

**IN THE TRADE DISPUTES PANEL** )  
**OF SOLOMON ISLANDS** )

Case No. 118 of 1992

**IN THE MATTER** of the Unfair  
Dismissal Act 1982

**AND IN THE MATTER** of a Complaint  
of Unfair Dismissal

**BETWEEN:** JAVEN TUITA  
Applicant

**AND:** SOLOMON ISLANDS ELECTRICITY  
AUTHORITY  
Respondent

Hearing: 1st February 1996.

Decision: 1st February 1996.

Panel: A.N. Tongarutu - Chairman  
F. Koraimae - Employer Member  
C. Karaori - Employee Member

Appearances: J. Ilifanoa, Legal Officer, for the Applicant.  
Respondent not appear.

---

**DECISION**

---

The applicant's representative filed notice of complaint in June 1992 claiming that he was unfairly dismissed from his employment as a clerical officer on June 5th, 1992 and sought compensatory relief. The ground for his application was; **"whether the termination of his employment for reason of ill health supported by a medical report was justified"**.

The respondent in its notice of appearance admitted the dismissal for the following reasons:

**"He was dismissed due to serious neglect of duty and misuse of the Authority's fund. His dismissal falls under clause 14.5 of the Authority's terms and condition of service"**.

By virtue of section 6(6) of the Unfair Dismissal Act 1982 it was for the Respondent to show that the applicant was fairly dismissed. The respondent however failed to appear at the hearing without any explanation although sufficient notice was sent to both parties. Because proceedings on this case have been delayed since March 1993 for various reasons inclusive of requests for deferment of the hearings by the respondent party, the Panel proceeded to hear the case pursuant to Rule 11(3) of the 1983 Panel Rules.

Evidence under oath from the applicant showed that he was dismissed following his absenteeism on sickleave from 17th to 18th May 1992. Prior to 17th May 1992 the applicant contracted malaria and was put on treatment. On the 17th May 1992 a Sunday he complained of a headache and drowsiness. A medical certificate for the Employer (Med/86) was issued by the Ministry of Health and dated 17th May 1992 showed that he was granted one day sick leave. This was meant for Monday 18th May 1992. When the applicant returned to work on Tuesday 19th May 1992, Mr. Hatimoana rejected the certificate and advised the applicant that he was going to be terminated from employment. On 5th June 1992 he received his termination letter. Reasons given for termination were absentism on 18th May 1992, and several warnings previously issued. These warning letters were also submitted to the Panel. So on 5th June 1992 after being employed for eight (8) years he was dismissed without notice and without holiday pay.

At this juncture, it is important to note the historical events in the employment of the applicant. The BSIEA (E.A32) Engagement Sheet showed that he was initially employed in March 1984 with the Distribution section as a driver. In May 1987 he was transferred to the Administration Section as a driver and in October 1989 he was appointed as Administration Officer (outstations) on probation. This was a promotional transfer. In February 1990 he satisfactorily completed the three (3) months probation and was confirmed in his new appointment as Clerical Officer (Outstations). This was the post he held until his dismissal two years later in June 1992.

Records tendered at the hearing showed that the applicant's period of employment was not without its flaws. In October 1990 he was issued his first warning letter for unauthorised use of the employer's vehicle. He was warned that repetition would result in the removal of his driving permit and an exodus back to his old driving duties. Again in October 1991, almost a year after the first warning, the applicant was suspended for ten (10) days without pay. The suspension letter did not carry the reason for the suspension. It was treated as the second warning letter.

Explanation from the applicant pertaining to the employer's reasons for dismissal in the notice of appearance was that the serious neglect of duties referred to his absentism on sick leave on the 18th May 1992 and in 1991 when he was at Auki. A statutory declaration made in May 1993 by an employee of SIEA who was the officer in charge of SIEA at Auki explained that in 1991 he requested the applicant to extend his stay at Auki. He was later shocked to learn that the applicant was suspended for this authorised stay. This document was submitted to the Panel.

Submission from Mr. Ilifanoa on the warnings issued was that warnings have a life line of one year as stipulated in the Collective Agreement between SINUW and the respondent. On this basis the first warning would have expired upon the issuance of the suspension which according to the applicant's evidence and the statutory declaration was groundless.

In the absence of evidence from the respondent party but in due consideration of the respondent's reason for dismissal, the Panel's decision was dependant on the strength of the applicant's evidence and submission. The test for a "fair dismissal" is whether the reason for dismissal is substantive and that proper procedures were followed in the dismissal. Firstly, on the substance of the dismissal the Panel was unanimously of the view that the reason for dismissal was not a substantial reason warranting a dismissal of an employee who was employed for eight years. It could hardly be said that absentism on grounds of illness and supported by a medical certificate was a substantive reason for dismissal especially when absentism on sick leave is regulated by legislation. The underlying principle under Rule 7(1) of the Holidays, Sick-leave and Passages Rules 1982 cannot be dispelled. Secondly, on the procedure of the dismissal the Panel was of the opinion that the procedure was improper. Between the first warning and the second, a year had lapsed and in accordance with the SINUW/SIEA Collective Agreement thus, nullifying the effect of the first warning. This would mean that the suspension became the first warning. But the explanation in the statutory explanation should have dispelled the suspension. Under the circumstances, the Panel was of the opinion that the applicant was unfairly dismissed and should be compensated for loss of employment.

Travel expenses to attend the hearing of this case was claimed by the applicant and five tickets were submitted for re-imburement. The total cost claimed was \$140.00. Unfortunately only two tickets amounting to \$50.00 tallied with the hearing schedule and on this basis it was only fair that the respondent re-imbursed the applicant in the sum of fifty dollars (\$50.00).

In all the circumstances and pursuant to section 7(2) of the Unfair Dismissal Act 1982 the Panel assesses a fair and reasonable compensation equivalent to loss of employment and wages in lieu of notice as follows;

#### Basic Award

Date of commencement:	19th March 1984		
Date of termination:	5th June 1992		
Qualifying period:	426 weeks		
Benefit:	426 x 1/26 x (\$622.50 x 12 ÷ 52)		
	<u>426 x \$143.60</u>		
	26	=	\$2,352.80
Wages in lieu of notice (20 days)		=	\$ 414.00
Loss of earnings (2 months)		=	\$1,245.00
			<u>\$4,011.30</u>
<b>Travel Expenses</b>			\$50.00

**Award**

The respondent unfairly dismissed the applicant and is to pay compensation to Javen Tuita in the sum of four thousand and eleven dollars and thirty cents (\$4,011.30) being payable immediately and is recoverable as a debt under section 10 of the Unfair Dismissal Act 1982.

**Appeal**

The appeal provisions under the Unfair Dismissal Act 1982, Trade Disputes Act 1981, Trade Disputes Panel Rules 1981 and the High Court (Civil Procedure) Rules 1964 apply to this Decision.

**Panel Expenses**

Pursuant to section 12(3) of the Unfair Dismissal Act 1982 the respondent is required to pay the Panel's expenses of \$150.00 within 14 days from receipt of this Decision.

On behalf of Panel

A. N. Tongarutu  
**CHAIRMAN/TRADE DISPUTES PANEL**