



ADGM COURTS

محاكم سوق أبوظبي العالمي

In the name of
His Highness Sheikh Khalifa bin Zayed Al Nahyan
President of the United Arab Emirates/ Ruler of the Emirate of Abu Dhabi

**COURT OF FIRST INSTANCE
EMPLOYMENT DIVISION
BETWEEN**

SAMER YASSER HILAL

Claimant

and

HAIRCARE LTD

Defendant

JUDGMENT OF JUSTICE SIR MICHAEL BURTON GBE

Neutral Citation:	[2022] ADGMCFI 0001
Before:	His Honour Justice Sir Michael Burton GBE
Decision Date:	7 January 2022
Decision:	<ol style="list-style-type: none"> 1. Judgment be entered in favour of the Claimant in the total sum of AED149,679.50, being as to the admitted sum of AED2379.50 unpaid commission, and as to damages: <ol style="list-style-type: none"> a. AED100,000 for salary; b. AED30,000 for commission; c. AED8,000 for annual leave; d. AED1,900 for repatriation; e. AED3,500 in respect of end-of-service gratuity; f. AED900 for medical insurance; and g. AED3,000 for deducted visa costs. 2. Interest shall accrue on the judgment sum at the rate of 5% per annum from the date of judgment until payment. 3. The parties are to file and serve their costs submissions as to liability and quantum with the Claimant to file his written costs submissions in light of this judgment by 4.00 pm on 13 January 2022 and the Defendant to file its written costs submissions by 4.00 pm on 20 January 2022.
Hearing Date(s):	13 and 14 December 2021
Date of Order:	7 January 2022
Catchwords:	Wrongful termination of fixed-term employment contract, mitigation of loss, employee's entitlement towards damages including salary, commission, annual leave, repatriation, end-of-service gratuity, medical insurance and deducted visa costs.
Cases Cited:	Boston Deep Sea Fishing & Ice Co v Ansell (1888) 39 ChD 339 CA
Legislation Cited:	ADGM Employment Regulations 2019
Case Number:	ADGMCFI-2021-021
Parties and representation:	Mr Samer Yasser Hilal, the Claimant (self-represented) Mr Firaz El Essber, Managing Director of the Defendant, for the Defendant

JUDGMENT

1. This has been the hearing of the Claimant's claim arising out of the termination of his employment as a hairdresser, under an Employment Agreement commencing 25 July 2019 ("**Employment Agreement**"), at Haircare Beauty Salon ("**HBS**"), by the Defendant, of which the controller was and is Mr Firaz El Essber ("**Mr. El Essber**"). His employment was summarily terminated, it is now common ground, on 25 September 2020. The Defendant admits the termination, and the onus is consequently upon it to justify the dismissal as having been for cause, namely for gross misconduct in accordance with clause 8 of the Employment Agreement, and so Mr. El Essber gave his evidence and called his witnesses first.

Terms of employment

2. I set out the relevant terms of the Employment Agreement below, and I indicate the areas of dispute.

Duration

3. The Employment Agreement was for three years, as provided at clause 8 (with bold emphasis in the original):

*"The duration of this agreement is **three years renewable**, it may be amended or cancelled by mutual agreement of the parties..."*

4. Clause 8 contains provisions in relation to termination for cause and termination by reason of the employee's disability. The three-year term is also emphasised in clause 4, which provides that if the employee wants to terminate the contract "*before completing his 3rd year of employment*" he must repay the cost of his visa. There were accordingly 22 months of the three-year contract still outstanding at the date of termination. The Defendant will be liable to pay damages in respect of that period (subject to the Claimant's duty to mitigate) unless it can establish good cause pursuant to clause 8.
5. The Claimant's salary was paid up to 31 August 2020. As a result of my judgment of 15 June 2021, I ordered a further AED5,000 in respect of salary for the month of August 2020. Since the August salary had, unknown to me and not then appreciated by the parties, in fact been paid, that judgment sum stands in respect of the unpaid September salary. On that basis, salary is paid up to 30 September 2020. Entitlement to further payment depends upon my resolution of the issue of gross misconduct.

Remuneration

6. The salary according to the Employment Agreement was AED5,000 monthly. The Claimant alleges that in fact it was agreed to be AED6,000, and that AED1,000 was paid over and above the rate of salary provided for in the Agreement, but he does not pursue that claim. In addition to salary, the Claimant was paid commission in accordance with an oral agreement with the Defendant.
7. It is common ground between the parties that, in accordance with a WhatsApp message sent by Ms Julie Nuera ("**Ms. Nuera**"), the Defendant's then receptionist at the time, there was commission owed to the Claimant in the sum of AED3,379.50, and it was also there recorded that there had been a cash advance of AED1,000 falling to be credited. It is thus agreed that the sum of AED2,379.50 is due to the Claimant on any basis. The Claimant alleges that this commission was at the rate of 25% of the monies paid by clients serviced by him at the salon, which amount was never less than AED3,000 monthly, paid to him by cheques which the Claimant arranged to have cashed, as he had no bank account. Mr. El Essber alleges that the commission was variable, dependent upon the services provided, calculated by Ms Nuera. Ms Nuera would have been able to give further detail of this, had she given evidence, as she intended, but unfortunately she is in the Philippines and her attendance by video link was not in the event possible.
8. The Defendant has provided no details about the calculation or payment of commission or its method, and all that was disclosed by the Defendant was a work tally sheet for August and September 2020, apparently showing a list of customers and the prices they paid. The Defendant's case is that the commission was gratuitous, and that the Claimant had no contractual entitlement. The Claimant's evidence is that commission was agreed at the outset with Mr. El Essber, although not included in the Employment Agreement at Mr. El Essber's request, that he always received the commission each month in an amount which was never less than AED3,000, and that, without the commission, AED5,000 would have been an inappropriately low remuneration for a senior hairdresser of his experience and admitted skill. Apart from that issue, the question of any liability to continued commission post termination depends upon my resolution of the gross misconduct issue.

Annual leave

9. The Claimant is entitled by clause 3(c) of the Employment Agreement to annual leave of one month. The Claimant denied that he had taken any annual leave for the period of his employment, and that the only period he was away was for one week in December 2020, when he went to Lebanon, for which

period he was not paid. That would entitle him pursuant to ss.22 and 23 of the *ADGM Employment Regulations 2019* ("**the Regulations**") to (approximately) AED8,000, including the monthly commission. Mr. El Essber says that the Defendant paid the Claimant for that period of one week in Lebanon, though he has provided no record: and that in any event the Defendant should be entitled to treat the period of lockdown (when the salon was closed) from 15 March 2020 to 10 June 2020 as annual leave of the employee. Quite apart from challenging that proposition, the Claimant alleged that in fact he had been caused by the Defendant to work during that period, at a different site, The Haircare Workshop in the World Trade Centre.

End-of-service gratuity

10. This entitlement again depends upon the resolution of the issue of gross misconduct, which would disentitle the Claimant to payment (s.59(4) of the Regulations). Otherwise, it would follow that, pursuant to s.59(2) of the Regulations, the Claimant is entitled to 21 days at his basic wage (i.e. not including commission in accordance with s65 of the Regulations) being 70% of AED5,000.

Repatriation

11. The parties agree that, again subject to the issue of gross misconduct which would disentitle the Claimant, the Claimant would be entitled to the cost of an air ticket to Lebanon at a cost agreed at AED1,900 pursuant to s.63 of the Regulations, unless the Claimant obtained alternative employment rendering the repatriation unnecessary. As will appear, the Claimant is subject to a deportation order as a result of the Absconding Summons brought against him in the Abu Dhabi Courts by the Defendant, so that such repatriation will, as the Defendant accepts, take place.

Health insurance

12. The Claimant is entitled pursuant to clause 3(e) of the Employment Agreement to medical insurance covered by the Defendant. The Defendant has disclosed a copy of a policy said to be for 12 months expiring on 6 May 2020, at a cost of AED632. The Claimant asserts that in the light of the need for continued coverage under the contract, a year's insurance was purchased in the sum of AED900, deducted from his salary. Again, Ms. Nuera would have been able to assist, had she been able to attend. The figure of AED900 looks reasonable in the light of the cost of the policy cover disclosed by the Defendant, and the Defendant has produced no documentation relating to the cover subsequent to 6 May 2020 which the Defendant was obliged to provide under the Employment Agreement.

Deducted visa costs

13. The Defendant deducted AED3,000 from the Claimant's salary for visa costs. Leaving aside any impact of s.14(2) of the Regulations, the Defendant relies at paragraphs 2-3 of its Defence on clause 4 of the Employment Agreement set out in paragraph 4 above, obligating the Claimant to repay the visa costs, but only if the Claimant "*wants to terminate the contract*" before the expiry of the 3 year term.

Mitigation

14. If the Claimant's claim for breach of contract succeeds, i.e. if the Defendant's case of justified dismissal for gross misconduct fails, then the Claimant would be entitled to continuing remuneration pursuant to: paragraphs 3-5 above and, subject to the resolution of the issues on commission, paragraphs 6-8 above, but subject to the Claimant's duty to mitigate.
15. The issue arises as to whether he could and should have mitigated by finding alternative employment both up to now and continuing until expiry of the 22 months. The Defendant issued, almost immediately after he dismissed the Claimant, an Absconding Summons in the Abu Dhabi Courts, which resulted in the police seeking to arrest the Claimant and to the Claimant's inability to find any employment in that period while facing the Absconding Summons, and in any event it appears that, no doubt in order to protect the Defendant's position as Mr. El Essber saw it, he appears to have warned off possible employers of the Claimant such as the Beach Hotel and the Grand Hyatt.

16. The Defendant asserts that the Claimant was in some way responsible for his problems with the Abu Dhabi authorities by reference to a complaint about unpaid rental for a car, but in the papers which I have seen there is no reference by the Abu Dhabi judicial authorities to any other issue than the fact that the Claimant had absconded from the Defendant and consequently breached the terms of his work permit. In any event the result was that the Claimant was found guilty on the Absconding Summons by the Abu Dhabi Courts, and his appeal failed, and he was sentenced to serve, and did serve (at a time which caused this trial to be adjourned when it was otherwise fixed), to 28 days imprisonment and thereafter to be deported. A second Absconding Summons was issued by the Defendant but this has also now been disposed of. The Claimant's case is that thus he could not have obtained any alternative employment, although he accepts that he was trying to put together a WhatsApp group of potential clients, as described by Ms Samia Naser ("**Ms. Naser**"), a witness called by the Defendant. He is now to be deported pursuant to the decision of the Abu Dhabi Court on the Absconding Summons and will be returned to Lebanon, where he plans to try to find alternative employment as a hairdresser, although, given the well-publicised difficulties of the economy in Lebanon, that may not be easy.

Issues for decision

17. These are the issues for me to decide, after hearing witnesses, 8 in all, though I did not regard the evidence of Mr. Jesam Abece for the Claimant as being of any relevance.

Dismissal for cause

18. I turn to the one issue upon which almost all other matters depend. The Defendant sets out his case by reference to the evidence of Ms Manal Hamdan ("**Ms. Hamdan**") and Ms Souha El Natour ("**Ms. El Natour**"). Ms. El Natour describes how, at a date which Mr. El Essber in his evidence estimated as about six weeks before the events of 23-25 September 2020, she had told Mr. El Essber that a friend (whom she identified in evidence in answer to the Claimant to be Ms. Hamdan) had told her that the Claimant had claimed in a conversation with that friend to be the owner of HBS, i.e. the Defendant. Ms. El Natour said that she had called Mr. El Essber and he had told her that the Claimant was not the owner, but was his employee and that "*Steve [the Claimant] likes to show off on social media. It seemed to me that Firaz [Mr. El Essber] didn't take the story seriously*". Mr. El Essber confirmed in evidence before me that he did not raise Ms. El Natour's conversation with the Claimant or complain about it to him. Then came the evidence of Ms. Hamdan. She gave an account that at her hairdressing salon she employed Ms Nadin Al Salibi ("**Ms. Al Salibi**"), and that in the last week of September 2020 (plainly 23 September) the Claimant had attended at her salon and started to talk with her by way of a complaint on behalf of Ms. Al Salibi, who was a girlfriend of the Claimant, about the terms and conditions which Ms. Hamdan was proposing for Ms. Al Salibi's employment. It seems that the conversation became heated. The Claimant, according to Ms. Hamdan, said in the course of that heated conversation that he owned HBS. If she was so informed by the Claimant (and he does not accept that) she would have known the contrary from her earlier conversation with Ms. El Natour, unless she is confusing the two occasions. In any event she told the Claimant to leave and asked her PRO to phone up HBS, and then herself contacted Mr. El Essber to complain about the Claimant. On 1 October 2020, i.e. after Mr. El Essber had dismissed the Claimant, she wrote an email to Mr. El Essber which read as follows:

"[The Claimant] came to our salon asking for more clarification about the contract that already signed by Nadeen, then I told him talk to our PRO and he started to shout and don't want to listen or understand (anger issues) we can't continue with such a level!! He refused, told us that we change the contracts etc., he caused a big problem without any reason.... When we met last month he introduced himself as the owner of haircare salon in Cleveland and many other salons in UAE and abroad."

This is obviously a reference to the earlier conversation she had had with Ms. El Natour. In her email dated 20 October 2021 produced as part of her witness summary for this hearing, she added that "*we told him if he showed again near our shops we will call the police*".

19. Mr. El Essber's account to me was that, although he had taken no steps in relation to the earlier conversation with Ms. El Natour, in the light of Ms. Hamdan's conversation, which he had on the Wednesday 23 or Thursday 24 September 2020 he was concerned about the risk to his salon, and that the fact that Ms. Hamdan had said that the Claimant claimed to be the owner of the Defendant caused him to be concerned; and on Friday, 25 September 2020, he spoke to the Claimant from his home, the

Claimant being in the salon, and that after some strong words between them he dismissed the Claimant. He made other complaints about the Claimant, that he had acted as if he was the manager of the salon when he Mr. El Essber was not there; but, that apart, the other complaints he mentioned all relate to matters after the termination. The first is by reference to the evidence of Ms. Naser, referred to in paragraph 16 above, as to the fact that she was disturbed to find, after the Claimant had left the Defendant, her name on a WhatsApp list of the Claimant: although this does not seem to me to be material to the Defendant's case, the Claimant denies that it was he who added her name. The second is by reference to the evidence of Ms Sabrine Achir ("**Ms. Achir**"). This was not known to the Defendant at the time of dismissal, but in the light of the authority of **Boston Deep Sea Fishing & Ice Co v Ansell** (1888) L.R. 39 Ch. D 339 CA, if it could have justified the dismissal had it been known at the time then the Defendant might still be able to rely on it. Ms. Achir's evidence was that in the course of the Claimant doing her hair, he criticised her hair extensions, which she had in fact had done by someone else at the Defendant's salon, and, according to her, recommended where she might have improvements made. The Claimant says that he accepts that he did criticise the hair extensions, while doing the customers hair, which would be a natural thing to do, but denies that he suggested that she had the work redone elsewhere. On any basis this does not amount to sufficient justification for summary dismissal, at least without further investigation, nor his complaint, denied by the Claimant, and never the subject of any prior warning to the Claimant, of his managerial conduct in the salon.

20. It is against this background that it is plainly the case that the justification for dismissal of this senior employee from his three-year contract hangs solely on whether it was reasonable for Mr. El Essber to do so in the light of his conversation with Ms. Hamdan.
21. The Claimant's case was that, although he did go to see Ms. Hamdan to have it out with her about Ms. Al Salibi's contract of employment, and that the discussion, which quickly transferred from the reception area of Ms. Hamdan's salon to the coffee shop at the front, may well have got heated, he did not say that he was the owner of the Defendant. Once Ms. El Natour clarified, when she gave evidence, after Ms. Hamdan, that the friend in question was Ms. Hamdan, it does appear, by tying up that fact with the reference in Ms. Hamdan's email of 1 October 2020, that the conversation in which the Claimant is suggested to have said that he was the owner of the Defendant's salon was in fact some time earlier. But in any event it is apparent that, insofar as there was anything said to Mr. El Essber by Ms. Hamdan about the Claimant's claim to be the owner of the Defendant, it was the same matter as that reported to him earlier by Ms. El Natour, which he accepted he had done nothing about (and, according to Ms. El Natour, had treated as not being serious). Insofar as Ms. Hamdan said that she had said to him that if he came back she would call the police, that may have been said in the course of their heated discussion, but the whole matter had nothing to do with the Defendant. The Claimant's account of the events on 24 and 25 of September 2020 leading to his termination is then quite different from that of Mr. El Essber, in that, on his case, the strong words which he did have with Mr. El Essber had nothing to do with Ms. Hamdan. Ms. Al Salibi came to the salon on the afternoon of 24 September, while the Claimant was working there, and Mr. El Essber took her down to the beach, because he said he wanted to talk with her. What then happened is in the event largely unchallenged. Mr. El Essber accepts that he spoke to Ms. Al Salibi and told her that the Claimant was a bad man and that she should not have anything to do with him, and that he had a wife and family. The Claimant relates that Ms. Al Salibi was upset and told him what Mr. El Essber had said. In the telephone call on the next day he complained to Mr. El Essber that he had no right to have spoken to Ms. Al Salibi, and that he should not have interfered with his personal affairs. The conversation between them on the telephone on the Friday, 25 September 2020 did become extremely heated, but on that topic, and ended with Mr. El Essber arranging for the security guards to attend and have the Claimant removed from the premises, effectively resulting in his dismissal.
22. The evidence of Ms. Al Salibi supported the Claimant, both as to what had happened at Ms. Hamdan's salon and also in relation to the fact that Mr. El Essber had taken her down to the beach and said "*bad things*" about the Claimant, which she had, in a state of considerable upset, reported to the Claimant. As I have said, Mr. El Essber did not challenge Ms. Al Salibi in relation to the general content of their conversation and said in closing "*I cannot control myself*". I am entirely satisfied that the conversation, in which effectively Mr. El Essber dismissed the Claimant, by having him removed from the salon, resulted from the Claimant's strong and vigorously expressed complaint about the fact that Mr. El Essber should not have spoken to Ms. Al Salibi in the way that he did, and should not have involved himself in the Claimant's personal affairs. It did not result from any concern which Mr. El Essber had as to the content of Ms. Hamdan's conversation with him. The Claimant's understandable loss of

temper as a result of Mr. El Essber's intrusive conversation with Ms. Al Salibi is not conceivably justification for dismissal of him by Mr. El Essber on the grounds of gross misconduct. I am therefore satisfied that there was no ground for summary dismissal, and that the Claimant's dismissal was not for cause within clause 8 of the Employment Agreement, such that the Claimant is entitled to damages for breach of that Agreement.

Salary

23. 22 months of salary (less 5 days to account for the Claimant's salary being paid to 30 September 2020) is prima facie due at AED5,000 per month. I am quite satisfied that the Claimant was in no position to mitigate his loss at any time until now, given his facing not one but two absconding summonses, leading to his imprisonment and deportation. I am satisfied that the Claimant did not do anything to contribute to his immigration position. Mr. El Essber took the view that he was protecting the Defendant against the Claimant, at that stage believing that he was justified in having summarily dismissed the Claimant. However, the result on any basis was that the Claimant was not able to obtain any employment. He is now leaving for Lebanon. Notwithstanding the very serious and well publicised position of Lebanon, the Claimant's family lives in the mountains, not in Beirut, and I am satisfied that after five months in Lebanon it ought to be possible for him to find employment as a hairdresser as remunerative as his employment by the Defendant. However, he has suffered a loss of 20 months' salary at AED5,000 per month.

Commission

24. The commission claim runs for the same period. I am satisfied that the Claimant did have a contractual entitlement to such commission on all customers to whom he supplied services in the salon, and that although there was no guaranteed sum, in practice he had received every month a sum of at least AED3,000, calculated on a basis known to and operated by the Defendant, and in any event Mr. El Essber did not challenge the 25% rate when cross-examining the Claimant. It is plain to me however that, as indeed the Claimant himself accepted, the Defendant's business will have declined by at least 50%. I award 20 months at AED1,500 per month.

Annual leave

25. I am satisfied that the Claimant is entitled to one month's annual leave in respect of the period when he worked for the Defendant. In the absence of production of any employment documents by the Defendant, I accept the Claimant's evidence that he was not paid in respect of the week when he travelled to Lebanon. Whether or not he worked for the Defendant, as he asserts, during the lockdown period, I am satisfied that the Defendant is not entitled to treat the salary paid during the lockdown period as if it had been annual leave. I award AED8,000 in respect of salary and commission for that one month.

Repatriation

26. In the light of my finding that the Claimant was wrongfully dismissed, and that he has no alternative employment in Abu Dhabi, the agreed sum of AED1,900 is payable

End-of-service gratuity

27. For the same reason this is due, although by virtue of s.59(2)(a) of the Regulations only in respect of the basic wage, as defined in s.65 of the Regulations, and not the commission. Hence 21 days at AED5,000 per month, namely AED3,500.

Health insurance

28. I am satisfied that AED900 was deducted from the Claimant's salary in respect of the renewal of the medical insurance cover. In any event the employment agreement required the Defendant to provide medical insurance and the AED900 which I am satisfied was the proper cost of one year's medical insurance, was the obligation of the Defendant.

Deducted visa costs

29. In light of my finding of wrongful dismissal by the Defendant, the AED3,000 is due.

Conclusion

30. I accordingly find for the Claimant in the total sum of AED149,679.50, being, in addition to the sum of AED2,379.50 admitted as appears in paragraph 7 above, AED100,000 for salary, AED30,000 for commission, AED8,000 for annual leave, AED1,900 for repatriation, AED3,500 in respect of end-of-service gratuity, AED900 for medical insurance and AED3,000 in relation to deducted visa costs. Interest shall accrue on the judgment sum at the rate of 5% per annum from the date of judgment until payment.
31. As to costs, in principle these ought to follow the event and would ordinarily be awarded to the Claimant, to be assessed if not agreed. However, I was not addressed on costs during the trial and, accordingly, I direct the parties to file and serve their costs submissions as to liability and quantum with the Claimant to file his written costs submissions in light of this judgment by 4.00 pm on 14 January 2022 and the Defendant to file its written costs submissions by 4.00 pm on 21 January 2022. I propose to make my costs decision on paper.



Issued by:

Linda Fitz-Alan
Registrar, ADGM Courts
7 January 2022