



IN THE SMALL CLAIMS COURT
OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

18 March 2025

CASE No: AIFC-C/SCC/2024/0041

Askhat Serkbayev

Claimant

v

China Construction Bank Corporation Astana Branch

Defendant

JUDGMENT

Justice of the Court:
Justice Lord Banner KC



ORDER

1. **The Claim is dismissed.**
2. **There shall be no order as to costs.**

JUDGMENT

1. This is an employment dispute between the Claimant, Mr Serkbayev, and the Defendant, the China Construction Bank Corporation Astana Branch (“CCB”).
2. Mr Serkbayev was employed by the CCB as a Senior Officer of its Marketing Department under a fixed-term contract from 12 December 2022 until 12 December 2023. This contract was extended for a further fixed term of one year until 12 December 2024. On 16 May 2024 the parties entered into an addendum to the contract under which Mr Serkbayev was appointed to the position of Manager of the Marketing Department.
3. During the second half of 2024, Mr Serkbayev raised complaints internally about what he considered to be an unjustified disparity between the salaries, and other employment terms, of locally-based employees on the one hand, and expatriates relocated to Kazakhstan from China, where CCB’s Headquarters are located, on the other hand.
4. There followed various discussions between the parties, which did not resolve the matter.
5. CCB did not renew Mr Serkbayev’s contract again, and his fixed term of employment therefore expired on 12 December 2024.
6. A huge number of arguments and counter-arguments have been generated in this litigation in a succession of written representations and responses generated by each party (many of which had no basis in the AIFC Court Rules). This was disproportionate and unhelpful to the effective consideration of the dispute by the Court. Accordingly, on 29 January 2025, the Court issued the following directions:
 1. There shall be a video hearing in this case for up to a maximum 4 hours from 13:00 Astana time (08:00 UK time) on Thursday 20 February 2025.
 2. By 16:00 Astana time on Monday 3 February 2025, the Parties shall file with the Court an Agreed List of Issues which require determination by the AIFC Court.
 3. By 16:00 Astana time on Monday 10 February 2025, the Claimant shall file a Skeleton Argument setting out its case in relation to each of the issues in the agreed list (using headings that correspond to the Agreed List of Issues).
 4. By 16:00 Astana time on Monday 10 February 2025, the Defendant shall file a Skeleton Argument setting out its case in relation to each of the issues in the agreed list (using headings that correspond to the Agreed List of Issues).
 5. The skeleton arguments should be no more than 25 pages, A4 size. They should not introduce new evidence that is not already before the AIFC Court. Where they refer to documents, cross-references should be included to where those documents can be found in the material already provided to the AIFC Court.
 6. By 16:00 Astana time on 10 February 2025, The Parties shall reply to confirm (1) the full name, title, and organisation, of one person who will speak on behalf of the Party at the hearing and the list of the attendees; (2) the language in which the speaker for each Party will speak during the hearing. The Registry will provide simultaneous translation with no cost to the Parties if the

Parties wish to speak in Russian language.”

7. Unfortunately, contrary to the second of these directions, the parties did not file an Agreed List of Issues, but two rival competing lists of issues prepared unilaterally by each party. Each party’s skeleton argument addressed its own unilateral list of issues. This was not of assistance to the Court and served to confuse, rather than clarify, the points of dispute.
8. An application by CCB to adjourn the hearing, and an application by Mr Serkbayev for interim relief, were both dismissed by the Court by Order dated 17th February 2025.
9. On 19th February 2025, the day before the hearing, Mr Serkbayev indicated that he wished to adduce new witness evidence. The Court indicated that he would need to make an application to the Court for permission at the outset of the hearing, and he would need to be ready to address any consequent issues concerning a potential need to adjourn the hearing (with potential costs consequences) to allow CCB a fair opportunity to respond to this new evidence if his belated application were to succeed.
10. At the outset of the hearing on 20th February, Mr Serkbayev confirmed that he no longer pursued his application. Nothing more therefore needs to be said about it in this judgment.
11. At the hearing the parties elucidated their cases in response to questions from the Court and it became clear that the central issues in the dispute are as follows:
 - a. Has Mr Serkbayev been the subject of unlawful discrimination in relation to salary and/or tenure of employment?
 - b. Was the non-renewal of his fixed term contract of employment in December 2024 unlawful?
 - c. If the answers to (a) and/or (b) are ‘Yes’, what is the appropriate remedy?
12. The rest of this judgment focuses on these issues. All the other arguments made in the voluminous submissions and evidence presented by each party have been considered,¹ but in the absence of an agreed list of issues (contrary to the Court’s directions issued on 29th January 2025), it is proportionate and in accordance with the overriding objective in Rule 1.6 of the AIFC Court Rules for this judgment to focus on the central issues outlined above.

Has Mr Serkbayev been the subject of unlawful discrimination in relation to salary and/or tenure of employment?

(i) The arguments

13. At the hearing, Mr Serkbayev’s focus was on alleged differences in salary between expatriates relocated from China and employees permanently based in Kazakhstan, for doing the same or essentially the same work. In his skeleton argument, he also relied upon alleged differences in the term of employment and the currency in which wages are paid.

¹ Save for post-hearing written case ‘summaries’ submitted by each Party without the Court’s permission, as to which by Order dated 24th February 2025 the Court stated:

“The Judge will not consider the additional attached document that was filed at the Registry after the video hearing in this case. The Judge has considered all written and oral submissions in this case. The submission of the additional document is not in accordance with the AIFC Court Rules and is not justified at this very late stage. The Parties have had every opportunity to make written and oral submissions to the Judge in this case. The Judge will proceed to Judgment and the Parties are asked to wait for that Judgment without further document submission.”

14. Mr Serkbayev relied, in this context and elsewhere in his arguments, upon the Equality Act 2010, which is a statute of the United Kingdom Parliament, and upon case-law concerning other employment legislation in the United Kingdom.
15. However, the AIFC Employment Regulations are a complete code in relation to minimum employment rights in the AIFC. The Equality Act 2010 does not have effect in this jurisdiction. Caution also needs to be placed in relation to reliance on case-law concerning legislation which, whilst in places potentially analogous, is not identical to the AIFC Employment Regulations.
16. Of greater relevance is Regulation 59(1) of the AIFC Employment Regulations, which prohibits discrimination on grounds of sex, marital status, race, nationality, religion, age or disability.
17. Regulation 59(2) states:

“For subsection (1), the Employer discriminates against the Employee if:

 - (a) the Employer treats the Employee less favourably than others would be treated in the same circumstances on any of the grounds mentioned in subsection (1); or
 - (b) in respect of the application of the same provision, criterion, or practice, the Employee is put at a disadvantage not faced by others who are not of that sex, marital status, race, nationality, religion or age, or suffering from a Disability, as applicable; or
 - (c) on any of the ground mentioned in subsection (1), the Employee is subjected to unwanted treatment or conduct that has the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive workplace.”
18. Regulation 59(3) further states:

“For subsection (2)(b), a provision, criterion or practice is discriminatory in relation to any of the grounds mentioned in subsection (1) if:

 - (a) the Employer applies, or would apply, it to persons who do not share the characteristics of the Employee; and
 - (b) it puts, or would put, persons with whom the Employee shares the characteristic at a particular disadvantage when compared with persons with whom the Employee does not share it; and
 - (c) it puts, or would put, the Employee at that disadvantage; and
 - (d) the Employer cannot show it to be a proportionate means of achieving a legitimate aim.”
19. Put shortly, Regulation 59(1) concerns direct discrimination, which cannot be justified, whereas Regulation 59(2) concerns indirect discrimination, which is capable of objective justification provided that justification is a proportionate means of achieving a legitimate aim.
20. Mr Serkbayev confirmed at the hearing that he put his case on the basis of direct discrimination on the grounds of nationality.
21. CCB denied that it discriminated between expatriates relocated from China and employees permanently based in Kazakhstan. It further submitted that the different treatment was in any event because its employees in China needed to have an incentive to agree to relocate to Kazakhstan, and there would be no such incentive if they were forced to accept payment in local currency at local rates, which would amount to a real-terms pay cut. At the hearing, Mr Kambaliyev for CCB explained that the relocation of personnel from the bank’s headquarters in Beijing to Astana was considered by the company to be necessary in order to ensure effective co-ordination between the headquarters and the local branch,

including in relation to the implementation of the bank's business strategy and strengthening compliance and risk management.

22. The Court asked both parties if they were aware of any case-law from other jurisdictions in relation to the comparative situation of employees who are relocated expatriates and those who are locally-based. Neither party was able to assist the Court in response. It would be surprising if these or similar issues had not been considered and decided elsewhere. Whilst it would have been useful to have received assistance in relation to any case-law from other jurisdictions, the Court has however decided against undertaking its own research, the fruits (if any) of which would need to be put to the parties for comment (in order to ensure procedural fairness). The Court has been able to reach clear conclusions based upon the statutory framework and the arguments of the parties.

(ii) The Court's conclusions

23. This is plainly not a case of direct discrimination. The differentiating factor is not nationality but whether an employee is a relocated expatriate (of whatever nationality) or a person permanently based in Kazakhstan (of whatever nationality).

24. It is, however, highly likely that this differentiating factor, whilst non-discriminatory on its face, will have the effect (even though this is not the aim) of adversely affecting Kazakh nationals (who will form the overwhelming majority of one cohort: locally-based employees) compared to Chinese nationals (who will form the overwhelming majority of the other cohort: relocated expatriates). On this basis the Court proceeds on the basis that the measure in question is indirectly discriminatory, engaging Regulation 59(3)(a)-(c) of the AIFC Employment Regulations.

25. However, any such indirect discrimination is, in the Court's judgment, plainly justified for the reasons given by CCB and summarised at paragraph 21 of this judgment. Relocation of staff from Beijing to Astana is a legitimate business objective, and ensuring that those staff are not financially disincentivised from agreeing to such relocation is a legitimate aim in pursuance of that objective. The measures that Mr Serkbayev complain about are a proportionate means of achieving that legitimate aim.

Was the non-renewal of Mr Serkbayev's fixed term contract of employment in December 2024 unlawful?

26. Under this part of his claim, Mr Serkbayev submits that CCB lacked valid reasons for not renewing his fixed-term contract of employment.

27. Regulation 65 of the AIFC Employment Regulations states:

"An Employee has no rights to compensation or payments from the Employee's Employer on the termination of the Employee's employment, apart from rights under these Regulations, rules made by the Board under these Regulations and the Employee's Contract of Employment."

28. Mr Serkbayev did not point to any relevant rules made by the Board of the AIFC Authority or to any terms in his contract in support of this part of his claim.

29. Accordingly, this part of the claim stands or falls by reference to the provisions of the AIFC Employment Regulations in relation to termination of employment. Those provisions are to be found in Part 10 of the Regulations.

30. Regulation 60 provides that an employer may terminate an employee's employment subject to certain notice periods. Provided these notice periods are complied with, the employer does not need to show cause.
31. There is no allegation in the present case that Regulation 60 has been breached.
32. Accordingly, CCB did not need to show cause for deciding not to renew Mr Serkbayev's contract.

What is the appropriate remedy for any breach?

33. In the light of the Court's findings above, this third issue does not arise.

Conclusions

34. It follows from the above that the claim must be dismissed.
35. CCB seeks its costs from Mr Serkbayev on the basis that he failed to respond to an offer of settlement which, so CCB says, would have avoided the need for this litigation.
36. Rule 26.9 of the AIFC Court Rules states:

"The SCC may not order a party to a small claim to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except:
(1) such part of any Court fees paid by that other party as the SCC may consider appropriate; and
(2) such further costs as the SCC may assess by the summary procedure and order to be paid by a party who has behaved unreasonably."
37. There were no applicable court fees in the present case and therefore limb (1) does not apply.
38. No order with costs shall be made under limb (2). Neither party has acted in a procedurally commendable manner in this litigation. It would be wrong to single out one party over the other for costs in circumstances where each has borne its own share of unreasonable conduct during this litigation, which in the Court's view is broadly equivalent on each side. It is of some relevance in this context that Mr Serkbayev is a litigant in person whereas CCB is legally represented.
39. Accordingly, there shall be no order as to costs.

By the Court,

The Lord Banner KC
Justice, AIFC Court



Representation:

The Claimant was represented by himself.

The Defendant was represented by Mr Ravil Kassilgov, Partner, and Mr Aibek Kambaliyev, Junior Partner, TKS Disputes LLP, Almaty, Republic of Kazakhstan.