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

LILY

Claimant

and

LEON RESTAURANT DIFC

Defendant

Hearing : **27 September 2020**
Judgment : **5 October 2020**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON the Claim Form being filed on 4 August 2020

AND UPON a Hearing having been held before SCT Judge Nassir Al Nasser on 27 September 2020, with the Claimant and the Defendant's representative in attendance

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 his end of service entitlements in the sum of AED 4,141.47

2. The Defendant shall pay the Claimant the Court fee in the sum of AED 367.50.

Issued by:
Nassir Al Nasser
SCT Judge
Date of issue: 5 October 2020
At: 12pm

THE REASONS

The Parties

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

2. The Defendant is LEON Restaurant DIFC, a company registered in the DIFC located at Burj Daman, DIFC, Dubai (the "Defendant").

The Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant pursuant to fixed employment contract for the period of two years dated 20 June 2016 (the "Employment Contract") with a commencement date on 1 July 2016. However, upon the renewal of the Employment Contract on 14 July 2018, it is stated in the Employment Contract that the actual start date is 14 July 2016.

4. On 21 June 2020, the Claimant provided his resignation notice to the Defendant, who in turn, accepted the resignation.

5. On 4 August 2020, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") claiming the payment his end of service entitlements in the sum of AED 20,000.

6. On 19 August 2020, the Defendant responded to the claim by filing a defence.

7. The parties met for a Consultation with SCT Judge Delvin Sumo on 27 August 2020, 1 and 7 September 2020 but were unable to reach a settlement.

8. Thereafter, the parties attended a hearing listed before me on 27 September 2020.

Claimant's submission

9. The Claimant filed a claim with the SCT alleging that he is entitled to the sum of AED 20,000, consisting of the following claims:

(a) Gratuity in an amount between AED 12,000 to 13,000;

(b) Flight ticket in the sum of AED 2,350;

(c) Salary in the sum of AED 1,755; and

(d) Compensation in the sum of AED 2,600.

10. The Claimant confirmed that he has been working with the Defendant since 2016 pursuant to a fixed term contract, the duration of which was set out to be two years (the "Contract"). The Contract was renewed in 2018 for a further two years.

11. On 21 June 2020, the Claimant resigned by way of email, and stating that his resignation date should be 15 June 2020, as discussed verbally between the parties and further confirmed that his last working day will be on 16 July 2020, being the date of the Contract's expiry. The Defendant accepted the Claimant's resignation by way of an email dated 21 June 2020.

12. The Claimant alleges that the Defendant refused to pay him his End of Service Entitlements and therefore filed this Claim seeking the amounts he is seeking from the Defendant.

The Defendant's submissions

13. The Defendant alleges that the Claimant failed to complete the employment term that was set out in the Contract. The Contract was set out to be for a fixed term of two years from 14 July 2018 to 14 July 2020, and the Claimant resigned ahead of the Contract's expiry date, on 15 June, as agreed verbally by the parties and confirmed by way of the Claimant's email dated 21 June 2020.

14. The Defendant submits that the Claimant is not entitled to his end of service benefits as the Claimant failed to complete the 2 years' term set out in the Contract. At the Hearing, the Defendant confirmed that the Claimant should only be entitled to his salary in the sum of AED 2,675.

Discussion

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

16. The Defendant, in its submissions, makes reference to the UAE Federal Labour Law, which does not apply in the DIFC. The Claimant is employed by a DIFC entity, and therefore, the DIFC Employment Law shall apply.

17. Clause 14 of the Employment Contract reads as follows:

"Your contract of employment is limited for 2 years. In case you choose to terminate your services with the company prior to the expiry of 2 years for whatsoever reason subject to the limitations set forth under the Employment Law, you shall be liable to compensate the company for (i) the costs incurred by the company to process your visa and costs of complying with other labour formalities, air fare, health card (ii) the entire cost of the uniform if provided by the Company (iii) training costs etc, the company reserves the right to set-off the above payment from the end of service benefits payable to the Employee under this Contract without any further notice."

18. Clause 11(1) of the DIFC Employment Law, stipulates the following:

"The requirement of this Law are minimum requirements and a provision in an agreement to waive any of those requirements, except where expressly permitted under this Law, is void in all circumstances".

19. Clause 57(1) and (2) of the DIFC Employment Law, read as follows:

"(1) If an Employee is required to work in the DIFC, their Employer is required to obtain and maintain, at the Employer's own cost, the requisite sponsorship documentation (including UAE and DIFC identity documentation), visas, authorizations, licenses, permits and approvals as may be required from time to time by Federal Law, Dubai Law, a Competent Authority or a Personnel Sponsorship Agreement, to enable the Employee to work lawfully for the Employer in the DIFC and comply with any such requirements.

(2) "an Employer is not permitted to:

(a) Recoup any costs and expenses incurred pursuant to Article 57(1) from an Employee; or

(b) Retain the passport or other original personal documents of an Employee."

20. Therefore, I find that Clause 14 of the Employment Contract is void. I also find that the Claimant is entitled to his end of service entitlements, to be calculated below.

Gratuity

21. The Claimant argues that he is entitled to around AED 12,000 to 13,000 as gratuity payment. I am not sure how the Claimant arrived at this calculation, as the Claimant has failed to provide any evidence to conclude that he would be entitled to this amount.

22. 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

(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. .

.

(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."

23. 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 his gratuity payment, as accrued until 31 January 2020, calculated below.

24. The Claimant's basic wage is AED 540, 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 14 July 2016, meaning the period of service to be calculated for gratuity is 3 years and 6 months and 16 days.

Gratuity = AED 540 basic wage x 12 months / 365 days = AED 17.75 per day x 21 days (for the first 3 year) = AED 1,118.25

Gratuity for 6 months = 21 days/ 12= 1.75 days = 6 months x 1.75= 10.5 days x AED 17.75 = AED 186.37.

Gratuity for 16 days = 1.75 days / 30 = 0.05 per day x 16 days = 0.8 days x AED 17.75 = AED 14.20.

In accordance with the above, the Claimant is entitled to AED 1,318.82 for gratuity payment.

25. 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.

26. The Claimant's employment with the Defendant was for the amount of 3 years, 6 months and 16 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 21 June 2020, being the resignation date.

Between 1 February 2020 - 21 June 2020:

The Claimant's monthly basic wage is AED 540 x 5.83% (being the minimum contribution amount defined by the Employment Law) = AED 31.48 per month x 4 months = AED 125.92.

Between 1 June 2020 - 21 June 2020:

AED 17.75 (being the Claimant's daily basic wage) x 5.83%= AED 1.03 per day x 21 days = AED 21.73.

27. 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 147.65.

Flight Allowance

28. The Claimant claimed the sum of AED 2,350 in relation to his flight allowance. In the Claim Form the Claimant submits that he was only paid the sum of AED 1,200 in relation to a ticket he allegedly purchased for AED 2,800.

29. Clause 9 of the Employment Contract stipulates the following:

"Subject to the home leave ticket entitlement of once in twenty-four (24) months, home leave tickets may not be accumulated beyond the corresponding holiday year in which they fall due unless the Employee is unable to take the holiday entitlement in a particular holiday year due to business reasons. The holiday leave ticket purchase will be at the sole discretion of the company. You will not be entitled to claim payment in cash in lieu of your home leave ticket but you may take an airline ticket for the equivalent value to another destination, subject to prior approval of the director or head of the department".

30. The Claimant failed to provide the Court with any evidence demonstrating the cost of the ticket he purchased. Therefore, I dismiss the

Claimant's claim for flight allowance.

Salary

31. The Claimant argues that he is entitled to salary in the sum of AED 1,755. At the Hearing the Defendant confirmed that the Claimant is entitled to the sum of AED 2,675 as salary to 29 June 2020, being the days he worked with the Defendant.

32. Therefore, in accordance with the amounts provided by the Defendant, I find that the Claimant is entitled to the sum of AED 2,675 in relation to his unpaid salary.

Compensation

33. The Claimant submits that he is entitled to the sum of AED 2,600 as compensation.

34. The Claimant failed to provide any evidence to demonstrate that the Claimant has undergone any form of mistreatment or wrongdoing at the hands of the Defendant which would entitle him to seek compensation in the form of damages. Therefore, I dismiss the Claimant's claim for this amount accordingly.

Conclusion

35. In light of the aforementioned, the Defendant shall pay the Claimant his end of service entitlements in the sum of AED 4,141.47.

36. The Defendant shall pay the Claimant the Court fee in the sum of AED 367.50

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Nassir Al Nasser
SCT Judge
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