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

LIAM

Claimant

and

LUKE RESTAURANT AND BAR LIMITED

Defendant

Hearing : **6 October 2020**
Judgment : **7 October 2020**

JUDGMENT OF SCT JUDGE AND REGISTRAR NASSIR AL NASSER

UPON the Claim Form being filed on 13 August 2020

AND UPON a Hearing having been held before SCT Judge Nassir Al Nasser on 4 and 6 October 2020, with the Claimant in attendance and the Defendant's representative is absent;

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

AND PURSUANT TO Rule 53.61 of the Rules of the DIFC Courts the ("RDC")

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 9,722.61.

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

3. The Defendant shall pay the Claimant the Court fees in the sum of AED 367.50.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 7 October 2020
At: 2pm

THE REASONS

The Parties

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

2. The Defendant is **LUKE RESTAURANT AND BAR LIMITED**, a company registered in the DIFC. (the "Defendant").

The Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to an employment contract dated 31 January 2020 (the "Employment Contract").

4. On 22 July 2020, the Defendant terminated the Claimant's Employment Contract with immediate effect.

5. On 13 August 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming the total sum of AED 11,782 which consists of the following:

(a) Salary for 16 March 2020 to 22 July 2020 in the sum of AED 8,528;

(b) Accrued but untaken annual leave for 19 days in the sum of AED 1,254;

(c) One-month notice period in the sum of AED 2,000;

(d) Visa cancellation; and

(e) The Court fees applicable to the filing of this Claim.

6. On 27 August 2020, the Defendant responded to the claim by filing an Acknowledgment of Service setting out its intention to defend all of this Claim.

7. The parties met for a Consultation before SCT Judge Delvin Sumo on 3 and 10 September 2020 but the parties failed to settle the Claim.

8. Thereafter, the parties attended a hearing listed before me on 6 October 2020, in accordance with the RDC and the relevant procedures of the SCT.

Discussion

9. This dispute is governed by DIFC Law No. 2 of 2019 (the "DIFC Employment Law") in conjunction with the relevant Employment Contract.

10. The Claimant's monthly salary was AED 2,000, as set out in the Employment Contract.

11. The Claimant submits that he did not receive his salary from 16 March 2020 to 22 July 2020 in the sum of AED 8,528.

12. The Defendant failed to submit any evidence that the Claimant received his salary during the said period.

13. The Claimant's salary is AED 2,000 per month; therefore, I will calculate the amounts owed to the Claimant as follows:

From 16 March 2020 to 16 July 2020 = 4 months x AED 2,000 = 8,000

For the remaining 6 days from 17 July 2020 to 22 July 2020 = AED 2,000/30 days = AED 66.66 x 6 = 399.96

The Claimant is entitled to AED 8,399.96 in relation to his salaries.

14. The Claimant claimed the sum of AED 1,254 as payment in lieu of accrued but untaken annual leave days in the amount of 19 days.

15. As per the Employment Contract, the Claimant is entitled to 30 calendar days per year of service which can be claimed only after the completion of 12 months. The Claimant worked from 31 January 2020 to 22 July 2020, being the date that he was terminated with immediate effect. Therefore, the Claimant is entitled to payment in lieu of accrued but untaken annual leave for the period time for which he worked for the Defendant.

16. Article 28 of the DIFC Employment Law states, where relevant, that:

"(1) where an Employee's employment is terminated, the employer shall pay the employee an amount in lieu of Vacation Leave accrued but not taken up to and including the Termination Date calculated in accordance with Article 28(3).

(3) An Employee's Gratuity Payment shall be calculated as follows:

Compensation in lieu of Vacation Leave, or any amount owed by the Employee is respect of excess Vacation Leave taken, shall be calculated using the Employee's daily wage at the termination date."

17. The calculation should be as follows:

The Claimant worked for 5 months and 22 days = 30 calendar days/12 = 2.5 days each month x 5 months = 12.5 days + 2.5/30 days x 22 days = 1.83 = 14.33 days are the Claimant's entitlement in relation to accrued but untaken annual leave.

18. The Claimant's salary was AED 2,000 per month and as per the DIFC Employment Law, and his daily wage in regards to the calculation on Vacation Leave. Therefore, the Claimant's entitlements are to be calculated is as follows:

AED 2,000 x 12/260= AED 92.30 x 14.33 days = AED 1,322.65

19. The Claimant claimed the sum of AED 2,000 as payment in lieu of a one-month notice period. However, pursuant to the Contract, the Claimant was on a probation period of six months.

20. As per Article 62(6) of the DIFC Employment Law:

"Minimum Notice Period does not apply:

(a) During any probation period agreed in an Employment Contract."

21. In light of the abovementioned clause, I find that the Claimant is not entitled to payment in lieu of a one-month notice period in the sum of AED 2,000.

Findings

22. RDC 53.61 of the Rules of the DIFC Courts stipulates that *"if a defendant does not attend the hearing and the claimant does attend the hearing, the SCT may decide the claim on basis of the evidence of the Claimant only"*.

23. Therefore, I find that the Claimant is entitled to the sum of AED 9,722.61 consisting of following:

(a) Salary from 16 March 2020 to 22 July 2020 in the sum of AED 8,399.96

(b) Payment in lieu of 14.33 days of accrued but untaken annual leave in the sum of AED 1,322.65.

24. The Defendant shall also cancel the Claimant's visa.

Conclusion

25. In light of the aforementioned, it is hereby ordered that the Defendant shall pay the Claimant the sum of AED 9,722.61.

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

27. The Defendant shall pay the Claimant the Court fees in the sum of AED 367.50.

Issued by:
Ayesha Bin Kalban
SCT Judge and Deputy Registrar
Date of issue: 7 October 2020
At: 2pm