

**IN THE TRADE DISPUTES PANEL  
SOLOMON ISLANDS**

**Case No. UDF 50/2003**

**BETWEEN: Paul Sasau (Complainant)**

**AND: National Bank of Solomon Islands (Respondent).**

Panel: 1. Francis Cecil Luza - Chairman  
2. John Vollrath - Employer representative  
3. Elijah Gui - Employee representative.

Appearances: Brian Hiele for the complainant.

Claudina Habru for the Respondent.

Date of hearing: 12<sup>th</sup> March, 2009.

Finding delivered: 28<sup>th</sup> June 2009.

**Finding**

By complaint (TDP1) lodged to the Panel on 29/9/2003, the complainant claimed that he was unfairly dismissed by the respondent on 25/9/2003.

The respondent, however, by notice of appearance (TDP2) filed on 3/11/03, the respondent resisted the claim stating that the complainant was terminated for poor performance.

At the time of his dismissal the complainant had worked for the Bank for a period of eight years. His position with the Bank was senior clerk. He received a monthly salary of \$965.00 plus \$241.26 (25% housing allowance).

The facts leading up to the complainant's dismissal as claimed by the Bank were as follows. On 29<sup>th</sup> August 2003, the complainant together with Susan Votu (complainant's supervisor), Jethro Siosi (driver) and Willie Titus (security) did a "cash run" for three bank branches in Honiara, namely

Honiara Branch (Mud Alley), Point Cruz Branch and Ranadi Branch. It was a pay day.

Before proceeding on that cash run the four Bank employees went to collect cash from the Central Bank. They then returned to the NBSI headquarters where they counted the cash and placed them into different bags ready to be delivered to the three NBSI branches in Honiara. All three banks should receive a cash sum of \$5,000.00 each.

As they came to Point Cruz Branch, the complainant and the driver, Jethro Siosi waited in the vehicle whilst Susan Votu and Willie Titus went into the Bank to deliver their cash. They were received by the Branch Manager who collected the cash after verifying it. Susan and Willie then returned to the vehicle as they proceeded on to Ranadi Branch.

On arrival at Ranadi Branch, Susan Votu and Willie Titus went in first to the bank followed by the other two, the complainant and Jethro Siosi (the driver). Whilst they were all inside the room, Jethro whispered to Susan saying he saw something suspicious about the complainant whilst they were waiting in the vehicle at Point Cruz branch. Susan told Jethro to wait until the officer receiving them verified the cash. The officer verified the money and it was balance. They then returned to the Honiara Branch to continue with their normal duties.

At the end of the day however Susan Votu found out a short fall of \$5,000.00 as she tried to balance all the transactions for that day. This was at Teller 50 where Susan was taking charge being a supervisor.

The Bank's decision to terminate the complainant's employment was apparently based on Jethro Siosi's story of what he saw as suspicious about the complainant whilst they were waiting for Susan and Willie in the vehicle outside the Point Cruz branch.

In his sworn evidence, Jethro Siosi (driver) told the Panel that whilst he and the complainant were waiting in the vehicle outside the Point Cruz branch, he saw something strange happened. The complainant moved to his left from where he was sitting as he faced the boot where the bag of money was. After a short while, the complainant repositioned himself to face the front again. Straight away Jethro asked him what he was doing with the money because his action was suspicious to him. The complainant replied in pidgin

“no any thing” as he shifted back to his original seat just behind the driver’s seat (Jethro’s seat). The complainant was leaning towards Jethro’s seat as he (Jethro) could hear the complainant unfolding monies. Jethro asked the complainant whose money he was counting, the complainant replied his own. By then, Jethro noticed the complainant’s brace pocket swollen that he asked him what it was but the complainant replied his passbook. Susan Votu and Willie Titus then returned to the vehicle as they proceeded on to Ranadi branch to deliver cash there. It was there that Jethro had whispered to Susan to tell her about what he had noticed about the complainant whilst delivering cash at Point Cruz branch.

In his sworn evidence, however, the complainant told the Panel that he was not responsible for the cash shortage on that day. Whilst in the vehicle he only moved to the boot to move the bag of money closer for security reasons. He did not take any money from the bag as claimed by Jethro. What was in his brace pocket then was his own name tag, \$100.00 cash and a passbook belonging to his relative, namely Peter Tomasusu. He held on to his pocket because he had realized that he was yet to withdraw money for his relative as requested by him. He explained this to Jethro when Jethro seemed to be still suspicious of him when he said in pidgin “what more olsem ia!”

The complainant further told the Panel that a couple of days later, Susan Votu, Jethro, Willie Titus and himself (the complainant) were asked to see the Manager Retail Banking, Mark Carol. During the interview Jethro accused him of stealing the missing cash. The complainant was then sent out as three others were still there with Mark Carol in her office. Rose Abana then asked the complainant to write a statement which he did. A few days later he was further interviewed by Mark Carol and two other senior bank managers. The complainant told the interviewers to refer the matter to Police which they agreed. A couple of days later however he was surprised to be given the termination letter.

In unfair dismissal cases, the onus is on the employer to prove that the employee’s dismissal was not unfair.

The Panel is guided by section 4 (1) of the **Unfair Dismissal Act (Cap 77)** in determining whether or not an employee’s dismissal was unfair. The section provides:

“An employee who is dismissed is not unfairly dismissed if –

- (a) he is dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding his position; and
- (b) in all the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissing the employee.”

Basically, the guiding principle here is that in determining whether or not an employee is fairly dismissed, the Panel must first consider whether the reason for dismissing the employee is substantial. Secondly, whether the manner in which the complainant was dismissed was proper in all the circumstances.

If the Panel finds that the reason for dismissal is substantial and of a kind justifying the dismissal, it must go on to consider whether in all the circumstances, the employer had acted reasonably in treating that reason as sufficient for dismissing the employee.

If the answer to the first question is in the negative, the complainant's dismissal is apparently unfair and therefore the Panel need not go further to consider the second question.

***Was the reason for the complainant's dismissal substantial and of a kind justifying an employee holding the complainant's position?***

If the complainant had truly stolen the \$5,000.00 cash that was said to have gone missing during the cash run on 25/8/2003, then such offence is a breach of trust and warrants a summary dismissal, whether or not the complainant has any previous warning.

On the evidence, however, there was nothing to prove that the complainant was responsible for the missing \$5,000.00 cash, in any way, the basis for which he was terminated. The only ground for suspecting the complainant taking the money was his action in the vehicle as claimed by Jethro Siosi and yet the cash was still balance when delivered at the last place of delivery at Ranadi branch as confirmed by Susan Votu.

The complainant had stated in his sworn evidence that he was interviewed twice by the Bank before the decision was made to terminate him. He was also requested to submit a written statement which he did.

Why the complainant's statements cannot be accepted is a question. Such evidence can only be adduced by the employer but for some reasons it had decided not to call relevant witnesses in answering the question.

Having said that, the Panel finds that the complainant was not responsible in any way for the cash shortage at Teller 50 on 25/8/2003, the basis for which he was dismissed.

Accordingly, and in all the circumstances, the Panel finds that complainant was unfairly dismissed.

### **COMPENSATION**

In awarding compensation, the Panel notes as follows. The complainant had worked for the Bank for a period of eight years. At the time of his dismissal he was paid a monthly salary of \$965.00. Since termination he has also secured an employment with the Solomon Island Government as Prison officer.

The compensation is therefore calculated as follows:

1. One month pay in lieu of notice	- \$ 965.00
2. Loss of employment (6 x \$965.00)	- \$5,790.00
<b>Total</b>	<b>\$6,755.00</b>

The Panel having taken into account the conduct of the employer and the complainant both before and after the date of dismissal in this case considers an award of **\$6,755.00** as fair and reasonable in all the circumstances.

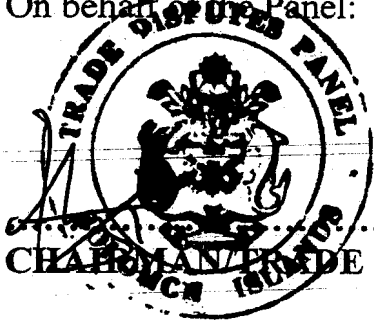
### **ORDER**

1. The respondent is ordered to pay the sum of **\$6,755.00** to the complainant within 7 days.
2. The respondent is also to pay **\$600.00** towards panel costs within 7 days.

**APPEAL**

Right of appeal to the High Court is 14 days.

On behalf of the Panel:



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CHAIRMAN/TRADE DISPUTES PANEL