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Nashir v Naseen [2024] DIFC SCT 323

OCTOBER 10, 2024 SCT - JUDGMENTS AND ORDERS

Claim No. SCT 323/2024

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

BETWEEN

NASHIR

Claimant

and

NASEEN

Defendant

Hearing :	26 September 2024
Further Submissions :	8 October 2024
Judgment :	10 October 2024

AMENDED JUDGMENT OF H.E. JUSTICE MAHA AL MHEIRI

UPON this Claim being filed on 29 July 2024 and amended on 10 September 2024 (the “Claim”)

AND UPON a hearing having been listed before H.E. Justice Maha Al Mheiri on 26 September 2024, with the Claimant in attendance and the Defendant absent although served Notice of the hearing date (the “Hearing”)

AND PURSUANT to Rule 53.61 of the Rules of the DIFC Courts (the “RDC”), it is stated that: “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 only.”

IT IS HEREBY ORDERED THAT:

1. The Defendant shall pay the Claimant the sum of AED 223,192.
2. The Defendant shall pay the Claimant the DIFC Courts’ filing fee in the sum of AED 5,443.83.

Issued by:
Delvin Sumo
SCT Judge and Assistant Registrar
Date of issue: 10 October 2024
Date of reissue: 10 October 2024
At: 1pm

THE REASONS

The Parties

1. The Claimant is Nashir (the “Claimant”), an individual filing a claim regarding his employment at the Defendant company.
2. The Defendant is Naseen (the “Defendant”), a company registered in the DIFC, Dubai, UAE.

Background and the Preceding History

3. The underlying dispute arises over the employment of the Claimant by the Defendant. On 4 September 2016, the Claimant was hired as an ‘Senior Distribution Manager’, for a monthly salary of AED 22,000. On 1 June 2024, the Claimant received a promotion on her monthly salary to AED 35,000, consisting of:

- (a) Basic salary in the amount of AED 21,000; and
- (b) Housing allowance in the amount of AED 14,000.

4. In July 2024, The Defendant was facing cash flow issues which resulted in the Claimant being not paid for August 2024. The Defendant started facing financial difficulties which led the Defendant to initiate the insolvency process.

5. On 10 September 2024, the Claimant filed an amended claim with the DIFC Courts’ Small Claims Tribunal (the “SCT”) claiming the amount of AED 272,191, set out as follows:

- (a) AED 60,968 for the monthly salary for August and 23 days in September 2024;
- (b) 3-month notice period in the amount of AED 105,000;
- (c) Payment in lieu of 29.1 days of untaken annual leave in the amount of AED 46,997;
- (d) AED 50,141 as end of service gratuity from 4 September 2016 to 31 January 2020;
- (e) DEWS for the months of July to September 2024 in the amount of AED 4,840; and
- (f) Business expenses in the amount of AED 5,045

6. The parties met for a Consultation with SCT Judge Delvin Sumo on 28 August 2024 but were unable to reach a settlement.

7. In line with the rules and procedures of the SCT, this matter was referred to me for determination, at the Hearing. The Defendant’s representative was absent at the Hearing.

8. 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”.

Discussion

9. This dispute is governed by DIFC Employment Law No. 4 of 2021 (the “DIFC Employment Law”) in conjunction with the relevant Employment Contract.

10. I shall set out below each of the Claimant’s claims. The Defendant failed to provide any defence, so I shall rely on the Claimant’s submission at the Hearing and the supporting documents only.

11. After the Hearing, the Claimant informed the Court that she received her salary payments for July, August and half of September. She has also confirmed that her DEWS for the month of July to September were paid.

12. The Claimant also submitted new claims which I will not address in my findings below and will only address the claims requested in the Amended Claim Form.

Outstanding salary

13. The Claimant is requesting the remainder of her unpaid salary for September 2024 in the amount of AED 17,500.

14. The Claimant provided a table with the amount she received from the Defendant and the pending amounts for each month. The Defendant failed to provide any evidence to demonstrate that the Claimant had received her salaries during the requested dates.

15. I am of the view that the Claimant is entitled to receive her pending salary payments for 16 days of September 2024. The Claimant's claim in respect of outstanding salary shall be paid in the amount of AED 17,500.

3-month notice period

16. The Claimant is seeking payment for her 3-month notice period. The Defendant failed to provide any evidence to demonstrate that the Claimant is not entitled to 3 month notice.

17. Article 62 of the DIFC Employment Law reads as follows:

“PART 10: TERMINATION OF EMPLOYMENT

62. Minimum notice periods

(1) An Employer or an Employee may terminate an Employee's employment without cause in accordance with this Article.

(2) Subject to Articles 62(3), 62(4), 62(6) and 63, the written notice required to be given by an Employer or Employee to terminate the Employee's employment shall not be less than:

(a) seven (7) days, if the period of continuous employment of the Employee is less than three (3) months, including any period of Secondment;

(b) thirty (30) days, if the period of continuous employment of the Employee is in excess of three (3) months but less than five (5) years, including any period of Secondment; or...

(c) ninety (90) days, if the period of continuous employment of the Employee is in excess of five (5) years, including any period of Secondment.”

18. As the Claimant worked for the Defendant from 4 September 2016, (i.e. more than 5 years), she is entitled to 3- months' notice, as per the DIFC Employment Law. In light of this, I have determined that the Defendant shall pay the Claimant her salary in the amount of AED 105,000 for her 3-months' notice.

Payment in lieu of untaken annual leave

19. The Claimant claims the amount of AED 46,997 which reflects the amount accrued from 2021. The Claimant submits that her company allows them to carry forward any pending annual leave from previous years.

20. The Claimant provided a screen shot of the pending annual leave according to the Defendant's HR system, which reflects 34 days available annual leave. The Claimant requested in her claim form 29.1 days only.

21. The Defendant failed to provide any submission to prove that the Claimant has been paid the pending annual leave.

22. As such, I find that the Claimant shall be paid the amount of AED 47,007.56 (AED 35,000 x12/260 = AED 1,615.38 x 29.1 days = AED 47,007.56).

End of Service Gratuity.

23. 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...

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)”

24. 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(1), 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..."

25. The abovementioned clauses provide that an employer is required to pay amounts equal to the core benefits set out by the DIFC Employment Law, and that 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.

26. The Claimant's basic wage is AED 21,000, 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 4 September 2016, meaning the period of service to be calculated for gratuity is 3 years and 149 days.

27. Gratuity = AED 21,000 basic wage x 12 months / 365 days = AED 690.41 per day x 63 days (for the 3 years) = AED 43,495.89

28. Gratuity for 149 days = 1.75 days / 30 = 0.05 per day x 149 days = 7.45 days x AED 690.41 = AED 5,143.55.

29. In accordance with the above, the Claimant is entitled to AED 48,639.44 for gratuity payment.

Expense Claim

30. The Claimant also requested the amount of AED 5,045 for unpaid expenses, the Claimant supported her expense claim with evidence to proof that the amount was put on the HR system and not paid by the Defendant.

31. As such, the Defendant shall pay the Claimant the pending amount of AED 5,045

Conclusion

32. In light of the aforementioned, I find that the Defendant shall pay the Claimant the sum of AED 223,192.

33. The Defendant shall pay the Claimant the amount of AED 5,443.83 for the DIFC Courts' filing fee.

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DIFC Laws and Regulations Legal Database (<https://www.difc.ae/business/laws-and-regulations/legal-database>) ,
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