

IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS

Case No. UDF 79/11

BETWEEN: Andrew Ario (Complainant)

AND: John Wesley Timbers (Respondent)

Panel: 1. Francis Cecil Luza - Chairman
2. Yolande Yates - Employer representative
3. Sanneth Talo - Employee representative

Appearance: Selson Fafale of the Labour office for the complainant.

John Keniapisia for the respondent.

Date of hearing: 9/5/12

Finding delivered: 17/12/12

FINDING

By complaint (TDP Form 1) lodged to the Panel on 29/11/11, the complainant claimed that he was unfairly dismissed by the respondent on 21/9/11.

The grounds of his complaint were that he was not given notice for his termination and that he had never received any warnings prior to his termination.

In its notice of appearance (TDP form 2), however, the respondent company stated that the complainant was dismissed on the following grounds:

"Employee tell(s) liars to his employer in that:

- He was given unpaid leave.
- He never returned with timbers as he had promised.
- He never kept his family to take care of company premises as he had promised..."

The complainant commenced employment with the respondent company in 2004. He was employed as a lucas mill operator and timber grader. He worked 45 hours a week and received a net salary of \$900.00 per fortnight.

In unfair dismissal cases, the onus is on the employer to prove that the complainant's dismissal was not unfair (s. 6 (6) of the **Unfair Dismissal Act, Cap 77**).

Respondent's case

The respondent's case was that the complainant was dismissed because he told lies to the company regarding his unpaid leave. In his sworn evidence, John Wesley Zesapa, the owner of the respondent company told the panel that the complainant approached him and his son Charley Wesley whilst at their residence at Tandai to get permission if he could be sent on unpaid leave to go to Marovo to cut timber. He said the timbers he cut would be sold back to the respondent company. This was on a date in July 2011. The complainant told the father and the son that whilst in Marovo, the community would take care of him. They would also meet his family's needs as they continued to occupy the company's house in Honiara. Having convinced of what the complainant had told them, John Wesley and his son granted the 3 months' unpaid leave as requested by the complainant. They also agreed that the complainant's family remained in the company house to look after it whilst the complainant was away. About 3 months later, however, the complainant returned with no timber. Because he had not fulfilled what he had promised, the company decided not to re-engage him and treated him as self-terminated.

Complainant's case

In his sworn evidence, the complainant admitted having approached Mr. John Wesley Zesapa and his son Charles Wesley to suggest to them if he could be released to cut timber at Marovo seeing that their timber yard at Ranadi was out of stock. The manager Mr. Dent Sorna was also in favour of the idea as the landowners at Marovo had discussed it with him. After discussions, Mr. Zesapa and his son agreed and released him as requested.

The complainant further told the panel that sending him to the rural areas to cut timber for the company was not a new thing. At one time in 2004 he was sent to Utupua to cut timber. He brought back a shipment of timber transported by MV Moika, a ship owned by the respondent company. Another time in October of the

same year he and Charles Wesley were sent to Makira. They also brought back a shipment of timbers also transported by MV Moika. In 2006, they went to Choiseul on similar arrangement. They brought back only seven cubic meters of sawn timbers which were transported to Honiara by a transport arranged by the company. The complainant told the panel that for those trips he was on full salary.

As to the Marovo trip, the complainant told the panel that he was away for only one and half month when he received information that his family were not allowed getting his pay. The complainant's family was also asked to vacate the company house to allow another family to occupy it. Having received that information, the complainant immediately returned to Honiara. Even so, the complainant told the panel that by then, he already had 200 cubic meters of timbers ready to be shipped over to Honiara. When he arrived in Honiara he asked the respondent to arrange for transport to collect the timbers. The respondent however insisted that the landowners should meet the cost of transporting the timbers to Honiara themselves.

Was the complainant fairly dismissed?

The guideline is section 4 (1) of the Unfair Dismissal Act (cap 77), which states:

"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."**

In light of this provision, the panel first asks itself whether the complainant was dismissed for a reason of a kind such as to justify the dismissal of an employee holding his position (the complainant's position).

The respondent claimed that the complainant was dismissed because he misrepresented the company a result of which he was granted 3 months' unpaid leave. Having obtained the leave, the complainant failed to achieve the purpose for which the leave was granted, that is to cut timber and bring it back to the company.

The panel however finds no evidence to prove that the complainant had misrepresented the company in any way. On the sworn evidence of the complainant, the panel is satisfied that the complainant did arrange for timbers to be milled at Marovo and that by the time he left for Honiara he had 200 cubic meters volume of timbers ready to be shipped over. Upon his arrival in Honiara he went to see the manager, Dent Soma to ask him if he could arrange a transport to collect the timbers from Marovo, but he refused the request saying that the landowners themselves should meet the cost of transporting the timbers to Honiara and not the company. Non-availability of transport therefore was the reason for not bringing the timbers to Honiara. The panel is also satisfied that the complainant returned to Honiara earlier than planned because his family was displaced from the company accommodation. The company had arranged with another family to move into the rooms that were occupied by the complainant's family. This was clearly a non-compliance of the arrangement made by the complainant with the company before the complainant went on unpaid leave.

It must be noted that the complainant was still an employee of the company when he was sent on unpaid leave. To terminate his employment, the company must have "substantial reasons" a reason of a kind such as to justify the dismissal of an employee holding his position (the complainant's position). Even if the respondent had substantial reasons to terminate the complainant (which the panel did not find), the respondent in all the circumstances must act reasonably in treating that reason as sufficient to terminate the complainant. On the evidence, the respondent had not even called the complainant to explain his case before a decision could be made to terminate him. Instead he was asked to come back to office a number of times until he was verbally informed that he was dismissed. He was not even issued with a termination letter.

Having said that, and in all the circumstances, the panel finds that complainant was unfairly dismissed.

Award

In considering award in this matter, the panel notes as follows. The complainant had not secured any employment since termination. The complainant was not paid one month in lieu of notice.

The award is therefore calculated as follows:

1. One month pay in lieu of notice	- 1,800.00
2. Loss of employment (3x \$1,800.00)	- 5,400.00
Total	- \$7,200.00

In all the circumstances, the panel considers the sum of \$7,200.00 as reasonable compensation for the complainant for his wrongful dismissal.

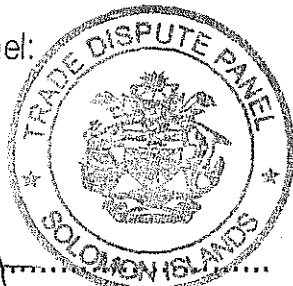
ORDER

1. The respondent is to pay a total of \$7,200.00 as compensation to the complainant within 14 days.
2. The respondent is also to pay \$1,000.00 towards panel expenses within 14 days.

APPEAL

Right of appeal to the High Court within 14 days.

On behalf of the Panel:



[Handwritten Signature]
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CHAIRMAN/TRADE DISPUTES PANEL