



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

24 March 2023

CASE No: AIFC-C/SCC/2022/0028

Kaniya Bizhanova

Claimant

v.

Center for Scientific and Technological Initiatives Ltd.

Defendant

JUDGMENT

Justice of the Court:

Justice Charles Banner KC

ORDER

1. **The Claim is allowed to the extent that the Defendant shall pay the Claimant the sum of 747 866,75 KZT within 7 days of this Order.**
2. **In all other respects the Claim is dismissed.**
3. **Provided that the Defendant complies with paragraph 1 of this Order, there shall be no order as to costs.**

JUDGMENT

1. By this claim, the Claimant, Ms. Bizhanova, seeks various remedies from the AIFC Small Claims Court relating to her contract of employment with the Defendant, Center for Scientific and Technological Initiatives Ltd.
2. The Claimant commenced employment with the Defendant on 3rd May 2022. The Claimant contends that she was not provided with a Written Contract of Employment within the two month timescale required by Regulation 11 of the AIFC Employment Regulations (AIFC Regulations No. 4 of 2017 as amended, referred to below as “**the Employment Regulations**”). She contends that her contract of employment was later wrongly terminated by the Defendant and seeks various heads of damages as a result of that, along with her reinstatement and her costs of these proceedings.
3. It is common ground between the parties that the claim is within the jurisdiction of the AIFC Court pursuant to Regulation 4(3) of the Employment Regulations, and that it is appropriate for determination by the Small Claims Court (“**SCC**”) having regard to Rule 28.2 of the AIFC Court Rules (“**the Court Rules**”).
4. The Defendant resists the claim in its entirety, principally on the basis that it was entitled to terminate the Claimant’s employment either because she had committed a repudiatory breach of contract by virtue of having failed properly to give notice of her sick leave for a significant period during July 2022 (entitling it to dismiss her without notice under Regulation 61 of the Employment Regulations), or because such termination happened during her three month probation period under Regulation 15 of the Employment Regulations (entitling it to dismiss her with 1 week’s notice).
5. A further, separate issue is whether the Defendant was entitled under Regulation 20 of the Employment Regulations to deduct various sums from the Claimant’s salary during the time when, on both parties’ cases, she was still employed by the Defendant.

6. Neither party requested a hearing. However, the Court considered that it would be in the interests of justice to hold a hearing given the nature of the factual and legal issues in dispute.
7. At the hearing, the Claimant was represented by Mr Dimash Bizhanov and the Defendant by Ms Janara Abdullayeva. Neither party sought to rely upon oral witness evidence. The Court is grateful to both representatives for the articulate and concise way in which they advanced the parties' cases.
8. Much of the written and oral argument in the proceedings focused upon the Claimant's assertions that she was not provided a written contract of employment within the two month timescale provided for by Regulation 11 of the Employment Regulations, and that the version of the written contract upon which the Defendant relies contains a false signature. The Claimant suggested, and the Defendant did not oppose, that the question of the authenticity of her signature ought to be resolved by the Court appointing a handwriting expert. It is clear from Rules 28.27 and 28.28 of the Court Rules that such an appointment would be exceptional. Given the objective of the SCC which is to provide a fast track, streamlined means of determining small claims,¹ the Court would require a convincing case to be made in favour of such an exceptional step.
9. There is no such convincing case here for the following reasons.
10. First, even if taking the purportedly signed written contract at face value, the burden of proof would be on the Defendant, if it wished to justify the dismissal of the Claimant without notice, to persuade the Court that the Claimant had committed a repudiatory breach of the contract: see Regulation 61(2)(b) of the Employment Regulations. The Court is not satisfied that the Defendant discharged this burden of proof on the evidence presented. Although Regulation 34(1) of the Employment Regulations makes clear that the entitlement to sick pay is contingent on the employee giving the employer the notice provided for by Regulation 33, there is nothing in either of these regulations, or in Regulation 61, to indicate that the failure to give such notice is, of itself, sufficient not only to disentitle the employee to sick pay but also to amount to a repudiatory breach of contract so as to justify dismissal without notice. The Court therefore rejects the Defendant's assertion that it was entitled to dismiss the Claimant without notice. The Court also rejects the Defendant's associated assertion that the Claimant orally agreed to her dismissal in these circumstances. There is no clear evidence of such oral

¹ See Case AIFC-C/SCC/2020/0002 *Nursultan Aliyev v. Proportunity Management Company Ltd* per Justice Charles Banner QC at para. 18, cited with approval on appeal by Justice Sir Stephen Richards (Case AIFC-C/CA/2020/0009 at para. 16).

agreement and the Court is unconvinced, on the balance of probabilities, that such an important agreement would not have been recorded in writing in a form signed or otherwise agreed by both parties.

11. Secondly, as both representatives confirmed at the hearing, it is undisputed that the termination happened during the first three months of the Claimant's employment. Regulation 15 of the Employment Regulations is clear that an Employer may require an Employee to undergo a probationary period not exceeding three months during which the Employer may terminate the Contract of Employment with one week's notice. The dispute about whether and when the Claimant was provided with, and/or agreed, a Written Contract of Employment in this case goes nowhere on this point, because it is clear from Regulation 15 that it is entirely up to the Employer whether to include a probation clause in the Contract. Therefore, there are only two plausible possibilities on the facts of this case in light of the evidence presented to the Court: either (1) the Defendant included within the terms of the Employment Contract a three month probation clause pursuant to Regulation 15; or (2) if the Defendant so required, as it was entitled to do, the Claimant did not agree to such a clause in which case there was no Contract of Employment in the first place. The Court therefore finds on the balance of probabilities that, whatever the precise terms of the Employment Contract between the parties, as a minimum it would have included a three month probationary period as provided for by Regulation 15 of the Employment Regulations. On that basis, the Defendant was able lawfully to terminate the Contract of Employment with one week's notice at the time when it purported to do so.
12. On this basis, the Court finds that the Contract of Employment in this case was lawfully terminated, irrespective of whether or not the purported signature on the Written Contract was a fraud as contended by the Claimant. The exceptional step of the SCC appointing a joint handwriting expert is therefore not necessary for the determination of the claim.
13. Given that the Claimant was entitled to one week's notice, the Court will require the Defendant to pay her damages equating to a week's salary. The uncontested evidence of the Defendant was that the Claimant's monthly salary was 1 346 667 KZT (see the settlement sheets at Attachment 2 to the Defence). This equates *pro rata* to 336 666,75 KZT per week, which is the sum that the Court requires the Defendant to pay to reflect the one week's notice period under Regulation 15 of the Employment Regulations.
14. That then leaves the question of the deductions. The Defendant contends in its Defence, pages 1 to 3, as elaborated at the hearing in response to questions from the Court, that it was entitled to deduct from the Claimant's salary the sums of 261,200 KZT and a further 150,000 KZT on the basis that she

made errors in her job, in particular in relation to procurement procedures. Specifically, the Defendant alleges – albeit in high level terms with few specifics - that the Claimant purchased certain IT Software on behalf of the Defendant for these sums without proper authorisation or lawful basis, and accordingly the Defendant contends that the Claimant was not entitled to charge back these sums as expenses. The Claimant responded at the hearing that these purchases were in fact made, and were made in good faith.

15. As the party making this assertion, and as the party who must justify the salary deduction under Regulation 20 of the Employment Regulations, the Defendant bears the burden of proof on this issue. The Court asked the Defendant through Ms. Abdullayeva to explain precisely what evidential basis the Defendant had for contending that these were not expenses which were incurred in fact and in good faith and as such fell within the meaning of Regulation 20(1)(c). Beyond restating the high level allegations set out in the Defence, to which the Claimant responded at the hearing, the Defendant was unable to offer any specifics and in particular did not engage with the precise terms of Regulation 20(1)(c) or with the Claimant’s explanation that the expenses were incurred in good faith.
16. In these circumstances, the Court is not satisfied that the Defendant has discharged the burden of proof for these deductions.
17. To this extent, alongside the one week’s notice required by AIFC Regulation 15 for termination during the probationary period, but to this extent alone, the Court will allow the claim.
18. In conclusion, therefore, the Court dismisses the Claimant’s claims insofar as they contend that the Defendant was acting unlawfully in terminating her employment. The Court, however, allows the Claimant’s claim to the limited extent of requiring the Defendant to pay her one week’s salary as the notice period under Regulation 15, equating to 336 666,75 KZT, along with a refund of the unlawful deductions of 411,200 KZT. The total amount payable by the Defendant to the Claimant is therefore 747 866,75 KZT.
19. The Court requires the Defendant to pay this sum to the Claimant within 7 days of this Order. The Court’s reason for requiring payment with this short timescale is that the sum in question should never have been withheld from the Claimant in the first place. It is evident to the Court that the amounts in question are of real significance to the Claimant personally, and therefore in the circumstances it is in the interests of justice for the Defendant company to compensate her without delay.
20. Provided that the Defendant complies with the Court’s timescale for payment of the aforementioned

sums to the Claimant, the Court sees no exceptional basis for an award of costs in this case, for or against either party, bearing in mind the general rule that each party bears their own costs in small claims proceedings before this Court.

By Order of the Court,



Charles Banner KC,
Justice, AIFC Court



Representation:

The Claimant was represented by Mr. Dimash Bizhanov, independent external lawyer, Astana, Kazakhstan.

The Defendant was represented by Ms. Janara Abdullayeva, lawyer, Center for Scientific and Technological Initiatives Ltd., Astana, Kazakhstan.