

TRADE DISPUTES PANEL, SOLOMON ISLANDS  
Under the Unfair Dismissal Act 1982

UD/223/88

Between: SIMON NINGALO Applicant

and: MENDANA HOTEL LIMITED Respondent

Hearing at Honiara on 30 August 1990.

H Macleman Chairman

O Pokana Member

J Adifaka Member

For the applicant: C Waiwori, Assistant General Secretary, Solomon Islands  
National Union of Workers.

For the respondent: Nathaniel Menigi, Personnel Manager.

F I N D I N G S

The respondent company (now Solomon Kitano Mendana Hotels Limited) employed the applicant from September 1985 and admitted dismissing him on 3 August 1988. In effect, therefore, under sections 4 and 6 of the Unfair Dismissal Act 1982, the respondent had the burden of persuading the Panel that the dismissal was for a substantial reason and that it acted reasonably in coming to its decision.

In its notice of appearance the respondent gave the following grounds for resisting the claim:-

"Not complying with the hotel rules. He had already signed three written warnings and refused to sign for the fourth warning. On three different occasions he gave out beers to customers without collecting money and on one occasion he was drunk during working hours and threatened to fight a member of staff."

The respondent produced copies of warnings as follows:-

- 12 February 1988 - giving out beers without payment.
- 26 February 1988 - " " " " "
- 28 May 1988 - drunk at work and threatening member of staff.
- 2 July 1988 - giving out beer without payment.

The applicant signed the first three warnings, while the fourth is marked "refused to sign".

The final incident which led to termination took place on 1 - 2 July 1988. The respondent produced copies of a report of an investigation by Mr Menigi, then Assistant Food & Beverage Manager, into a shortfall of \$420.15 in the public bar takings that night, when the applicant was on duty with 1 or 2 other bar-men, of the stocktaking records bringing out the shortfall, and of the termination letter dated 25 July which details the prior warnings and states:-

"... with regard to those beers you gave out from the Public Bar to your friends without payment and without permission from the Duty Manager on the eve of 2/7/88 of which we lost \$420.15 on your shift, we regret to inform you that we have no alternative but to terminate your employment ...."

On referring to the report, however, on the applicant's uncontradicted evidence, and on admissions made by Mr Menigi at the hearing, it is clear that on the evening in question Mr Ningalo and his colleagues were threatened by a group of drunk and aggressive Bellonese men demanding beer without payment and brandishing a knife; that the security grilles and door to the bar serving area did not afford adequate protection; that the bar staff had called the duty manager and the police without receiving any help; that the security services provided in the public bar were considered by management itself to be weak and unreliable; that Ningalo had, quite understandably, fled, and the beers were taken or given out during his absence; that no consideration was given to whether the beers were "given out" under threat, although that was known to be a regular occurrence in the public bar; and that the evening had developed into a major disturbance in and around the public bar after which several people had been charged with serious offences and some later given lengthy custodial sentences. In 1988, at least, it seems that management was utterly complacent about a continuing situation in the public bar which was quite appalling from a staff management point of view, to say nothing of several other aspects.

The Panel had no difficulty in concluding that Mr Ningalo had not been shown to be in any way at fault for the incidents of 1 - 2 July 1988 and accordingly that his dismissal was unfair. On the other hand Mr Ningalo admitted threatening another member of staff which led to the warning of 28 May 1988 and although he disclaimed knowledge of any earlier occasion when beer was "given out" (stolen) the Panel was satisfied that his record was not an unblemished one and that he contributed to his dismissal in some part. We assess compensation at the equivalent of the redundancy payment to which he would have been entitled plus three further months gross pay, but we make a broad allowance for his own contribution in all the circumstances by not allowing interest.

Applying the formula under s. 7 of the Employment Act 1987:-

September 1985 - 3 August 1988	=	153 weeks	
153 x $\frac{1}{26}$ x 36	=		\$ 211.85
3 x 144	=		432.00
			<hr/>
			\$ 643.85
			<hr/>

AWARD

The respondent unfairly dismissed the applicant and is to pay him compensation of \$643.85, payable immediately and recoverable as a debt under s. 10 of the Unfair Dismissal Act 1982.

EXPENSES


The Panel fixes a contribution of \$75 towards its expenses to be paid by the respondent to the Ministry of Commerce and Primary Industries within 14 days of this date.

APPEAL

- (1) There is a right of appeal to the High Court within 14 days on a question of law only: Unfair Dismissal Act 1982, s. 12, Trade Disputes Act 1981, s. 13; Trade Disputes Panel Rules 1981, r. 11; High Court (Civil Procedure) Rules 1964, O. 30 r. 3.
- (2) Any party aggrieved by the amount of compensation awarded may within one month of the date of the award appeal to the High Court: Unfair Dismissal Act 1982, s. 7(3).

Issued to parties on 20 September 1990.

On behalf of the Panel

  
(Hugh Macleman)

CHAIRMAN/TRADE DISPUTES PANEL