TRADE DISPUTES PANEL, SOLOMON ISLANDS

Under the Unfair Dismissal Act 1982

UD/196 and 199/88

Between: WILSON KWALU AND DAVIS BATHOLO — Applicants

and: SHORNCLIFFE (SOLOMON ISLANDS) LIMITED — Respondent

Consolidated hearing at Honiara on 6 September 1990.

H Macleman Chairman
G Kuper Member
J Adifaka Member

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

For the respondent: Eric, Administration Clerk.

F I N D I N G S

Shorncliffe employed Wilson Kwalu from 25 April 1988 and Davis Batholo from 19 April 1988, and admitted terminating the employment of both of them on 15 August 1988. The dismissals being admitted, it was for Shorncliffe to show the reason(s). The Company's case was that both men were taken on to drive heavy machinery on a specific roads project and they were terminated when that project was nearing completion and their labour was no longer required. The applicants, on the other hand, said they were engaged on three months probation and at the end of that period were told they had permanent positions.

The only point for decision, which is determinative of both cases, is whether the applicants were engaged on a temporary basis or not. The official of the company who discussed terms with them was A. Hatigeva, then the administration manager. Shorncliffe did not call him to give evidence, although he had completed Forms TDP2 stating the engagements were temporary and had written a letter on 25 August 1988 to Solomon Islands National Union of Workers to similar effect. Record cards were produced. On Mr Davis card he is shown to be employed as "temporary tar crew and driver". Mr Kwalu's card has no such entry. Both cards have a space for the employee's signature but do not bear it.

The only direct evidence the Panel has as to the terms of engagement is that

both applicants say they were told they were taken on for a probationary period with a view to permanent positions, in which they were later confirmed.

The company ought to have been in a position to call direct evidence on the point and to produce written statements of the terms and conditions of employment, copies of which ought to have been given to the applicants. Such a procedure would have put the case beyond question. In its absence we find that the company has not established its reasons and the dismissals were unfair.

The applicants had been employed for only a short period and would not have been entitled to redundancy payments. In all the circumstances and taking account of the time which has gone by we think reasonable compensation may be assessed at $300 each.

AWARD

The respondent unfairly dismissed both applicants and is to pay compensation of $300 each (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

(Hugh Macleman)
CHAIRMAN/TRADE DISPUTES PANEL