IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

19 December 2022

CASE No: AIFC-C/SCC/2022/0021

KOZHABAY ABDILDA ALIBEKULY

Claimant

v.

"QOSIL LIMITED" PRIVATE COMPANY

Defendant

JUDGMENT

Justice of the Court:

Justice Charles Banner KC

Court

JUDGMENT

Introduction

1. By this claim, the Claimant, Mr Abdilda Kozhabay, seeks damages against the Defendant, Qosil Limited, in connection with the termination of what he says is an employment contract between them. The claim is brought in reliance upon the AIFC Employment Regulations (AIFC Regulations No. 4 of 2016) ("**the Employment Regulations**"), disputes concerning which are subject to the jurisdiction of the AIFC Court: see Regulation 4(3).[1]

2. The Court has had the benefit of written evidence and submissions from each party, which were elaborated at a remote hearing which took place via Zoom on 7th December 2022, at which the Claimant represented himself and Mr Batykov represented the Defendant. The Court is grateful for the high quality and concise manner by which each party has presented its written and oral arguments.

The factual background

3. On 11th July 2022 the Claimant applied for an advertised job vacancy with the Defendant. On 19th July, the Defendant's Ms Ulzhan Issakhova contacted him via Whatsapp with a view to arranging an interview. That interview took place later the same day by video. The participants were the Claimant, Ms Issakhova and the Defendant's Managing Director, Mr Furuk Hunter.

4. At the conclusion of the interview, Mr Hunter on behalf of the Defendant offered the Claimant a job. Mr Hunter indicated that he was outside the country. The Claimant says, and the Court accepts, that Mr Hunter told him that the necessary[2] written contract of employment would therefore be signed by Ms Issakhova on behalf of the Defendant.

5. On 1st August 2022, Ms Issakhova sent the Claimant a contract for his employment by the Defendant as a Field and Vendor Manager (contract number 50048222) for his signature. The contract already bore Ms Issakhova's signature, expressly on behalf of the Defendant. The Claimant signed and returned it the same day.

6. The Claimant proceeded to work for the Defendant for more than one month. On 9th September 2022, he contacted Ms Issakhova to request the payment of his salary due under the contract, namely 375,000 Tenge per month. She replied stating that she no longer worked for the Defendant. The Claimant then contacted Mr Hunter. Mr Hunter then indicated that the Defendant would not pay the Claimant's salary on the basis that there was no valid employment contract between them.

7. Accordingly, the Claimant has brought these proceedings before the Court, seeking 562,000 Tenge in unpaid wages for the work he had done for the Defendant, together with an additional 375,000 which he describes in his Claim From as *"moral damages as I was unable to find another job since I was still under the contract with the Company".*

8. The Defendant's case, as confirmed by Mr Batykov at the hearing, is that only Mr Hunter had authority within the company to sign the contract, and therefore Ms Issakhova's signature on it was not

[1] Note Clause 18.1 of the contract further provides: "*This Contract of Employment will be governed by the acting law of the AIFC*".

[2] See Regulation 11(1) of the Employment Regulations, discussed further below.

effective. Mr Batykov points to Regulation 11(1) of the Employment Regulations, which provides that *"An Employee may only be employed under a Contract of Employment that is written in English and signed by both the Employer and the Employee"*. He submits that, in the present case, Ms Issakhova did not have authority to sign the contract on behalf of the Defendant and therefore it as not *"signed by…the Employer"* for the purposes of Regulation 11(1).

9. The Claimant says, and the Defendant does not dispute, that he was entirely unaware that Ms Issakhova, when she signed the contract purportedly on behalf of the Defendant, did not have power to do so. Indeed, as noted above, Mr Hunter had expressly stated on 1st August that the contract would be signed by Ms Issakhova because he was out of the country at the time. Further, the hearing, the Claimant clarified (in response to questions from the Court) that Mr Hunter was fully aware that the Claimant was working for the Defendant in reliance on the contract during August and early September 2022. The Defendant did not dispute this evidence either.

10. Mr Batykov also clarified at the hearing that the Defendant no longer maintains an allegation previously made in correspondence (but not pursued in the Defendant's statement of case or written submissions) that the signature on its behalf on the contract was the product of a fraud. Its case on liability is confined to the argument that under the Defendant's company structure Ms Issakhova did not have power to sign the contract.

11. The Defendant also submits that, even if there was an effective contract of employment, the Claimant is not entitled to any damages because he failed to submit any time sheets. Mr Batykov confirmed at the hearing that the Defendant does not dispute the Claimant's calculation of damages on any other basis.

12. There are therefore two issues for determination by the Court:
    (1) Does the Claimant have an employment contract to which the Employment Regulations are applicable?
    (2) If so, what if any damages is the Claimant entitled to?

Issue 1: Does the Claimant have an employment contract to which the Employment Regulations are applicable?

13. The Court unhesitatingly concludes that the answer to this first question is 'Yes'. This is for either or both the following reasons.

14. First, Ms Issakhova had "ostensible" or "apparent" authority to enter the contract on behalf of the Defendant. She was the Claimant's point of contact with the Defendant in the context of his job application and interview, and Mr Hunter told the Claimant at that interview that she would sign the contract on behalf of the Defendant, which she then did. The Claimant had no reason to doubt that she had actual authority to sign the contract, and he entirely reasonably relied upon the contract in thereafter undertaking work for the Defendant. Applying the principles derived from the judgment of the Court of Appeal of England & Wales in ***Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd*** [1964] 2 Q.B. 786 and subsequent case-law applying that judgment,[3] principles which

[3] See most recently ***Minister of Finance of Ukraine v. the Law Debenture Trust Corporation plc*** [2018] EWCA Civ 2026, [2019] 2 W.L.R. 655.

the Court considers are to be applied in the context of the Employment Regulations, this ostensible or apparent authority was sufficient for the contract to become binding between the parties.

15. Secondly, in any event, Mr Hunter was aware that the Claimant and Defendant had entered into the contract and was content to allow the Claimant to undertake work for the Defendant pursuant to its terms. Therefore, even on the Defendant's case that Mr Hunter was the only person able to enter into legal relations with the Claimant on the Defendant's behalf, the Court finds that he did so: through his conduct the Defendant assumed the terms of the contract and/or is estopped from denying that it is bound by the terms of the contract.

16. The Court is reinforced in these conclusions by the implications of the Defendant's contrary analysis. As Mr Batykov accepted at the hearing when questioned by the Court, it would follow from the Defendant's submissions that an employer could avoid the obligations imposed by the Employment Regulations by arranging for an employee's contract of employment to be signed purportedly on behalf of the employer by an officer of the employer who, unbeknown to the employee, lacks authority under the employer's corporate structure to enter into the contract. Thus the protections afforded to employees under the Employment Regulations could be circumnavigated even in the case of someone employed for many years under the illusion of a validly completed employment contract. Such an outcome would be plainly contrary to the purposes of the Employment Regulations, defined in Regulation 3 in the following terms:

"The purpose of these Regulations is to:

(a) provide minimum employment standards for Employees who are based in, or ordinarily work in or from, the AIFC; and

(b) promote the fair treatment of Employees and Employers; and

(c) foster employment practices that contribute to the prosperity of the AIFC."

17. Regulation 11 of the Employment Regulations should be interpreted in that light. This supports the conclusions the Court has reached at paragraphs 14 and 15 above.

<u>Issue 2: What if any damages is the Claimant entitled to?</u>

18. The Court rejects the Defendant's submission that the Claimant need to provided timesheets in order to be entitled to his wages. There is no basis in the contract for such a submission. The Court asked Mr Batykov what was the contractual basis for this part of the Defendant's case and he was unable to point to any clause in the contract which provided such a basis. Clause 3 and Schedule 1 of the contract, taken together, clearly provide that the employee's monthly wage is 375,000 Tenge.

19. The Court accepts the Claimant's calculation of his wages due under the contract for the period during which he worked for the Defendant as 562,000 Tenge. No alternative calculation was put forward by the Defendant.

20. By denying the existence of the contract and refusing to pay the Claimant, the Defendant effectively terminated the employment, thereby triggering Part 10 of the Employment Regulations. Within this Part, Regulation 60(2) entitles the Claimant to 7 days' paid notice. That entitles the Claimant to an additional sum of 86,538 Tenge. This is the amount that, in these circumstances, the Employment

Regulations deem appropriate for the unforeshadowed termination of the employment contract, leaving the Claimant having to find another job. The Claimant's request for an additional sum of "moral damages" over and beyond this amount (equating to a month's paid notice) does not have any basis in the Employment Regulations or in the contract itself.

21. The total amount therefore payable by the Defendant to the Claimant is 648,538 Tenge.

Conclusion

22. The Claim is allowed.

23. The Defendant shall pay the Claimant the sum of 648,538 Tenge within 7 calendar days of this judgment.

By Order of the Court,

Charles Banner KC,
Justice, AIFC Court

19 December 2022

Representation:

The Claimant was represented by himself.

The Defendant was represented by Mr. Rauan Batykov, lawyer, ILFA & A International Law Firm.