

IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS

Case No. UDF 52/11

BETWEEN: Joel Teava (Complainant)

AND: Diocese of Central Melanesia (Respondent)

Panel: 1. Francis Cecil Luza -Chairman
2. Sika Manuopangai - Employer representative
3. Eric Maefelo - Employee representative

Appearance: Selson Fafale, Labour Officer for the complainant.

Respondent barred.

Date of hearing: 29/2/12

Finding delivered: 7/3/12

FINDING

By complaint (TDP Form 1) lodged to the Panel on 9/6/11, the complainant claimed that he was unfairly dismissed by the respondent on 27/4/11.

On 23/6/11, the Panel secretary issued three copies of notices of appearance (TDP Form 2) to the respondent to be completed and returned to the Panel within 21 days from the date it received the forms.

At the lapse of the 21 days, however, the forms were never received from the respondent.

On 15/8/11, the Panel secretary issued another letter to inform the respondent of its failure to file the TDP 2 Forms. In the same correspondence, the respondent was advised to attend a hearing on 14/9/11 at 09.00am and to apply for an extension of time to file the TDP 2 Forms if it wished to take part in the proceeding.

At the hearing on 14/9/11, however, the respondent failed to make any appearance. Consequently, the complainant applied for an order to bar the respondent from taking part in the proceeding on the grounds of the respondent's non-appearance on that day as well as for its failure to file the TDP2 forms. The Panel granted the application and adjourned the matter for hearing at a later date.

The matter was not heard until 29/2/12 when the Panel heard evidence only from the complainant. In his sworn evidence, the complainant told the Panel that he was employed by the respondent since 4/3/10 as a driver. At times he would be required to do banking for the Diocese as well as transporting priests to their destinations and any other duties as directed by the Diocesan Secretary (the secretary). On many occasions the secretary would also ask the complainant to pick up his own family members. He sometimes wondered whether this is within his job description and whether it would be proper to use the Diocesan vehicle that way. He did not raise a formal complaint about this but would mention it to other priests who were around.

The complainant further told the Panel that he was not surprised about his dismissal. The dismissal was merely done to give way for the recruitment of the secretary's own uncle. It started when the complainant was sick and was admitted in the National Referral Hospital in Honiara. The secretary recruited his uncle, Danny to relieve him whilst on sick leave. When the complainant was recovered and returned to work, Danny was made to stay on performing the same duties as the complainant. For unknown reason, Danny even got a higher salary than the complainant. The complainant raised this with the Archbishop a result of which Danny was terminated.

Only about three months later after the termination of Danny, the complainant was also issued with a termination letter. As soon as he was terminated, the secretary re-employed his own uncle, Danny to replace him. The complainant told the panel that his dismissal was a clear action only to give way for the recruitment of Danny, the secretary's own uncle.

In his sworn evidence, the complainant denied the grounds for his dismissal as stated in the termination letter. The grounds for his termination was said to be of stealing money on two occasions. First, was for a shortfall of \$200.00 cash alleged to have been stolen by the complainant, and second, a \$400.00 cash alleged to have been misappropriated by the complainant.

The complainant however told the Panel that when the first allegation was made against him he was called to the office of the secretary where he explained his side of the story. He told the secretary that the money (\$1,000.00) was in fact shield in an envelope which he handed to the wife of the secretary as instructed. He did not even know how that money (\$200.00 cash) had gone missing from the shield envelope. After giving his explanation he did not hear anything about it until he was given the termination letter.

The second allegation was in relation to a \$400.00 cash alleged to have been misappropriated by the complainant. Instead of buying fuel for the truck, the respondent alleged that the complainant had converted the money for his own use. In his sworn evidence, however, the complainant told the Panel that he had never misappropriated the money as alleged. He told the Panel that when he was given the \$400.00 cash he could not buy fuel at Tongs Corporation where the Diocese had an account with because the place was closed due to the death of someone there. Instead, he went to buy fuel at Quan Chee to re-fill the truck. He was given a receipt for the fuel purchase which he brought it back to the office of the Diocese. The complainant told the Panel that he was not even asked to explain himself regarding the stolen \$400.00 cash as alleged of him by the respondent. Instead he was given a termination letter straight away.

In unfair dismissal cases, the onus is on the employer (the respondent in this case) to prove that the complainant was not unfairly dismissed. In this case, the respondent had lost its opportunity to discharge such burden as a result of its own failure to file its defense (TDP Form2s) that had resulted to an order by the Panel not to allow the respondent to take part in the proceeding.

Having observed the demeanor of the complainant in the witness box, however, the Panel finds that the complainant's evidence was reliable, thus, accepted by the Panel as truthful. The Panel finds that the respondent had acted unreasonably in handling the complainant's dismissal if there were any grounds for him to be terminated. If there were reasonable grounds to allege or to suspect that the complainant had stolen the \$400.00 cash (an offence warranting summary dismissal), there was no evidence before the Panel that the complainant was suspended to allow for investigation to be carried out, in the course of which, the complainant should also be given the opportunity to state his case. Instead, the respondent went ahead to summarily dismiss the complainant. Such action is considered by the Panel as unreasonable and cannot be accepted as a proper manner in terminating an employee in the circumstances of the complainant.

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

Award

In considering award in this matter, the Panel notes as follows. The complainant has still not secured any employment since termination. Upon termination, the complainant was not paid one month salary in lieu of notice.

Compensation is therefore calculated as follows.

1. One-month pay in lieu of notice	- 1,203.68
2. Holiday pay calculated on pro-rata basis (1.25 x 13 x \$8.00)	- 130.00
3. Loss of employment: (4 months' salary: 4 x \$1,203.68)	- 4,814.72
Total	- \$6,148.40

ORDER

1. The respondent is to pay a total of \$6,148.40 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:

