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

LAHU

Claimant

and

LADHI

Defendant

Hearing : **5 August 2021**
Further Submissions : **26 August 2021**
Judgment : **1 September 2021**

JUDGMENT OF H.E. JUSTICE MAHA AL MHEIRI

UPON this Claim being filed on 14 July 2021

AND UPON a hearing having been listed before H.E. Justice Maha Al Mheiri on 5 August 2021, 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 Defendant shall pay the Claimant the sum of AED 34,389.14.

2. The Defendant shall transfer the sum of USD 444.91 which is equivalent to AED 1,635.04 into the Claimant's Qualifying Scheme.

3. The Defendant shall cancel the Claimant's visa.

4. The Defendant shall pay the Claimant a portion of the Court fee in the sum of AED 687.78.

Issued by:
Hayley Norton
SCT Judge
Date of issue: 1 September 2021
At: 10am

THE REASONS

The Parties

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

2. The Defendant is Ladhi (the "Defendant"), a company registered in the DIFC located within the DIFC, Dubai, the 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 7 November 2019 in the position of `Events Director' (the "Employment Contract"). The Claimant commenced her employment with the Defendant on 8 December 2019.

4. On 8 April 2020, the Defendant sent a circular email to all staff members informing them of pay cuts in the staff's salaries, citing reasons of financial difficulties faced by the Defendant in light of the onset of the COVID-19 pandemic. The Claimant's position was of a senior managerial nature and a 50% basic salary cut was imposed upon her remuneration as of the month of April 2020.

5. On 17 May 2020, a letter was sent from the Defendant's HR department informing all staff members of the continued salary deduction until further notice. The 50% off basic salary deduction to the Claimant's salary was imposed until December 2020.

6. As of January 2021, onwards, the Defendant imposed a 35% off basic salary deduction, which was communicated verbally during a staff meeting on December 2020, without the consent of the staff.

7. On 26 January 2021, the Claimant signed an amended employment contract (the "Amended Employment Contract") which provided a new title of `Director of Member Success'. The Amended Employment Contract provided that the Claimant's remuneration would be AED 27,000 effective 1 February 2021.

8. The Defendant paid the Claimant the increased salary as of the February 2021 pay cycle onwards, minus the 35% basic salary deductions monthly, with the Claimant's written approval.

9. The Claimant resigned from her position at the Defendant company on 25 May 2021, and her resignation notice was acknowledged by the Defendant's HR Manager on the same day. The Claimant was requested to refrain from serving her notice period, and instead the Claimant was placed on garden leave.

10. The termination date was confirmed by the Defendant in writing to be 23 June 2021, subject to a 30-day notice period, and the Claimant was informed that her visa would be cancelled on 25 June 2021. It is to be noted, that, as of the date of this Judgment, the court is of the understanding that the visa has not yet been cancelled, as the parties have failed to agree on the final settlement owed to the Claimant.

11. The same email that was in reply of the termination made reference to the Claimant's notice period and the termination date imposed by the Defendant being 23 June 2021. The Claimant submits that, as per her Amended Employment Contract, the Claimant is entitled to a 90-days' notice period, or payment in lieu of.

12. On 14 July 2021, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming various sums set out as follows:

a) Unlawful deduction of salary from 1 August 2020 to 31 January 2021 in the amount of AED 39,000, after the expiry of the Presidential Directive No. (4) of 2020 in respect of COVID-19 emergency measures;

b) 83 days remuneration in lieu of her notice period in the amount of AED 60,175;

c) Payment in lieu of accrued untaken annual leave in the amount of AED 9,332.54;

d) End of Service gratuity in the amount of AED 3,937;

e) DEWS Contribution in the amount of AED 4,048.67;

f) Prorated airfare for the Claimant in the amount of AED 2,371.67;

g) Spouse Insurance reimbursement in the amount of AED 1,136;

h) Article 19 penalty in accordance with the DIFC Law No. 2 of 2019, accruing on a daily basis for late payment of settlement and unlawful deductions; and

i) Legal costs for filing the claim against the Defendant.

13. On 18 July 2021, the Defendant filed an Acknowledgment of Service intending to defend all of the claim.

14. The parties met for a Consultation with SCT Judge Delvin Sumo on 29 July 2021 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 5 August 2021.

15. The Court requested further submissions from the parties in relation to the final settlement numbers, which the Claimant provided on 26 August 2021.

The Claim

16. The Claimant's case is that she was employed with the Defendant as a `Director of Member Success' from 8 December 2019 until 25 May 2021. Following her resignation, the Defendant confirmed that the Claimant was to serve a 30-day notice period, however, this is disputed by the Claimant who submits that she is entitled to a 90 days' notice period.

17. The total sum claimed by the Claimant as set out in the Claim Form is AED 122,000.88. The Claimant also seeks an unquantified sum as a penalty under Article 19 of DIFC Law No. 2 of 2019 (the "DIFC Employment Law").

The Defence and counterclaim

18. The Defendant, on 27 July 2021, paid a portion of the amount from the final settlement calculations prepared by the Defendant in the amount of AED 21,142.79 for the following:

a) Salary until 23 June 2021 in the amount of AED 16,675;

b) 3.93 days of accrued but untaken annual leave days up to 23 June 2021 in the amount of AED 2,679.55;

c) Gratuity in the amount of AED 1,352.54; and

d) Contributions paid to the Claimant's Qualifying Scheme in the amount of AED 435.79 for the month of June 2021

19. The Defendant deducted the amounts of AED 2,271.20 for the Claimant's spouse's insurance for the months of June 2021 and July 2021 and the unpaid expense by the Claimant in the amount of AED 1,220.80, which resulted in its payment to the Claimant in the amount of AED 17,215 for her final settlement.

20. The Claimant argues that there is a discrepancy between the Claimant's and the Defendant's calculations, which will be determined by the Court. The Defendant's defence to each of the Claimant's claims are set out in the Discussion below.

21. In relation to the Counterclaim, the Defendant argues that the Claimant has an obligation towards the Defendant of confidentiality and non-disparagement under the Amended Employment Contract. Specifically, the Defendant states that they are putting the Claimant under notice for future confidentiality and disparaging remarks towards the Claimant, and reserve their right to claim damages in the future.

Discussion

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

23. I shall set out below each of the Claimant's claims, the Defendant's defence to each Claim, and the Counterclaim and accordingly, the Court's reasoning and finding.

Unlawful deduction from 1 August 2020 to 31 January 2021 in the amount of AED 39,000, after the expiry of the Presidential Directive No. (4) of 2020 in respect of COVID-19 emergency measures

24. The Claimant submits that, pursuant to the Presidential Directive No. 4 of 2020, only the period from 21 April 2020 to 31 July 2020 was declared as an "Emergency Period" in the DIFC. During this time, employers in the DIFC were allowed to implement certain "Emergency Measures" which included reducing the pay of employees, without the employees' consent, on a temporary basis.

25. On April 8 2020, the Defendant sent an e-mail to all employees informing them about the Defendant's unilateral decision to make pay reductions, after which the employees received 2 formal letters from the Defendant's HR Manager, informing employees about the ongoing 50% salary cuts from the basic salary that would continue until September.

26. At that time, the Claimant was not aware of the "Emergency Period" timeframe which expired as of the end of July 2020, and trusted that the Defendant's actions were in line with the Law.

27. The DIFC Employment Law states that no deduction to an employee's remuneration is to be made by an employer without the explicit prior written approval of the employee. This is reflected in Article 20, which states as follows:

> "20. Deductions
>
> An Employer shall not deduct from an Employee's Remuneration or accept payment from an Employee, unless:
>
> (a) the deduction or payment is permitted under this Law, or agreed to in an Employment Contract not in contravention of this Law;
>
> (b) the prior written agreement of the Employee has been obtained in respect of the deduction or payment, provided that such deduction or payment is not prohibited under this Law;
>
> (c) the deduction or payment is a reimbursement for an overpayment of any Remuneration or expenses, or to recoup benefits utilised by an Employee in excess of their accrued entitlement under their Employment Contract; or."

28. The Claimant submits that she did not sign any addendum or any other written approval between the period of August 2020 and January 2021. The Claimant submits that the 50% basic salary deduction from 1 August 2020 to 31 December 2020 and the 35% basic salary deduction imposed in January 2021 was done in violation of the stipulations of the DIFC Employment Law. The Amended Employment Contract was signed on 26 January 2021, which became effective only on 1 February 2021, and the Claimant submits that she only signed it in response to the ignorance of the employment law and her rights.

29. The Claimant submits that she did not accept or agree to the deductions imposed by the Defendant to her salary that accrued from 1 August 2020 until 31 January 2021.

30. In response to this Claim, the Defendant submits that it was aware of the Presidential Directive period and argues that the changes and deductions made to the Claimant's salary were within the Defendant's powers to do so. It is also argued that the employees were duly notified of the reductions and that all actions were within the powers of the Defendant to ensure the sustainability of its business.

31. The Defendant also adds that if the Claimant had any objections to the reduction of her salary, she should have raised those objections at the time. The Defendant claims that the Claimant was aware of the restrictions faced by the Defendant, submitting that these deductions were only made to ensure the sustainability of the business.

32. In review of the parties' submission, I find that the Claimant had been duly notified of the deductions that would be applied by the Defendant to all of its staff members, as evidenced by the emails received from the Defendant's HR department.

33. Although the Claimant seeks to argue that she raised her concerns verbally with the Defendant, there is no evidence presented by the Claimant to support that action. I am of the view that the Claimant's action of continuing to work for the Defendant is to be taken as an implied action that she accepted the new terms of her employment agreement.

34. In light of this, I have determined that the Claimant's claim for payment of unlawful salary deductions for the period of 1 August 2020 until 31 January 2021 shall be dismissed. Therefore, I shall also dismiss the difference in the end of service gratuity for that period and shall accept the

Defendant's calculation in respect of gratuity owed to the Claimant in the amount of AED 1,352.54.

Notice period

35. The Claimant is seeking payment in lieu of a 90-days' notice period in accordance with the Amended Employment Contract in the sum of AED 60,175. The Claimant's last working day was 25 May 2021 and she claims that she is entitled to her salary until 23 August 2021.

36. The Claimant submits that she signed a contract with the Defendant, which was signed by their duly empowered representative at that time, the CEO, and submits that the Defendant's internal authority delegation processes regarding approvals for contracts are therefore irrelevant to this case and in her view definitely do not impact the validity of this contract or of any other contract the Defendant signed with the Defendant's employees. The Claimant submits that whether the CEO had to obtain any internal approvals from a higher body is not material to this case, nor is this by law invalidating a valid agreement that has been in place since January 2021.

37. The Claimant did not receive any communication or otherwise referring to any Board meeting or to any subsequent amendment of her Amended Employment Contract before resignation. Hence, she submits that on her resignation date, the Amended Employment Contract was the sole valid contract.

38. In reply, the Defendant argues that from the day that the Claimant submitted her resignation, its message to the Claimant was consistent, in that she is required to serve a 30 days' notice period. The Defendant submits that upon the Director and Board's realisation that the then CEO made a unilateral decision to amend and extend the Claimant's notice period from 30 days to 90 days without the Director and Board's approval, immediate action was taken from the Board meeting on 19 May 2021 to notify all staff that all contracts were to be aligned and this was done on June 6, 2021, by offering the amended contract to all the concerned employees by email.

39. The Defendant denies that the Claimant was deprived of her 90-days' notice, as such a condition was never approved by the Director and Board of Directors, and the Defendant submits that the Claimant was given her proper notice including her owed benefits and entitlements.

40. In review of Clause 18 of the Amended Employment Contract, I note that the duration of the notice period is set out to be for 90 days. The Clause stipulates that in the situation that an employee is under continuous employment for 1 year than the notice period of 90 days shall apply. The Amended Employment Contract did not mention any requirements or prior approvals for the 90-days' notice to apply, as stated below:

> "18 TERM AND TERMINATION:
>
> .
>
> (b) Notice period depends on the length of your employment; (for termination, redundancy, resignation, or non-renewal without cause).
>
> i. 7) days if the period of continuous employment is less than three (3) months
>
> ii. (45) days if the period of continuous employment is more than three (3) months but less than 1 year.
>
> iii. (90) days if the period of continuous employment is more than 1 year.
>
> ..."

41. There was no email communication from the HR department nor from the Claimant's line manager to amend the Amended Employment Contract. This, therefore, leads the Court to conclude that the Amended Employment Contract and the Clause referred to above is applicable to the Claimant's employment, thus I find that the Claimant is entitled to payment in lieu of a 90-days' notice period.

42. The Claimant tendered her resignation on 25 May 2021, and her increased salary according to her Amended Employment Contract is to be AED 27,000, minus 35% COVID-19 salary reduction from her basic salary of AED 15,000. Therefore, this amounts to AED 9,750 as set out in her monthly pay slips, as submitted by the Claimant.

43. The Claimant was paid for her full May 2021 salary and 23 days of her June 2021 salary, therefore, I find that the Claimant is entitled to payment in lieu of her 90-days' notice period from 24 June 2021 to 23 August 2021 (being her last day of notice) in the sum of AED 27,450. This is equivalent to 61 days, (being the remainder of the 90-days' notice period).

(AED 9,750 x12 / 260 = AED 450 x 61 days = AED 27,450)

44. Accordingly, the Defendant is ordered to pay the Claimant the amount of AED 27,450 as payment in lieu of her 90-days' notice period.

Payment in lieu of accrued but untaken annual leave

45. The Claimant claims an amount of AED 9,332.54 as the amount accrued against her untaken annual leave, taking the view that her last working day, inclusive of her notice period, is 23 August 2021. The Claimant submits that she is entitled to 22 days per annum and has carried over 5.38 days of leave from 2020. The Claimant has only availed 12 days during the course of the current year. The Claimant therefore seeks payment in lieu of 7.49 days of her accrued but untaken annual leave to be paid to her by the Defendant.

46. The Defendant submits that the Claimant is entitled to 3.93 days until 23 June 2021, and therefore states that the Claimant is entitled to the amount of AED 2,679.55, being the sum of the encashment of 13 days of accrued but untaken annual leave, which factors in the 5 days taken by the Claimant.

47. I agree with the Claimant's submission that the accrual of untaken annual leave is carried out gradually throughout the year, and that upon the termination of an employment relationship, any amounts owed would be pro-rated against the amount of time passed during the course of that

year. The Defendant already settled the untaken leave days until 23 June 2021 for 3.93 days. As such, I find that the Claimant shall be entitled to 3.66 days for the months of July 2021 and August 2021 in the amount of AED 1,647.

3.66 days for July and August 2021 (AED 22,000 x 12 / 260 = 450 x 3.66 = 1,647).

Airfare for the Claimant

48. The Claimant seeks payment of an airfare for herself to her home country. The Claimant claims this pursuant to Clause 4 of the Amended Employment Contract, which reads as follows:

> "4. ANNUAL LEAVE FLIGHT ENTITLMENT
>
> .
>
> (b) The airfare will be based on the mid-season Sky scanner.net or equivalent online travel agencies fare (March-April). The air ticket allowance shall be paid directly byLadhi.
>
> .
>
> (d) Encashment of the air ticket allowance will be processed along with the March or April payroll.
>
> (e) All confirmed employees as of the previous year (those who completed a year's employment before 31s of June of the current year) are eligible for a ticket entitlement of encashment along with July payroll; on a pro-rata basis or for the full entitlement, depending on their joining date.
>
> (f) Employees whose contract ends or is being terminated (without cause) throughout the year, will receive their pro-rata air ticket entitlement for that year at the last nearest pay cycle.
>
> ."

49. The Claimant has quantified the amount she is seeking in regards to this claim, and submits that she should be entitled to the airfare to the amount of AED 2,371.67.

50. The Defendant responded to this claim by submitting that the Claimant has already received all of her airfare entitlements and confirmed there are no further payments or compensations in this regard.

51. The DIFC Employment Law is silent on an employee's entitlement to an airfare. Such a benefit is common in employment relationships, and the general practice in this Court is to proceed with what is agreed upon by the parties in the agreement they have entered into. As such, I find that Clause 4 is clear as to what happens to this benefit in situations where the employee was terminated. In review of the papers before me and pursuant to the parties' submissions in the Hearing, it appears that the Claimant is entitled to the airfare entitlement for the year of 2021 on a pro-rata basis.

52. In light of this, I find that the Claimant is entitled to her airfare in the manner set out in Clause 4 of the Amended Employment Contract, pro-rated against the amount of time that has passed during the current year to her last working day, i.e. until 23 August 2021.

53. As provided above, the Claimant did quantify this claim and provided an estimate from a website named Flight Scanner in the amount AED 3,615, which the Court shall accept.

54. As the Claimant was employed by the Defendant until 23 August 2021, the Claimant is entitled to the sum of AED 2,120.92 (3,615 /12 = 301.25 per month x 7 months [until July 2021] = AED 2,108.75 + 3,615 / 260 = 12.17 per day x 23 days [until 23 August 2021] AED 2,120.92).

55. For the purpose of clarity, the Defendant is hereby ordered to pay the Claimant the amount of AED 2,120.92 for her airfare entitlement.

Qualifying Scheme Benefits

56. Further to my finding above, I have taken the view that the Claimant remained under the Defendant's employment until 23 August 2021, and the Defendant shall continue to contribute the amount equivalent to that period to the Claimant's account under the Qualifying Scheme.

57. On 26 August 2021, the Defendant filed submissions with the court to show the contributions it had made into the Claimant's Qualifying Scheme. Upon review of these submissions, it has come to the Court's attention that the Defendant failed to transfer any contributions for the months of June until 23 August 2021. In addition, the amount of USD 134.11 appears to have been transferred to the Claimant for the month of February 2021, when in fact, the transfer should be in the amount of USD 154.74, (USD 20.63 difference).

	Basic Salary	February	June	July	August 1-23	TOTAL
Basic (USD)	2,654.14	20.63	154.74	154.74	114.80	444.91

58. As the Claimant does not receive payment of the contributions directly from the Defendant, I hereby order that the Defendant shall transfer the sum of USD 444.91 (which is equivalent to AED 1,635.04) into the Claimant's Qualifying Scheme as payment of her benefits for the month of February, and from June to 23 August 2021.

Spouse Insurance reimbursement

59. Upon review of the case submissions, I have failed to find that the Claimant is entitled to spouse insurance. However, it appears that the Defendant offered the opportunity for its employees to purchase spousal insurance under a yearly sum that would then be deducted from an employee's monthly salary. The Claimant seeks the reimbursement of her spouse insurance which cost AED 6,816 per annum, from 14 April 2021 to 13 April 2022. The Claimant submits that, to date, she has paid the amount of AED 3,408 to the Defendant in relation to her spousal insurance. In addition, the Defendant deducted an additional amount of AED 2,271.20 for the months of June and July 2021, from the Claimant's final settlement, which resulted in the Claimant paying a total amount of AED 5,679.2 towards her spouse's insurance.

60. The Court notes that the insurance was only used for the period of 4 months and 9 days, which is equivalent to the sum of AED 2,120.92 [6,816/12 = 568 per month x 4 months [until 14 August 2021] = AED 2,272 + 6,816 / 260 = 26.22 per day x 9 days [until 23 August 2021] AED 2,507.98).

61. For the purpose of clarity, the Defendant is hereby ordered to reimburse the Claimant in the amount of AED 3,171.22 for her spouse insurance.

Article 19 penalty in accordance with the DIFC Employment Law

62. The Claimant seeks the accrual of a daily penalty in the amount of her daily wage pursuant to the Defendant's failure to pay her employment entitlements within 14 days of the Claimant's last working day. The Claimant submits that she should be entitled to this penalty charge from 4 December 2019, being 14 days from 20 November 2019. The Claimant, in her submissions, states that had the Defendant provided her with a list of her entitlements on time, the Claimant would not have filed a claim with the DIFC Courts.

63. The Defendant denies this claim, and submits that a member of the Defendant company had met with the Claimant to discuss the Claimant's final settlement, however when the Claimant asked for a list setting out the dues owed to the Claimant, the member of the Defendant was not able to provide one, as he did not have authority to do so.

64. Article 19 of the DIFC Employment Law stipulates as follows:

> (1) An Employer shall pay to an Employee all Remuneration (excluding, where applicable, any Additional Payments deferred in accordance with Article 18(2)), the Gratuity Payment and all accrued Vacation Leave not taken, within fourteen (14) days after the Termination Date.
>
> (2) Subject to the provisions of Article 19(3) and 19(4), an Employee shall be entitled to and the Employer shall pay a penalty equal to an Employee's Daily Wage for each day the Employer is in arrears of its payment obligations under Article 19(1).
>
> (3) A penalty pursuant to Article 19(2) may only be awarded to an Employee if the amount due and not paid to the Employee in accordance with Article 19(1) is held by a Court to be in excess of the Employee's Weekly Wage.
>
> (4) A penalty pursuant to Article 19(2) will be waived by a Court in respect of any period during which:
>
> (a) a dispute is pending in the Court regarding any amount due to the Employee under Article 19(1); or
>
> (b) the Employee's unreasonable conduct is the material cause of the Employee failing to receive the amount due from the Employer.

65. Pursuant to Article 19 (1) of the DIFC Employment Law, an Employer is required to pay an Employee all remuneration within fourteen (14) days after the termination, and in such instances where payment is not made within the time period, pursuant to Article 19(2) that Employer shall pay a penalty equal to an Employee's daily wage for each day the Employer is in arrears of its payment obligation under Article 19(1).

66. In review of the Court file, it appears that the Claimant filed her claim on 14 July 2021, ahead of her last working day being 23 August 2021. Therefore, the Court is of the view that the Claimant has filed this Claim ahead of 14 days grace period allotted to employers after the completion of the employee's last working day.

67. Accordingly, I dismiss the Claimant's claim for penalty for unlawful deduction of the basic salary for the period of 1 August 2020 until 31 January 2021.

Counterclaim

68. The Claimant denies any claim of disparagement or libel. The Claimant submits that the Defendant has no grounds for a claim of this basis and has failed to present any evidence to demonstrate this.

69. The Defendant argues that the Claimant breached her Contract with the Defendant and is liable for any reputation damage, however the Defendant failed to present any evidence or quantify this claim or to demonstrate the amount of damages suffered by the Defendant as a direct result of the Claimant's actions. The Court agrees with the Claimant's submissions and shall dismiss the Defendant's Counterclaim for lack of evidence.

Fees

70. The Claimant seeks to recover the fee that she has paid to the Court for the filing of this Claim. I am of the view that, as the Claimant has been unsuccessful on some of her claims, therefore, she should be entitled to recover a portion of the fee in respect of the claims for which she has been successful.

Conclusion

71. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 34,389.14.

72. The Defendant shall cancel the Claimant's visa.

73. The Defendant shall pay the Claimant the court fee in the amount of AED 687.78 being 2% of the judgment sum owed to the Claimant.