowance.

5. On 23 May 2018, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") for payments in the sum of AED 258,000 which consist of 3 months' notice period pursuant to clause 4B of the Employment Contract in the sum of AED 147,000, end of service gratuity from 2 January 2015 till the date of the last day of employment, which includes the added sum of AED 59,250 being the calculation of 3 months from the date in which the Claimant submitted his resignation notice, cash amount in lieu of vacation days accrued but not taken which is equal to 26.5 days, , 5 days for the months of June and July in the sum of AED 50,750, ticket allowance in the sum of AED 950 and other applicable payments (if any) in line with the DIFC Employment Law and Regulations, Employment Contract and any other applicable laws and regulations.

6. The Defendant responded to the claim on 28 May 2018, defending the claim.

7. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 4 June 2018 but were unable to reach a settlement.

8. Both parties attended the hearing before me listed on 5 July 2018.

The Claim

9. The Claimant's case is that he was employed by the Defendant from 2 January 2015 up to the date of his alleged resignation on 30 April 2018.

10. The Claimant alleges that the Defendant had failed in several instances to pay the monthly salaries owed to the Claimant on time, with delays that accrued up to 49 days in some occasions, such events eventually led him to resign. The Claimant further alleges that he submitted his resignation both verbally and by confirmed email on 30 April 2018. He submits that, as he had tendered his resignation, he would be entitled to a 3 months' notice period, or payment in lieu of notice, pursuant to Clause 4B of the Employment Contract which reads as follows:

"after the probation period, the written notice required to be given by the Employer to terminate this offer shall not be less than (1) one month and shall not be less than three (3) months by the Employee."

11. In addition to the abovementioned claim, the Claimant submits that up to 30 April 2018, he was yet to receive his salary for March 2018.

12. Furthermore, the Claimant alleges that the Defendant did not accept the resignation notice, and immediately followed it with no reason-based termination notice on the same day also referring to Clause 4B of the Employment contract, wherein its provided that the notice provided in the Contract would be one month if the employee is terminated.

13. The Claimant alleges that the Defendant's management team called for a senior staff meeting on 18 April 2018, apologizing for the delays in payment of salaries, and informing the employees of the difficult financial position of the Defendant. The Claimant also adds that the management informed the employees that any individual that is not comfortable with the Defendant's situation is free to resign and leave the Defendant's employment. Pursuant to this, the Claimant alleges that he decided to resign.

14. The Claimant also submits that on 30 April 2018, he was called to the CEO's office for a meeting with the CEO and Mr. Ianthe. At the meeting, they discussed business matters, and then the CEO informed the Claimant that due to the financial difficulty the Defendant was facing, they decided to make a minor amendment to the Employment contract, specifically regarding the notice period clause. The Claimant also alleges that he had prepared his resignation and had kept the email ready prior to attending the meeting.

15. The Claimant submits that the amendments to be made to the notice period in the Employment Contract would allow the Claimant one month notice in the event that the Claimant resigned, rather than the 3 months period currently stipulated in the contract. The Claimant did not agree to this proposal and informed the Defendant that he would like to resign from the Defendant's employment. Thereafter, the Defendant provided the Claimant with a termination letter.

16. The Claimant alleges that the CEO, pursuant to the meeting, informed the HR of the situation and asked them to send the Claimant the termination letter immediately. Subsequently, the Claimant headed to his office and sent his resignation letter which was already prepared and one click away. The Claimant sent his resignation letter at 11:57am. However, the Defendant sent the Claimant the termination letter at 11:58am.

17. Furthermore, the Claimant alleges that since that incident, and for a period of 3 days, the parties were arguing about the termination/resignation. On 2 May 2018, the Claimant alleges that the Defendant asked him to finalise the handover and leave the company immediately.

18. The Claimant alleges that the Defendant provided the Claimant a settlement letter to be signed by him. The Claimant refused to sign this letter, because it stated that the notice period owed to the Claimant would be only one month.

19. The Claimant also refers to Clause 19 of the Employment Contract which states:

> "19. Notices
>
> A. Parties agree that any notices that are required to be given under this offer shall be in writing and delivered personally or transmitted by confirmed email in each case followed by confirmation, sent by certified mail or express courier, return receipt requested, to the principal place of business of the Employer of residence of the Employee as set forth herein.

B. Where the Employer or Employee is to change its address, written notice of such change shall be given to the other and any such change shall, by this reference, be adopted into this article and will become part of this offer."

20. The Claimant alleges that he followed the steps as set out in the Employment Contract, and the Defendant failed to do so.

The Defence and Counterclaim

21. The Defendant alleges that, in review of company records of the years 2016, 2017 and 2018, it was found that the Claimant was not punctual at all in his attendance to work. It was also submitted that the Claimant's performance was poor during the course of his employment.

22. The Defendant alleges that on 29 April 2018, the Board passed a Board resolution, accepting two resignations of the general counsel and the Chief Financial Officer of the Defendant, and the termination of three employees. The Defendant alleges that two employees were served with the termination and the third, being the Claimant, was served with the termination notice during the meeting held on 30 April 2018, as mentioned by the Claimant above.

23. The Defendant alleges that to some extent the Claimant's allegations in regards to the meeting held on 30 April 2018 are true.

24. The Defendant submits that they had prepared the end of service settlement based on a one-month notice, and it is the Defendant's contention that the Claimant was terminated, rather than having resigned. This was performed in accordance with Clause 4B of the Employment Contract, set out above.

25. The Defendant also alleges that they had provided the Claimant with the termination letter at the meeting held on 30 April 2018, but the Claimant refused to accept it and informed the CEO and Mr. Ianthe that he will be resigning. The Defendant submitted that once the Claimant left the meeting, he ran to his office and submitted his resignation via email at 11:57am on 30 April 2018.

Discussion

26. 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.

27. There is one issue in this claim, whether the Claimant resigned or whether the Defendant terminated the Claimant's employment.

28. The Claimant argues that prior being called into the meeting of 30 April 2018, he had his resignation letter ready and was "one click" away from sending it to the Defendant. He adds that at the meeting and following the Claimant's rejection of the Defendant's proposal to vary Clause 4B of the Employment Contract, the Defendant provided the Claimant with a termination letter, which the Claimant also rejected.

29. Furthermore, the Claimant argues that upon his rejection of the proposal and the termination letter, he informed Mr. Ianthe and the CEO that he wished to resign, and that his resignation letter is ready. He also adds that on his way out of the meeting the CEO said that "we will see who will be faster in sending the notice". Pursuant to this, the Claimant sent his resignation at 11:57am and the Defendant's termination letter was sent at 11:58am.

30. The Claimant further argues that the termination letter was not served in accordance Clause 19(A) of the Employment Contract set out above, and therefore, should be considered void.

31. The Claimant then argues that once he left the meeting, he served his resignation via email, which was then followed by express courier on 15 May 2018.

32. On the other hand, the Defendant argues that they had terminated the Claimant prior to him sending the resignation letter, and the Claimant was provided with the termination letter signed at the meeting held on 30 April 2018 but refused to accept it and went to send his resignation letter.

33. The Defendant also presented the board resolution in which the company accepted two resignations and decided to terminate three employees, one of which was the Claimant.

34. In my view, it appears that the Defendant made the decision to terminate the Claimant on 29 April 2018 pursuant to the board resolution document presented. On 30 April 2018, the Defendant called the Claimant for a meeting and proposed to lower the notice period to one month if the employee resigns, but the Claimant refused to accept. Subsequently, the Defendant provided the Claimant with the termination letter which was signed prior to the meeting by the Defendant's management team.

35. I also find that the Defendant provided the termination letter pursuant to clause 19(A) of the Employment Contract, as the Defendant gave the notice in writing and personally to the Claimant, whereby at the time, the Claimant acknowledged that he was being terminated. I also find that fulfilling Clause 19(A) of the Employment Contract constitutes that there are merely formalities to be followed. The Defendant completed this by sending the email at 11:58am.

36. I consider the Claimant's resignation not effective, as he resigned knowing that the Defendant had already terminated him.

37. Therefore, I am satisfied with the Defendant's argument that they had terminated the Claimant's employment via termination letter served personally on the Claimant which was unaccepted by him, and then followed by an email to fulfill the requirements of Clause 19(A) of the Employment Contract.

Conclusion

38. In light of the aforementioned, I find that the Defendant is liable to pay the Claimant the total sum of AED 148,899.12 as per the Defendant's final settlement document which consists of the following: Annual airfare allowance in the sum of AED 689.58, one month notice for May 2018 in

the sum of AED 49,000, compensation in lieu of vacation leave accrued but not taken in the sum of AED 42,690.41 and end of service gratuity in the sum of AED 56,519.12. All other claims are hereby dismissed.

39. Each party shall bear their own costs.



Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 11 July 2018

At: 12pm