Claim No. SCT 325/2017

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

BEFORE SCT JUDGE NATASHA BAKIRCI

BETWEEN

IMAMU

Claimant

and

IMANI

Defendant

Hearing: **16 January 2018**

Judgment: **25 January 2018**

JUDGMENT OF SCT JUDGE NATASHA BAKIRCI

UPON the Claim Form being filed on 15 November 2017;

AND UPON a Consultation having been held before SCT Judge Ayesha Bin Kalban on 19 December 2017 and the parties being unable to reach a settlement;

AND UPON a Hearing being held before me, SCT Judge Natasha Bakirci on 16 January 2018, with the Claimant and the Defendant in attendance;

AND UPON the Claimant and the Defendant filing further post-hearing submissions;

AND UPON reviewing the documents and evidence submitted in the Court file;

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant AED 7,950 for unpaid salary for the months August to November 2017.

2. All the other of the Claimant's claims are dismissed.

Issued by:

Natasha Bakirci

SCT Judge

Date of issue: 25 January 2018

At: 4 pm

THE REASONS

Parties

1.The Claimant, Imamu, is a Lebanese national who worked as a hairstylist at the Defendant's salon in the DIFC ("the Claimant').

2. The Defendant, Imani, is the owner of Inbar Beauty Salon in the DIFC ("the Defendant".)

The Claim

3. The Claimant asserted in his claim form that he had not been paid his salary by the Defendant's salon since May 2017, however at the hearing he limited this to August until November 2017. He also claimed at the hearing that he was entitled to 10 % commission on all the work he had done, as had been agreed with his manager. He further maintained at the hearing that he had worked overtime and should be compensated accordingly. The total amount claimed was AED 15,000.

The Defence

4. The Defendant replied to the DIFC Courts Small Claims Tribunal ("SCT") on 11 January 2018, alleging that the Claimant had been warned verbally and in writing on numerous occasions in respect of his failure to attend work on time or at all, and that the Claimant had refused to sign pay slips. Moreover, the Defendant claimed that he had given the Claimant AED 13,500 in personal loans.

5. During the hearing and in post hearing submissions, the Defendant asserted that certain deductions had been made from the Claimant's salary on account of his being late and absenteeism.

Discussion

6. The Claimant insisted at the hearing that representing himself in English would put him at a disadvantage, despite having been advised that the DIFC Courts operate solely in the English language. In order to best assist the Claimant in putting forward his case, a volunteer Arabic interpreter was enlisted from the Dispute Resolution Authority (DRA) staff.

7. It appeared to be agreed at the hearing that the Claimant had worked as a hairstylist at the Defendant's DIFC salon from 17 May 2017 until 10 November 2017. Although the Claimant had submitted an employment contract citing AED 895 as basic salary per month, AED 250 general allowance per month and AED 358 housing allowance per month as part of his case file, it later transpired at the hearing that his monthly salary was actually AED 7,000. After the hearing, the Claimant submitted a salary slip from the Defendant's salon indicating that his monthly salary was indeed AED 7,000.

8. Article 13 (2) of the DIFC Employment Law (DIFC Law No. 4 of 2005, as amended by the Employment Law Amendment Law, DIFC Law No. 3 of 2012) entitles employees to a written contract and provides as follows:

> "The contract of employment, shall include as a minimum: (a) the names of the employer and employee; (b) the date when the employment began; (c) the employee's wages; (d) the applicable pay period; (e) any terms and conditions relating to hours or days of work; (f) any terms and conditions relating to: (i) vacation leave and vacation pay, national holidays and pay for such national holidays; and (ii) sick leave and sick pay; (g) the length of notice that the employee and the employer is obliged to give and is entitled to receive to terminate the employment; (h) the title of the employee's job or a brief description of the employee's work; (i) where the employment is not intended to be for an indefinite duration, the period for which it is expected to continue or, if it is for a fixed term, the date when it is to end; (j) the place of work; (k) any disciplinary rules and/or grievance procedures applicable to the employee; and (l) any other matter that may be prescribed under the Regulations.
>
> (3) An employer shall expressly state in writing in the contract of employment which terms of the contract shall be subject to the employer's policies and may be changed at the employer's discretion from time to time by way of a written notice to the employee."

9. It is not clear whether the Claimant has such a detailed contract in his possession, notwithstanding neither party has submitted such to the SCT for my consideration.

10. I shall go on to consider each aspect of the Claimant's claims under each separate head.

A. Alleged Unpaid Salary

11.The Claimant asserted at the hearing that he was owed salary for the last three months of his employment, namely August, September and October, as well as the first ten days of November 2017. When I asked the Claimant how he had arrived at the sum of AED 15,000 as a total for his claim, given that the parties had agreed that his monthly salary was AED 7,000, he replied that he had taken into account and deducted certain cash advances that had been paid to him by the Defendant.

12. After the hearing the Claimant submitted a number of documents, which appear to be pay statements for the months in respect of which he claims his salary is outstanding.

13. Indeed, Article 14 of the DIFC Employment Law provides that employees have a right to an itemised pay statement:

> "Right to itemised pay statement (1) An employer shall give to an employee when, or before, an employee is paid any wages, a written itemised pay statement that includes: (a) the amount of the wages payable; and (b) the amounts of any variable, and any fixed, deductions from that amount and the purposes for which they are made."

14. As regards August 2017, it appears that the Claimant was paid AED 5,400, which means that AED 1,600 remains owed to him for that month. As regards September 2017, it appears that the Claimant received AED 1,600, which means that he is owed AED 5,400. I see that he was marked sick on 22 September 2017, but he would be entitled to certain sick leave under Section 34 of the DIFC Employment Law. As for

the days he has taken off, these would presumably be his weekly day off from work which seems to fall on a Tuesday. Therefore, the Claimant remains to be paid AED 5,400 for the work he did in September 2017. As for October 2017, it appears that the Claimant received AED 2,800, which means he is still owed AED 4,200 for October. This amounts to a total of AED 11,200 in unpaid salary for the months of August, September and October 2017.

15. As regards November 2017, I understand that is the month in which the Claimant stopped working for the Defendant's salon on 10 November 2017. His daily salary was AED 233.33, which would amount to AED 2,333 for the ten days, however, he is noted as having taken AED 200 as a cash advance which would leave AED 2,133 owing to him.

16. As for the Defendant's submission that certain amounts had been deducted from the Claimant's salary, I refer to Article 19 of the DIFC Employment Law which provides as follows:

> "19. No unauthorised deductions An employer shall not deduct from an employee's wages or accept payment from an employee, unless: (a) the deduction or payment is required or authorised under a statutory provision or the employee's contract of employment; (b) the employee has previously agreed in writing to the deduction or payment; (c) the deduction or payment is a reimbursement for an overpayment of wages or expenses; or (d) the deduction or payment has been ordered by the Court."

17. It appears from the Attendance Sheet provided by the Defendant in post-hearing submissions that the Claimant was marked absent for fourteen and a half days in August 2017, I am willing to concede this and will therefore deduct the outstanding AED 1,600 from the Claimant's salary for August 2017, as well as a further AED 1,783 from the Claimant's September 2017 salary. Moreover, it appears that the Claimant received AED 2,000 on 17 November 2017, which I shall also deduct from the total sum owed to him.

18. It follows that the Claimant is owed a total of AED 7,950 in respect of unpaid salary for the months of August, September, October and November 2017.

B. Alleged 10% Commission Agreed with Manager

19. At the hearing the Claimant further asserted that he had been promised a total of 10% commission on revenue generated by his work by the salon manager.

20. The Defendant denied knowledge of this, saying that he was unaware of any such arrangement with the manager at the time.

21. I have not seen any documentary or other evidence of this commission agreement and am not in a position therefore to order that the Claimant be compensated under this head of claim.

C. Alleged Overtime

22. The Claimant lastly alleged that he had worked overtime on a number of occasions and should be paid for the same. He claimed he could show the Court photographs and videos he had taken in the salon after his official working hours as proof of this.

23. The Defendant alleged that the Claimant was accustomed to remaining at the salon beyond his established working hours whilst waiting for his colleague and friend to finish work and was not in fact working overtime during those periods.

24. I have seen no indication of any specific agreement as to entitlement to overtime payment and am therefore unable to reach a conclusion on this point.

Conclusion

25. I have tried to make sense of this case, which has proved difficult, due to the unsatisfactory evidence before me. It is for the Claimant to make his case, something which I explained at length at the hearing on 16 January 2018, at which I gave both the Claimant and Defendant a further opportunity to submit any evidence in support of their arguments.

26. In his post-hearing submissions, the Claimant provided a salary slip showing his salary to be AED 7,000 monthly, he also made out a *prima facie* case of his being owed certain amounts of outstanding salary for the months claimed.

27. The Defendant has submitted a final warning letter to the Claimant dated 9 October 2017 which refers to a "worrying trend of absenteeism and always coming late to work." For the month of August 2017 in particular, the Defendant has submitted an annotated version of the Claimant's attendance sheet, which I am willing to accept as evidence as to why the Claimant was not paid the outstanding AED 1,600 for that month, and why a further AED 1,783 was deducted from his salary in September 2017. I have also taken into account a note from the Defendant's records regarding cash advances given to the Claimant in November 2017, that he received a further AED 2,000 on 17 November 2017, which I have deducted from the total amount owed to the Claimant.

28. At the hearing, both I and my colleague from the DRA who had kindly agreed to assist as an Arabic language interpreter, heard a wide range of personal accounts of money being sent to the Claimant for various reasons and in various circumstances. However, it is the task of this Court to determine as accurately as it can on the basis of the evidence submitted what the Claimant was owed by the Defendant's salon in his capacity as an employed hair stylist, leaving aside any personal arrangements between the parties.

Issued by:

Natasha Bakirci

SCT Judge

Date of issue: 25 January 2018

At: 4 pm