

Abu Dhabi Court of Cassation Judgment on reporting Employees who have absconded

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December 2014 – January 2015

The Abu Dhabi Court of Cassation has recently issued a judgment confirming that employers have a duty to report employees that have absconded, and that the reporting of such employees cannot give rise to liability. Al Tamimi & Company successfully represented the employer in the case.

Background

An employee brought an action against her former employer (a university) seeking employment entitlements and AED 200,000 (USD 55,000) as compensation for harm caused by a report filed by the employer with the authorities claiming that she had absconded.

The employee's employment contract was terminated on the 25 March 2010. After the termination, the employee failed to cooperate with the employer to cancel her residence visa and did not turn up at the Naturalization and Residence Department to complete the necessary formalities. On the 19 May 2010 the employer filed a report alleging that the employee absconded. On the same day, the employee initiated court proceedings for her entitlements and compensation for damages.

Court of First Instance

The Court of First Instance delivered its judgment and rejected the employee's claim for compensation for material and moral damages. The court found that the employee failed to prove the elements of liability and accordingly the court rejected the allegation that the employer had maliciously reported her as absconding.

Court of Appeal

The employee filed an appeal and insisted on her claims. The Court of Appeal overturned the decision of the Court of Instance with respect to its dismissal of the claim for compensation and ordered the employer to pay AED 74,610 (USD 20,000) as compensation (equivalent to two months' salary for the employee).

The Court of Appeal found the report malicious because the employer had reported the employee as an absconder knowing that she had not absconded. This had caused her psychological harm and made her liable to arrest. The court relied on the fact that the employee had filed a claim against the employer for her employment benefits before the employer had filed the report that the employee had absconded. This meant that the employer knew that the employee had not absconded.

Court of Cassation

The employer filed an appeal to the Court of Cassation arguing that the Court of Appeal erred by ordering it to pay compensation because no fault giving rise to liability had been established. In reporting that the employee had absconded, the employer had legitimately exercised its right to report an absconder as required by the formalities for canceling the employee's residence visa and sponsorship at the end of her employment contract. The employee failed to cooperate with the

university by turning up at the Naturalization & Residence Department in order to complete those formalities. The employee had disappeared without a trace, could not be contacted and the employer had no power to compel the employee to appear. Therefore reporting her as an absconder was not an error but the legitimate exercise of a right, and one which had not been exercised in bad faith or with intent to cause prejudice to the employee. The employer therefore argued that it was not liable for the alleged damage.

The Court of Cassation concurred with the employer. It held that the employer was required by Article 6(a) and (d) of Ministerial Decision No. 52 of 1989 (regulating the recruitment and employment of expatriates in the UAE) to sponsor and be responsible for the employee as an expatriate employee, and to repatriate her to the country from where she was recruited at the end of her employment contract (which is when her visa should be cancelled). This takes effect after the necessary documents are presented to the Naturalization & Residence Department, and the Department requests that both parties submit the documents. According to the documents, the employee's ties with the employer are severed following the termination of her employment contract on 25 March 2010, until she was reported as absconding on 19 May 2010. In filing the absconding report after nearly two months, the employer exercised a right required by law under Article 4 of Ministerial Decision No. 390 of 1991 in order to avoid prosecution under the Labour Law. Article 181(1) of the Labour Law Article states that an employer will be punished if the employee is caught still residing in the UAE after the termination of her employment contract because her residence visa had not been cancelled and she was not reported.

The Court of Appeal had erred when it considered the employer's absconding report to be malicious on the basis that the employer filed the report knowing that the employee had not absconded. The employer is required by law to cancel the employee's residence visa and so had acted in good faith and not vexatiously. Article 104 of the Civil Code states that "the doing of what is permitted by law negates liability, and no person who lawfully exercises his rights shall be liable for any harm arising there out". The employer was not therefore liable.

Having reached the above conclusion, the Court of Cassation dismissed the law suit filed by the employee as being without merit.

Conclusion

There are often differences and controversies between employers and employees on the issue of visa cancellations and often this leads to complaints by employees that the employer acted maliciously or arbitrarily in exercising certain rights. One of these issues is when an employee declines or fails to attend before the immigration authorities to cancel his visa on the basis that he has not yet been paid his employment benefits. In such instances questions arise as to whether or not the employer has any rights to report that his employee has absconded from him to avoid his visa cancellation and to what extent such reports shall be considered as malicious or within the legal rights given to the employer by law.

The above judgment is important because it firmly answers these important questions. An employer has a right to report an employee as absconding if they fail to attend to cancel their visa, and filing such a report cannot give rise to a claim against the employer.