Claim No: SCT 281/2018

THE DUBAI INTERNATIONAL FINANCIAL CENTRE COURTS

In the name of His Highness Sheikh Mohammad Bin Rashid Al Maktoum, Ruler of Dubai

IN THE SMALL CLAIMS TRIBUNAL OF DIFC COURTS

BEFORE SCT JUDGE MAHA AL MEHAIRI

BETWEEN

Iolauis

Claimant

and

Iolette Resources Ltd

Defendant

Hearing: **4 November 2018**

Further submissions: **11 November 2018**

Judgment: **12 December 2018**

JUDGMENT OF SCT JUDGE MAHA AL MEHAIRI

UPON this claim having been called on 30 August 2018, 2 September 2018, and 12 September for a First, Second, and Third Consultation before SCT Judge Ayesha Bin Kalban and SCT Judge Nassir Al Nasser.

UPON the parties not having reached a settlement.

UPON a Hearing having been held before SCT Judge Maha Al Mehairi on 4 November 2018, with the Claimant attending in-person and the Defendant's representative attending via phone.

AND UPON reading the submissions and evidence filed and recorded on the Court file.

IT IS HEREBY ORDERED THAT:

1.The Claimant's claims are dismissed.

2. The parties shall bear their own costs.

Issued by:

Maha Al Mehairi

SCT Judge

Date: 12 December 2018

At: 10am

THE REASONS

Parties

1.Iolauis (hereafter the "Claimant") is an individual formerly employed by the Defendant company.

2. Iolette Resources Ltd (hereafter the "Defendant") is a company operating in the DIFC.

Background/Procedural History

3. The Claimant joined the Defendant company in 2002, when it was an on-shore Dubai entity. In June 2010, the Defendant company moved to the DIFC and the Claimant's visa was thus transferred to the DIFC as well. Beginning in November 2017, the Claimant expressed his intention to leave the company, with his resignation being accepted on 21 November 2017 via letter, listing his last day of service as 14 December 2017. This letter informed the Claimant that there was an ongoing investigation against him and that should the investigation find any misconduct on his part, his cause for termination would be changed from "resignation" to "for cause termination."

4. On 7 December 2017, the Claimant was given another letter stating that he had breached the company Code of Conduct and that he had therefore been terminated "for cause", with his last working day being 7 December 2017. The letter informed the Claimant that his notice period remained running until 14 December 2017. The Claimant signed the letter but wrote that "All the allegations stated above are baseless and wrong. I deny the charges."

5. After this, the Claimant was given his end-of-service benefits, however he contends that certain benefits were omitted. Thus, he filed a Claim in the DIFC Courts, Small Claims Tribunal ("SCT") on 9 August 2018 seeking certain sums and actions against the Defendant company. His claim sought a total of USD 27,500 to include stock benefits, incentive bonus, defamation damages, and airfare. He also sought for the company to change his reason for termination from "for cause" in the company's internal system.

6. The Defendant filed an Acknowledgement of Service on 26 August 2018 informing of its intention to defend against all of the claim. After the Defendant failed to attend the First Consultation on 30 August 2018, the parties attended two further Consultations on 2 September 2018 and 12 September 2018. However, the parties failed to reach a settlement. The Claimant was given permission to amend his Claim but failed to do so in the designated time period. Thus, a Hearing and submission schedule was set and the parties were called for a Hearing before me on 4 November 2018.

7. At the Hearing, the Claimant presented his arguments and submitted a supplemental submission. The Defendant provided responses and was given the opportunity to provide additional submissions by 11 November 2018, which it provided. The Claimant offered during the Hearing to provide a letter proving that he did not act as a director for an outside company while employed at the Defendant company and I indicated that such a submission would be accepted if he wished to provide it, however the SCT Registry did not receive any such submission. The Defendant's final submission was received in time and the case was reserved for Judgment.

The Claim

8. In sum, the Claimant has claimed a total of USD 27,500, however he failed to quantify a number of his claims. He claimed for reinstatement of his 2017 stock options in the amount of USD 27,500, compensation for "tarnished" image and character of at least half of his annual salary, bonus payment in the amount of AED 16,000, repatriation costs of an unspecified amount, and a change in the Defendant's internal system of termination "for cause."

9. The Claimant contends that he did nothing to violate the Defendant company's Code of Conduct and that the investigation resulting in his termination "for cause" was baseless and unjust. He contends that he was not a director of another company while working for the Defendant, only that he was issued shares in that other company as an option towards future work when the company became operational sometime in 2018. The other company was not operational when the shares were issued. He did not perform work for them while employed with the Defendant. The Claimant stated that he discussed his relationship with the other company with his boss orally but did not have written record of the discussion. He did not believe any further action was required as he was only a shareholder. The Claimant was given the opportunity to provide a letter from that other company clarifying why he was issued stock and when he began to work for them, however the Claimant failed to provide this letter. However, the Claimant has argued that the Defendant company should be required to change the reason for his leaving the company from "for cause" termination to "resignation" or termination "without cause".

10. The Claimant also contends that he planned for a six-month exit plan from the company when he expressed his desire to resign in November 2017. Based on this six-month exit plan, he would have been eligible for the bonus, which had a March/April distribution schedule. However, he was given a shorter exit date than planned and thus he has claimed his bonus. The Claimant contends that he would have been eligible for the bonus had the company honored his plan. Furthermore, he states that employees who are terminated without cause are also eligible for pro-rated bonus payments. Thus, as the "for cause" label on his termination is allegedly baseless, he should be at least eligible for a pro-rated bonus.

11. As to the stock options, the Claimant contends that these options were provided from his boss, although he does not have paper record of them. He notes that he was properly paid out for his 2015 and 2016 stock options but did not receive his 2017 options as he was due.

12. As to the airfare claim, the Claimant contends that he should receive one-way repatriation costs for himself and his family upon the close of his relationship with the Defendant. This, he contends, is company policy and the Defendant has provided the same to many other individuals. The Defendant has even provided this benefit at least once before to someone who was not planning to leave the UAE.

13. The Claimant did not reiterate his defamation claims at the Hearing but did state that he was very upset over the way he was treated upon given his notice to resign, especially after having worked for the company for such a long period of time and having been a top performer.

The Defence

14. The Defendant argued against providing any of the claimed remedies. Regarding the claim for stock options for 2017, the Defendant stated

that there is no record of such stock options being granted to the Claimant. Furthermore, if there was a record of such stock options being granted for the year 2017, those options would not have yet vested by the time the Claimant left the company, as per company policy. Thus, even if these options were given to the Claimant, he would not have been eligible to cash them out at the time of his leaving.

15. As for the bonus payment, the Defendant argued that as per company policy, the employee must be actively employed at the time of bonus payouts to be eligible to receive the bonus. The only time that employees are granted additional bonus rights is when an employee is terminated due to redundancy and then the bonus is pro-rated for time of termination. As the Claimant was terminated "for cause" and in any event desired to resign, he would not have received the bonus under either reason for termination. As to the six-month exit plan that the Claimant spoke of, there is no record of that being agreed or required. Thus, the Claimant would have left the company before bonus distribution regardless of the reason for termination.

16. As for the repatriation costs for the Claimant and his family, the Defendant argued that they are willing to pay these costs provided that the Claimant is not seeking to transfer his visa to another entity in the UAE. If he and his family are truly returning to their home country, the company policy is to provide the one-way airfare for them. However, the Claimant has indicated that he will be transferring his visa to another entity in the UAE and therefore he is not eligible for the airfare.

17. The Defendant did not address the claims for defamation other than to point out that the Claimant's termination has been treated as "without cause" externally and for the purposes for benefit calculations. The only instance where he has been deemed to be terminated "for cause" is within the company's internal system such that he will not be eligible for re-hire by the Defendant company. The Defendant argued that they do not reveal the reason for leaving to outside enquirers and any recommendation letters will be sent from the prior manager based on their relationship and the employee's performance of his work functions, not based on the reason for termination. Thus, there is no reason to grant the Claimant's request to require the Defendant to change the Claimant's reason for termination in the internal system.

18. In any event, the Defendant maintains that it had the right to terminate the Claimant "for cause" due to his undisclosed involvement as a shareholder and director of another company. There is no record of him disclosing his involvement to the Defendant company. This was against the company Code of Conduct and thus the Defendant had the right to terminate the Claimant "for cause".

Discussion

19. The DIFC Courts and the Small Claims Tribunal have jurisdiction over this case as it concerns employment within the DIFC and the amount in question is less than AED 500,000. This dispute is governed by the 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 and other agreements between the parties.

20. As the parties in this dispute agree that there was no relevant employment contract between the parties, the default terms of employment between the parties will be based upon the DIFC Employment Law. The parties did submit a letter of employment dated 22 May 2002 which included some terms of employment (the "Employment Letter"), however this letter was signed by the parties before the Defendant moved to the DIFC and before the Claimant was a DIFC employee, thus it cannot be said to be a DIFC Employment Contract entered into between the parties. However, to the extent that it honors the DIFC Employment Law, it is a valid agreement between the parties to which neither party objects. Furthermore, the parties are in agreement that the Claimant received his basic settlements as per the DIFC Employment Law and the Claimant is now claiming for items not required by the DIFC Employment Law.

21. There are a number of relevant issues that must be addressed in this case including the Claimant's right to the stock options, bonus payment, and airfare as well as his right to defamation damages and a change of his termination from "for cause."

22. I will first address his claim for defamation damages. The Claimant did not articulate his legal argument for these damages nor did he show a real harm felt by him. Thus, I must dismiss this claim in full.

23. Next, as to his other monetary claims for stock option, bonus, and airfare, none of these items are required by the DIFC Employment Law, nor are they listed in the Employment Letter of 22 May 2002. To be valid claims, they would need to be required by an employment contract, agreement or other company policy. The Claimant contends that these payouts should be made as per company policy, however the Defendant has shown that in fact, the Claimant would not have received these benefits had he been terminated "for cause" or had he resigned as he originally planned. While the Claimant may have been eligible to receive the 2017 stock options and the bonus had he exited the company on a six-month plan as he envisioned, there is nothing to indicate that this six-month option was required pursuant to agreement nor that the Defendant company accepted such a plan. Thus, without an agreement in place on the relevant issue, we fall back on the DIFC Employment Law, under which the Claimant did receive his rights. Furthermore, as for the airfare, it seems clear that the Claimant intends to stay in the UAE and thus would not receive this payout pursuant to company policy. Therefore, I cannot grant the Claimant any monetary compensation for the stock options, bonus, and airfare he claims.

24. Finally, there is the request that the Defendant company change its internal system to reflect that the Claimant was not terminated "for cause." I find it unnecessary at this time to determine whether the Claimant was or was not, in fact, in violation of the Defendant's Code of Conduct and whether he was properly terminated "for cause." Typically, when someone is contesting their own termination "for cause," it is because they were deprived of their rights under the DIFC Employment Law, rights they would have been eligible for had they not been terminated "for cause." In this case, the Claimant has not been deprived of any of his rights under the DIFC Employment Law due to his being terminated "for cause." As far as I can see, the only lingering effect of his termination "for cause" is that he is not eligible for re-hire by the Defendant company, and the Defendant's internal system has labeled the termination as "for cause." The Claimant has not shown proof of how this is currently causing him harm, only speculation that it may cause him harm in the future. However, the Defendant has also reiterated its policy regarding sharing information with outside enquirers, and it does not seem likely that the Claimant's being labeled as a "for cause" termination in the system will adversely affect him later. Should the Claimant provide some proof and evidence of harm caused to him by this label, that would be a different case. However, as the case stands now, I must dismiss this claim for lack of proof of measurable harm.

Costs

25. The parties shall bear their own costs.

Conclusion

26. In sum, the Claimant cannot collect on the claimed items as they are not legally owed subject to the DIFC Employment Law or any relevant employment contract or agreement proven between the parties. Thus, the Claimant's claims must be dismissed in full. The parties are to bear their own costs.





Issued by:

Maha Al Mehairi

SCT Judge

Date: 12 December 2018

At: 10am