

IN THE TRADE DISPUTES PANEL )

OF SOLOMON ISLANDS )

Case No: UDF 23,24,25 of 2009

IN THE MATTER of the Unfair  
Dismissal Act 1982

AND IN THE MATTER of a  
complaint of Unfair Dismissal

BETWEEN: ELIZABETH BARINA & OTHERS

Complainant

AND: RAIN TREE CAFÉ

Respondent

Hearing: 7<sup>th</sup> February 2012, Honiara.

Decision: 27<sup>th</sup> March 2012.

Panel: Wickly Faga Deputy Chairman  
Eric Maefelo Employee Member  
Yolande Yates Employer Member

Appearances: Selson Fafale, Representative of the Complainants  
No appearance for the Respondent

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FINDING

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The three complainants in this matter collectively filed with the Panel Secretary their complaints of unfair dismissal pursuant to section 6(1) of the Unfair Dismissal Act [cap77] on the 21<sup>st</sup> May 2009. They came to the Panel seeking compensatory relief against the Respodnent for what they thought was their unfair dismissal due to their membership with the Solomon Islands National Union of Workers (SINUW). The Respondent however stated in its response that, "all staff were given 2 weeks pay in lieu of notice as the business was forced to close operation due to lack of income and increasing expenses."

This matter was mentioned a total of six times since the first hearing on the 6/10/09; and during those times, the Respondent had failed to appear either by its representative or by its legal counsel. During a full hearing on the 7/02/2012, neither the Respondent's Manager nor its legal counsel appeared, without any reason. Therefore the Panel, in its discretion, allowed the full hearing to proceed in the absence of the Respodnent.

All the Complainants gave evidence under oath. Elizabeth Barina who worked as Cook and Assistant Waitress, stated in her evidence that she worked for the Respondent from the 7<sup>th</sup> of February 2004 until the 6<sup>th</sup> of April 2009, when she recieved a letter dated 5<sup>th</sup> April 2009, from her Manageress, Mary, advising that her employment with the Respondent had ceased as of the date of the letter. Mrs. Barina identified a copy of the said letter when it was produced during the hearing [EX1]. The first paragraph of the letter reads;

*"This letter serves to inform you that Rain Tree Café will be closing as of Monday 6<sup>th</sup> April, 2009 due to lack of profitability of the business and a need to restructure and reassess our whole business operation. This letter serves as notice to you that your employment with Rain Tree Café ceases as of 5<sup>th</sup> April, 2009. You will be paid your current fortnight wages owing. In addition, you will be paid an extra two weeks pay based on your hours worked in the previous fortnight as a good will gesture from Rain Tree Café Ltd."*

Mrs. Barina also stated in her evidence that the Manageress, Mary, verbally advised her to rest from work for two weeks. She was then paid \$280.00 for the two weeks she had worked, but no further payment as advised in the letter. She personally called back to the Respodnents office after two weeks to enquire about her employment. She was told that her employment had ceased and no work was available for her. She then sought assistance from the office of the Commissioner of Labour.

Mrs. Eunice Jacobs who used to work as Kitchenhand for the Respondent also gave evidence. She stated in her evidence that she was given a letter on the 6<sup>th</sup> April 2009. Mrs. Jacobs identified a letter with exactly the same wordings as the letter Mrs. Barina identified when it was produced in Court [refer EX1]. She told the Panel that she was given a copy of the said letter, and Mary verbally advised her to rest from work. She was to return after two weeks. When she returned to the Respodnent's premises after two weeks to enquire about her employment status, she was told that her employment with the Respodnent had ceased.

She further stated in her evidence that, apart from her salary payment of \$300.00 for the two weeks she had worked, there was no further payment as stated in the said letter.

Mrs. Hellen Eric who was working as Cook for the Respondent agreed with the evidences of Mrs. Barina and Mrs. Jacobs. She confirmed receiving a copy of the same letter that was given to her other two colleagues. She told the Panel that she was advised in the said letter to rest for two weeks, and to return to work thereafter. However, when she returned after two weeks, she was told to re-apply as her employment with the Respondent had ceased. Mrs. Eric only received her normal fortnightly salary of \$300.00 at the time she was told to rest from work. She denied receiving any other payments apart from her salary.

In his closing submission, Mr. Fafale stated that his clients were dismissed because they were members of the Union. This however had not been supported by any written or verbal evidence before the Panel. It was further submitted that the Complainants were dismissed because of redundancy and were entitled to be paid redundancy in accordance with the provisions of Section 4 of the Employment Act [cap 72].

After having considered all available evidence, the Panel is satisfied that the Complainants were dismissed because of redundancy. Section 4(2) of the Unfair Dismissal Act [cap77] states that, "An employee who is dismissed is not unfairly dismissed if he is dismissed because of redundancy." They are however entitled to be paid their redundancy. Section 2.-(1) of the Employment Act states that;

"Where-

- (a) an employee is dismissed by his employer, and
- (b) the dismissal is because of redundancy, and
- (c) the employee has been continuously employed for a period of twenty-six weeks or more ending with the date of his dismissal,

then, subject to the following provisions, the employer shall be liable to pay him a sum calculated in accordance with section 7 (in this Part referred to as a "redundancy payment")."

AWARD

The amount of redundancy that each Complainant is entitled to receive is calculated in accordance with section 7 of the Employment Act, as follows:

A. Elizabeth Barina

$272 \times 1/26 \times \$150.00 = \$1,569.20$

B. Ellen Eric

$180 \times 1/26 \times \$150.00 = \$1,038.50$

C. Eunice Jacobs

$172 \times 1/26 \times \$150.00 = \$992.00$

The Respondent is to pay to each complainant their redundancy entitlements as follows; Elizabeth Barina-\$1,569.20, Ellen Eric-\$1,038.50 and Eunice Jacobs-\$992.00. These are payable immediately and are recoverable as debts under section 10 of the Unfair Dismissal Act 1982 [cap 77].

COSTS

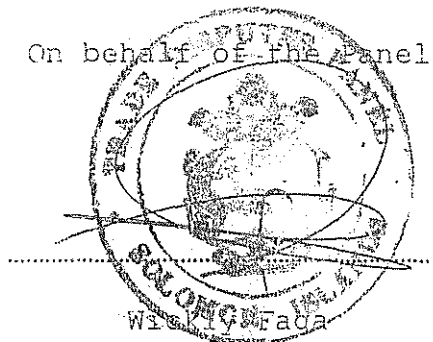
The respondent is also ordered to pay \$500-00 towards Panel expenses within 14 days from receipt of this finding.

APPEAL

There is a right of appeal to the High Court within 14 days on points of law only, and any party aggrieved by the amount of redundancy may within one month of the date of the award appeal to the High Court as provided for under the Unfair Dismissal Act 1982, S. 7 (3).

Dated the 27<sup>th</sup> day of March 2012

On behalf of the Panel



DEPUTY CHAIRMAN/TDP