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 NASSIR AL NASSER

BETWEEN

LASHANDA

Claimant

and

LAUNE

Defendant

Hearing : **11 August 2021**
Judgment : **17 August 2021**

JUDGMENT OF H.E JUSTICE NASSIR AL NASSER

UPON this Claim being filed on 18 July 2021

AND UPON a Hearing having been held before H.E Justice Nassir Al Nassir on 11 August 2021, with the Claimant in attendance and the Defendant absent although served notice of this Claim

AND UPON reviewing the documents 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 187,454.54**

2. The Claimant shall, by no later than **4pm on 19 August 2021**, provide the Court with 3 quotations reflecting flight tickets to the United Kingdom.

3. The Defendant shall pay the Claimant a portion of the Court filing fee in the sum of **AED 3,749.09**

Issued by:
Nassir Al Nasser
SCT Registrar
Date of issue: 17 August 2021
At: 2pm

THE REASONS

The Parties

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

2. The Defendant is Laune (the Defendant), a company registered in the DIFC.

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 15 November 2018 ("the Employment Contract"). The Claimant commenced work with the Defendant on 7 January 2019.

4. On 18 July 2021, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") seeking various employment claims in the sum of AED 199,382.

5. On 2 August 2021, a consultation was held before SCT Judge Delvin Sumo but the parties were unable to reach a settlement.

6. In line with the rules and procedures of the SCT, this matter was referred to me for determination, pursuant to a Hearing held on 11 August 2021.

The Claim

7. The Claimant's case is that she was employed with the Defendant from 7 January 2019 to 9 April 2021. She submits that, on 15 March 2020, the Defendant notified her that she would be placed on unpaid leave for an unspecified period of time and was not given a date to return to work nor was she terminated.

8. As per the Employment Contract, the Claimant's salary was AED 17,000, consisting of a basic salary of AED 10,000, accommodation allowance in the sum of AED 5,000 and transportation allowance in the sum of AED 2,000.

9. The Claimant's Claim of AED 199,382 consists of the following breakdown:

(a) The sum of AED 11,769 for unpaid salary from 1 April 2020 to 21 April 2020;

(b) The sum of AED 140,708 for unpaid salary from 1 August 2020 to 8 April 2021;

(c) The sum of AED 15,535 as payment for end of service gratuity;

(d) The sum of AED 1,554 as reimbursement for medical expenses;

(e) The sum of AED 29,816 as payment in lieu of accrued but untaken annual leave;

(f) The sum of AED 5,000 as payment for 2 years' air fare ticket allowance;

(g) Interest at the rate of 12% per annum from the date that the outstanding amount fell due; and

(h) Any penalties to be decided by the Courts pursuant to Article 19(2) of the DIFC Employment Law.

The Defence

10. The Defendant failed to attend the hearing or submit any response to the Claim.

Discussion

11. This dispute is governed by DIFC Law No. 2 of 2019, as amended by DIFC Law No. 4 of 2020 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

12. Pursuant to Rule 53.61 of the Rules of the DIFC Courts, *"if a Defendant does not attend the hearing and the Claimant does attend the hearing, the SCT may decide the claim on the basis of the evidence of the Claimant alone."*

13. Below I shall set out each of the Claimant's claims and provide my determination as to whether the Claimant is entitled to these claims.

Salaries

14. The Claimant claims that she is entitled to salaries from 1 April 2020 to 21 April 2020 in the sum of AED 11,769. At the hearing, the Claimant confirmed that she had been placed on unpaid leave as of 15 March 2020 with no date provided for her return to work. Upon review of the Court file, I find that that the Claimant has failed to provide any evidence to substantiate this claim nor has the Claimant presented any evidence to suggest that she objected to being placed on unpaid leave for the concerned period. Therefore, I find that the Claimant is not entitled to her claim for salary from 1 April 2020 to 21 April 2020.

15. Presidential Directive No. 4 of 2020 in respect of the Covid-19 Emergency Measures (the "Directive") sets out the emergency measures that were put in place to enable employers to depart temporarily from specific DIFC Employment Law obligations. The Directive took effect from the period of 21 April 2020 to 31 July 2020.

16. Article 6(1)(C) of the Directive states as follows:

> "An Employer may only during the Emergency Period implement any one (1) or more of the following Emergency Measures in respect of some or all of their Employees without such Employees' consent:
>
> .
>
> (c) impose leave without pay."

17. At the Hearing, the Claimant agreed that the period from 21 April 2020 to 31 July 2020 will be considered as a period of unpaid leave during the emergency period.

18. Therefore, the Claimant claims her salaries from 1 August 2020 to 9 April 2021 (8 months and 6 days) in the sum of AED 140,708. However, the Claimant worked for 8 months and 8 days in which she is entitled to the sum of AED 140,471.23 for the period from 1 August 2020 to 9 April 2021.

Annual Leave

19. In relation to payment in lieu of accrued but untaken annual leave of 38 days, the Claimant claimed the sum of AED 29,816.

20. As per Article 28(3) of the DIFC Employment Law *"compensation in lieu of Vacation Leave, or any amount owed by the Employee in respect of excess Vacation Leave taken, shall be calculated using the Employee's daily wage at the termination date"*.

21. The Claimant's calculation is as follows:

AED 204,000 (annual salary) / 260 days of work per year = AED 784.62

AED 784.62 x 38 days = 29,815.56

22. I am satisfied with the Claimant's calculation which has been made in accordance with Article 28(3) of the DIFC Employment Law, and thus find that the Claimant is entitled to payment of AED 29,815.56

Flight Ticket

23. The Claimant claimed the sum of AED 5,000 as payment in lieu of a flight ticket.

24. Clause 13 of the Employment Contract reads as follows:

> "Upon completion of 12 months uninterrupted service with the Company, the Employee will be entitled to 1 round trip economy ticket and in each subsequent period of 12 months, to nearest international airport to United Kingdom to coincide with the Employee's annual leave. the amount for the ticket, which will be set on a yearly basis, will be transferred to the employee on his/her anniversary month."

25. In light of this, I find that the Claimant is entitled to her airfare in the manner set out in the Employment Contract. As provided above, the Claimant quantified this claim to AED 5,000 without providing any supportive evidence on the amount. Therefore, the Claimant shall provide the Court with 3 quotations showing the pricing of a ticket to the United Kingdom and accordingly the Court will decide on an amount to be paid to the Claimant in lieu of airfare.

Medical bills

26. The Claimant claimed the sum of AED 1,554 as reimbursement of medical expenses.

27. As per Clause 6 of the Employment Contract, "during the Employee's employment he/she will be entitled to medical insurance under the company's group Medical Insurance plan in effect and as may be amended from time to time". However, upon review of the court file, there is no evidence of Medical Insurance being provided to the Claimant.

28. Therefore, I find that the Defendant shall be liable to reimburse the Claimant for her hospital expenses dated 16 November 2020 and 5 December 2020, in the sum of AED 1,554.

End of Service Gratuity

29. The Claimant claims the sum of AED 15,535 as end of service gratuity.

30. Article 19 of the DIFC Employment Law stipulates the following:

> "(1) An Employer shall pay to an Employee, within fourteen (14) days after the Termination Date:
>
> a. all Remuneration.
>
> b. where applicable, any Gratuity Payment that accrued prior to the Qualifying Scheme Commencement Date under Article 66(1) not transferred to a Qualifying Scheme under Article 66(6)
>
> c. . ;"

31. Article 66 of the DIFC Employment Law states, where relevant, that:

> "(1) An Employee who is not required to be registered with the GPSSA under Article 65(`), and who completes continuous employment of at least one (1) year with their employer, before or after the Qualifying Scheme Commencement Date is entitled to a Gratuity Payment for any period of service prior to the Qualifying Scheme Commencement Date on the termination of their employment. .
>
> (2) 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 prior to the Qualifying Scheme Commencement Date; and
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> (b) an amount equal to thirty (30) days for the Employee's Basic Wage for each additional year of service prior to the Qualifying Scheme Commencement Date. .
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> .
>
> (7) From the Qualifying Scheme Commencement Date an Employer shall, on a monthly basis, pay to a Qualifying Scheme, for the benefit of each Employee who is not an Exempted Employee, an amount equal to as least the Core Benefits, which shall be calculated as follows:
>
> (a) five point eight three percent (5.83%) of an Employee's Monthly Basic Wage for the first (5) years of an Employee's service, inclusive of any period of employment of Secondment served to prior to the Qualifying Scheme Commencement Date; and
>
> (b) eight point three three percent (8.33%) of an Employee's Monthly Basic Wage for each additional year of service.

..."

32. The abovementioned clauses provide that an employer is required pay to an employee, within 14 days of the employee's termination date, a gratuity payment, in addition to amounts equal to the core benefits set out by the DIFC Employment Law, such amounts to be paid into a Qualifying Scheme. The gratuity payment to be paid must be for any period of service prior to the Qualifying Scheme Commencement Date, which is defined in the Law to be 1 February 2020. Therefore, I find that the Claimant is entitled to her gratuity payment, as accrued until 31 January 2020, calculated below.

33. The Claimant's basic wage is AED 10,000, and the gratuity payment is to be calculated against the period of service from the Claimant's first working day with the Defendant until 31 January 2020. The Claimant worked from 7 January 2019, meaning the period of service to be calculated for gratuity is 1 years and 24 days.

Gratuity = AED 10,000 basic wage x 12 months / 365 days = AED 328.76 per day x 21 days (for the first year) = AED 6,903.96

Gratuity for 24 days = 1.75 days / 30 = 0.05 per day x 24 days = 1.2 days x AED 328.76 = AED 394.51.

In accordance with the above, the Claimant is entitled to AED 7,298.47 for gratuity payment.

34. The parties have not provided any evidence to demonstrate that the Claimant has been enrolled into a qualifying scheme, nor has any evidence been provided to show that the Claimant would be exempted from being enrolled. In light of this, I order that the Defendant pay to the Claimant an amount equal to the minimum benefits set out by the DIFC Employment Law, which would reflect the contributions that the Defendant would have paid into the qualifying scheme had it complied with the requirements of the DIFC Employment Law. This is to be calculated as follows.

35. The Claimant's employment with the Defendant was for the amount of 2 years, 3 months and 2 days. Taking into consideration the period of service undertaken by the Claimant prior to the commencement date of the Qualifying Scheme, the Claimant would be entitled to contributions for the period between 1 February 2020 to 9 April 2021, being the resignation date.

Between 1 February 2020 - 9 April 2021:

The Claimant's monthly basic wage is AED 10,000 x 5.83% (being the minimum contribution amount defined by the Employment Law) = AED 583 per month x 14 months = AED 8,162.

Between 2 April 2021 - 9 April 2021:

AED 328.76 (being the Claimant's daily basic wage) x 5.83% = AED 19.16 per day x 8 day = AED 153.28.

36. Therefore, in accordance with the above, the Claimant's entitlement in regards to contributions that should have been made by the Defendant to a qualifying scheme is AED 8,315.28.

Penalties

37. The Claimant claimed penalties pursuant to Article 19(2) of the DIFC Employment Law.

38. The Claimant failed to provide a calculation for the penalties, nor did she seek to quantify the penalties to the date of filing the Claim.

39. Therefore, in light of the above, I dismiss the Claimant's claim for penalties.

Interest

40. The Claimant claimed interest at the rate of 12% per annum from the date that the outstanding amounts fell due until the date of payment.

41. Upon review of the Claimant's submissions, it is unclear upon what legal basis she is seeking to claim the said interest. Therefore, I dismiss the Claimant's claim for interest. However, pursuant to the DIFC Courts' Practice Direction No 4 of 2017 (Interest on Judgments), I shall award post judgment interest at the rate of 9% per annum.

Conclusion

42. In light of the aforementioned, I find that the Defendant shall pay the Claimant the total sum of **AED 187,454.54**, together with post judgment interest at a rate of 9% per annum effective from the date of this judgment until payment of the judgment sum.

43. The Claimant is also entitled to the Court fee paid for the filing of this Claim, and in taking into consideration the Claimant's failure to succeed on all its claims, I find it appropriate that the Defendant be ordered to pay the Court fee applicable to the judgment sum set out above, in the amount of **AED 3,749.09**