



IN THE SMALL CLAIMS COURT

OF THE ASTANA INTERNATIONAL FINANCIAL CENTRE

2 June 2021

CASE No: AIFC-C/SCC/2021/001

DAULETOV AZAMAT KHALIBAYEVICH

Claimant

and

GRUPPO RF KAZAKHSTAN LLP

Defendant

JUDGMENT

Justice of the Court:

Justice Patricia Edwards

1. This claim is brought by Dauletov Azamat Khalibayevich, who is said to represent “employees of the RF Group Kazakhstan”. The claim was commenced and served on the Defendant on 20 January 2021.
2. In accordance with Rule 28.12 of the AIFC Court Rules, the Defendant had until 3 February 2021 to admit the claim, file a defence or dispute the jurisdiction of the Court. On 9 February 2021, the Defendant applied for an extension of time until 11 February 2021 to file a Defence. This was granted and the Defence was filed and served on 11 February 2021.
3. The employees were, until December 2020, working on a chemical plant under construction in Kazakhstan. By an order of the Defendant dated 10 December 2020, they were dismissed. However, the Claimant alleges that their salaries were not paid. The remedy sought is “wage arrears to employees for November and December 2020”. The Claimant requested resolution of the claim on paper without a hearing.
4. A group of the employees and the Defendant entered into a mediation agreement dated 20 December 2020. Following the mediation, a purported settlement agreement was drawn up on 21 December 2020. Paragraph 6(2) of the agreement provides: “On December 22, 2020, Party 1 [the Defendant] undertakes to Party 2 to pay wages in arrears for the period November-December and pay for unused vacation for 2020”. Paragraph 7 of the settlement agreement contains an exclusive jurisdiction clause in favour of the AIFC Court.
5. According to the claim, at a meeting on 22 December 2020, at the request of the head of the Defendant (Walter Riva Cambrino) the employees agreed that payment could be delayed until 25 December 2020.
6. The claim is defended on grounds including that:
 - (1) The settlement agreement is not a binding contract because agreement was not reached on all essential elements. The Defendant refers to the fact that the agreement does not state the names of the relevant employees, the amounts due to them, or the term for payment of the debt.
 - (2) The Claimant provided no documents confirming his right to act on behalf of the employees.
 - (3) The “signatures of the parties” sheet was not signed by the director of the Defendant.

(4) The director of the Defendant does not speak Russian, and thought that the agreement was “a memorandum of intent to sort out the situation”.

Order of 16 February 2021

7. Pursuant to Rule 28.9 of the AIFC Court Rules, a claimant must include in the Claim Form a statement of the monetary value of the small claim. The Claimant did not do so. However, the court can make an order to remedy a failure to comply with a rule (Rule 3.4), and considered it appropriate and in accordance with the overriding objective (Rule 1.6) to do so in this case, in order to deal with the case expeditiously, proportionately and fairly. Accordingly, on 16 February 2021, I made an order for all employees or former employees of the Defendant who claim wages as set out in the claim to be named in a schedule, to include in respect of each individual, their name, the sum claimed, and their signature, consenting to be joined as a claimant.
8. Paragraph 2 of the order provided that each individual named in the schedule would be joined as a claimant in this action. Part 12 of the AIFC Court Rules provides for the possibility of representative claims to be brought where the parties have the same interest (Rule 12.18), or for parties to be added to existing proceedings on the Court's initiative or on application of an existing or potential party (Rule 12.2). These rules are not expressly applicable to the SCC (Rule 28.7). However, the Court has the power to take all steps that are required or expedient for the proper determination of the case (Rule 3.1) and may exercise its powers of its own initiative (Rule 3.5). I considered it appropriate for the proper determination of this case for all relevant employees to be joined as claimants, and to state the amount of their claim.
9. Further, following the service of the Defence, the Court may require the parties to provide further information about their case and file any further evidence upon which they intend to rely (Rule 28.25). In light of the matters raised in the Defence, and the further information to be provided in relation to the claim, I considered that it was appropriate for each party to have the opportunity to provide further information and evidence about their case. The order of 16 February 2021 therefore provided the opportunity for each party to file and serve further submissions and evidence.
10. As the parties were not given an opportunity to make representations in relation to the order of 16 February 2021, it provided in paragraph 5 that they could apply to have it set aside, varied or stayed within 7 days of service of the order, in accordance with Rule 3.8. No such application was made.

Order of 20 April 2021

11. No schedule or other documents were filed following the order of 16 February 2021. On 20 April 2021, I made a further order in similar terms. However, this order provided that unless a schedule was filed (including the name of each claimant, the sum claimed, and their signature, consenting to be joined as a claimant), by 4 May 2021, then the claim would be struck out. This deadline was more than three months after the claim was commenced. That is a considerable period of time in the context of a small claim. The information required was necessary for the Defendant to understand the case it had to meet, and to be able to respond properly and proportionately. Again, the order set out expressly the right of either party to apply within 7 days to set aside, vary or stay the order.
12. On 4 May 2021, the Claimant filed a timesheet containing a list of 107 employees, and a copy of the employment contract of one of the employees. He quantified the claim for wages in the amount of 15,762,586.02 tenge. That is equivalent to approximately US\$37,000. However, none of the proposed additional claimants has provided their signature consenting to being joined as a claimant in this action.
13. The Defendant has not responded or filed any further documents.

Conclusion

14. The information to be included in the schedule was the bare minimum necessary for the Defendant to understand the case it had to meet, including the number and identity of the claimants, and the sums claimed. It should have been provided at the commencement of the claim in January 2021. Without it, the Defendant cannot respond properly and proportionately to the claim. A proportionate response is all the more important in the context of small claims proceedings, which are intended to keep the costs incurred by all parties to a minimum. It is also very difficult for parties to settle a claim where it is not properly made.
15. Legal proceedings are a formal process and it is essential that the Court is assured that the claims are authorised by the parties said to be bringing them. The importance of a potential party providing signed consent to becoming a claimant to an action is underlined by Part 12 of the Rules which, while not expressly applicable in the SCC, deals with addition of parties in proceedings. It provides that nobody may be added as a claimant unless he has given his consent in writing, and that consent has been filed with the Court.

16. The order of 20 April 2021 provided that, if a complete schedule was not filed by 4 May 2021, the claim would be struck out without further order. No signatures of the purported additional claimants having been provided, consenting to being joined as claimants, the claim is now struck out.

17. In accordance with Rule 26.9, I do not consider it appropriate to make any order as to costs.

By the AIFC Small Claims Court,

