Claim No. SCT 326/2019

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

JACENTY

Claimant

and

JAFAR MIDDLE EAST LLP

Defendant

Hearing: **28 July 2019**

Judgment: **29 July 2019**

JUDGMENT OF SCT JUDGE NASSIR AL NASSER

UPON hearing the Claimant and the Defendant's Representative

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

IT IS HEREBY ORDERED THAT:

1. The Claimant's claim shall be dismissed.
2. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of issue: 29 July 2019

At: 9am

THE REASONS

The Parties

1. The Claimant is Jacenty (herein "the Claimant"), an individual filing a claim against the Defendant regarding his alleged employment at the Defendant company.
2. The Defendant is Jafar Middle East LLP (herein "the Defendant"), a company registered in the DIFC located in DIFC, Dubai.

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 August 2016 (the "Contract").
4. On 9 August 2018, the Claimant was terminated by the Defendant and his last working day was on 9 September 2018.
5. On 3 July 2019, the Claimant filed a claim in the DIFC Courts' Small Claims Tribunal (the "SCT") alleging that 22 days leave salary was not paid to him along with his final settlement in the sum of AED 13,900.

6. On 10 July 2019, the Defendant filed an Acknowledgment of Service with the intention to defend all of the claim. On 24 July 2019, the Defendant filed his defence.

7. The parties met for a Consultation with SCT Judge Maha Al Mehairi on 17 July 2019 but were unable to reach a settlement.

8. Both parties attended the hearing before me listed on 28 July 2019.

The Claim

9. The Claimant's case is that he was employed with the Defendant since 15 August 2016. On 9 August 2018, the Claimant was terminated pursuant to a termination letter and his last working day was on 9 September 2018. The Claimant alleges that the Defendant did not include his 22 days leave balance to his final settlement and claimed the sum of AED 13,900.

The Defence

10. The Defendant alleges that the Claimant was terminated on 9 August 2018 with his last working day on 9 September 2018. Upon termination, the Claimant was expected to serve a one month notice as per the terms of the Contract.

11. The Defendant alleges that during the period of the notice the Claimant was either absent or worked for half a day only, with the total days of his absence amounting to 6.5 days.

12. The Defendant also confirms that they have used the Claimant's annual leave in respect of the unauthorised leave so the Claimant's pay on termination would not be affected.

13. The Defendant alleges that the Claimant's entitlement to annual leave for 2018 was 17.5 days pro-rated and that the Claimant's annual leave taken in combination with his unexplained absence accumulates to 17.5 days.

14. The Defendant also alleges that the Claimant was paid his full entitlement in the sum of AED 32,178.14 on 22 September 2018.

Discussion

15. This dispute is governed by 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.

16. The Claimant's claim is that the Defendant failed to pay him his entitlement of 22 annual leave in the sum of AED 13,900 when his final settlement was paid. However, the Defendant argues that the Claimant's entitlement to annual leave for 2018 was 17.5 days pro-rated only.

17. The Defendant argues that the Claimant utilized his 17.5 annual leave during the course of his employment with the Defendant.

18. I must first determine what was the Claimant's annual leave balance up until his last day of employment, namely, 9 September 2018.

19. Clause 11.1 of the Contract stipulates the following:

> "Jafar's holiday year run from 1 January to 31 December. For the duration of this contract you shall be entitled to 25 days paid basic holiday. In addition, you will be entitled to the public holidays observed byJafar. These will be notified to you along with any nominated days the office will close"

20. The Claimant's entitlement as per the Contract is 25 days holiday per year from 1 January to 31 December. During 2018, the Claimant worked only from 1 January to 9 September which is less than a year. Therefore, I have calculated the Claimant's entitlement for the abovementioned period, on a pro rata basis, as the following:

    25 days / 12 months = 2.083 days annual leave per month

    2.083 x 8 = 16.66 from 1 January 2018 to 31 August 2018.

    2.083 / 30 = 0.069 per day x 9 days from 1 September to 9 September = 0.621

    16.66 + 0.621 = 17.281 days is the Claimant's annual leave entitlement for 2018 from 1 January 2018 to 9 September 2018.

21. Therefore, I find that the Claimant incorrectly claimed 22 days annual leave and failed to provide evidence to support his claim.

22. The second question that I must determine is whether the Claimant is entitled to 17.281 days of leave to be paid along with his final settlement.

23. The Defendant argues that the Claimant's annual leave taken in combination with his unexplained absence accumulates to 17.5 days. The Defendant provided a log of the Claimant's leave balance during the period of 2018 which reflects that the Claimant applied for annual leave for 9 days (confirmed by the Claimant at the hearing) and that the remining balance was 8.5 days. It is argued by the Defendant that the Claimant was absent for 6.5 days during his notice period without any justification as to his absence or without following the absence process as per the Company's "Attendance Management Policy and Procedure".

24. The Defendant argues that the Claimant utilized his total of 17.5 days of annual leave. However, pursuant to the calculations made, I am of the view that the Claimant only utilized 15.5 days and there is a remining unpaid balance of 2 days of annual leave.

25. At the hearing the Claimant argued that the final settlement in the sum of AED 32,178.14 was wrongly calculated and paid by the

Defendant. The payment made included the following breakdown:

(a) 9 days of September salary in the sum of AED 5,261.54.

(b) End of service gratuity payment in the sum of AED 26,916.60.

26. The Claimant's salary was AED 19,000 per month in which AED 15,200 was the basic salary and AED 3,800 was the housing allowance. At the hearing I recalculated the payments made to the Claimant keeping in mind that he has worked for 2 years and 24 days, and found the following:

(a) 9 days of September 2018 = AED 19,000.00 x 12 months = AED 228,000 / 365 = AED 624.65 daily wage x 9 days = AED 5,621.91.

(b) End of Service gratuity = AED 15,200 x 12 months / 365 = AED 499.72 daily basic wage x 42 days per year (the Claimant worked for two years) = AED 20,988.24.

(c) End of Service gratuity for 24 days = 21 days per year / 12 months = 1.75 day per month / 30 days = 0.05 x 24 days = 1.399 days x 499.72 = AED 699.2.

(d) 2 days unpaid annual leave = AED 624.65 x 2 = AED 1,249.3.

(e) Therefore, The Claimant's total entitlement calculated to AED 28,558.65.

27. I have calculated the gratuity as per Article 62(2)(a) of the DIFC Employment Law which states the following:

"the gratuity payment shall be calculated as follows: twenty-one (21) days' basic wage for each of the first five (5) years of service."

28. As per the calculations that I made at the hearing, I have found that the Defendant paid the Claimant the sum of AED 32,178.14 when, in fact, his entitlements should have been in the sum of AED 28,558.65. Therefore, the Claimant was paid an additional sum of AED 3,619.49.

29. The Defendant did not file a counterclaim claiming a refund of the additional sum paid to the Claimant. Therefore, I find that the Claimant has received all of his final settlement dues and, in fact, an additional amount of AED 3,619.49.

Conclusion

30. In light of the aforementioned, I find that the Claimant's claim shall be dismissed.

31. Each party shall bear their own costs.

Issued by:

Nassir Al Nasser

SCT Judge

Date of Issue: 29 July 2019

At: 9am