

IN THE TRADE DISPUTES PANEL)

OF SOLOMON ISLANDS)

Case No: UDF 48,49,50 of 2010

IN THE MATTER of the Unfair
Dismissal Act 1982

AND IN THE MATTER of a complaint
of Unfair Dismissal

BETWEEN: HUBERT TEIRARU & OTHERS

Complainant

AND: ISABEL DEVELOPMENT COMPANY

Respondent

Hearing: 20th March, 2012, Honiara.

Decision: 11th June, 2012.

Panel: Wickly Faga Deputy Chairman
- Employee Member
Walter H. Rhein Employer Member

Appearances: Selson Fafale, (COL) for the Complainants
No appearance for the Respondent

FINDING

All three complainants in this matter filed their complaints of unfair dismissal with the Panel Secretary on the 5th July 2010, pursuant to section 6(1) of the Unfair Dismissal Act, [cap77]. They claim unfair dismissal against the Respondent on the grounds that, there was no substantial reason, no warnings and no notice served.

The Respondent filed notices of appearance in respect of Hubert Tairaru and Francis Feitei. In both notices of appearance, the Respondent admitted that it dismissed Mr. Tairaru and Mr. Feitei. The reasons for their dismissal were that both, Mr. Tairaru and Mr. Feitei were regular drinkers of alcohol during working hours and

were usually on unauthorized leave from duties on a regular basis. The Respondent, however, did not elaborate on those grounds, but indicated that details would be provided during the full hearing. There was no notice of appearance filed, in respect of Mr. Jonus Manehia despite several reminders by the Panel Secretary to do so.

By order of the Panel dated 20th September 2011, the three individual complaints were consolidated and set down to be heard together. During the full hearing of the matter, the Respondent failed to appear either through a Company representative or its legal counsel. There was no reason provided to justify their non-appearance. The Panel therefore had in its discretion allowed the proceedings to continue in the absence of the Respondent.

Hubert Tairaru was first to give evidence under oath. In his evidence, he stated that he commenced employment with the Respondent as shipping clerk on the 7 July 2003. His job includes collecting fares and freights for the Respondent. He recalled that during the period of his employment, he would sign employment contracts for each working year. The Complainant further told the Panel that on the 21st May 2010, he was given a letter signed by one, Mr. Drewman Teomae who was the Acting General Manger. The said letter alleged that Mr. Tairaru consumed alcohol during working hours and for that reason was terminated from his employment with the Respondent Company. Tairaru denied drinking during working hours. He also told the Panel that the Acting General Manger did not ask him to explain his side of the story in response to the allegations against him, before making any decision to dismiss him. Mr. Tairaru confirmed that he was paid an amount of \$5,400.00 at the time of his dismissal.

Francis Feitei also gave evidence. In his brief evidence, he agreed that his termination was made in a similar fashion as Hubert Teiraru. He identified his signature on his TDP 1 Form which was tendered as evidence. In the said TDP 1 Form, he stated that he started working for the Respodnent as Engineer from April 2007 until his termination on the 21st May 2010. He was receiving \$1680.00 per month at the time of his dismissal. Mr. Feitei currently lives at Poro village, in Isabel Province. His other colleague, Mr. Jonus Manehia is from the same village. He stated in his TDP 1 Form that, he commenced working as crew for the Respondent from February 2003 until his termination on the 21st May 2010. He was receiving \$1064.00 per month at the time of his termination.

Selson Fafale, who represents the Complainants, submitted that his clients were terminated after they were alleged to have consumed alcohol on board MV Isabella. The Complainants denied drinking alcohol during working hours. Each of the Complainants was not given the opportunity to answer to the allegation before making the decision to terminate them. It was therefore submitted that failure to conduct proper investigation into the allegation had rendered the decision to dismiss the Complainants unfair.

The Respondent admitted dismissing the Complainants. The reasons given by the Respondent for dismissing Mr. Hubert Tairaru were that, he had a repeated drunken behavior, stealing money from the company and disobeying orders. Mr. Francis Feitei was dismissed due to the expiry of his contract of employment, drinking liquor whilst on duty and unauthorized leave. There was no notice of appearance in respect of Mr. Jonus Manehia, although it would appear from evidence before the Panel that he was dismissed with Mr. Tairaru and Mr. Fetei. It is unfortunate that the Respondent did not attend to show that each Complainant was dismissed for a substantial reason.

According to evidence before the Panel, the Complainants denied all allegations. Therefore, the onus of proving that the dismissal was for a substantial reason shifts to the employer. The Respondent's failure to attend and provide evidence in support of its case, cast doubt on whether the Complainants actually consumed alcohol during working hours.

Having taken time to consider the evidence before the Panel and being mindful of the uncontested evidence, the Panel must give the benefit of the doubt to the Complainants, and accordingly finds that they were dismissed for no justifiable reason. Accordingly, the Panel finds that the Complainants were unfairly dismissed.

In awarding compensation, the Panel takes into consideration that the Complainants were paid their last salaries and long service benefits.

Award

In all the circumstances, Panel assesses a fair compensation for each Complainant as follows;

HUBERT TAIRARU

1. Five months loss of employment $\$1120.00 \times 5 = \$5,600.00$

FRNCIS FEITEI

1. Five months loss of employment \$1680.00 x 5 = \$8,400.00

JONUS MANEHIA

1. Five months loss of employment \$1064.00 x 5 = \$5,320.00

The respondent unfairly dismissed the complainants and is to pay to each Complainant compensation in the following manner; Hubert Tairaru \$ 5,600.00, Francis Feitei \$8,400.00 and Jonus Manehia \$5,320.00, which are payable immediately and are recoverable as debts under section 10 of the Unfair Dismissal Act 1982.

Appeal

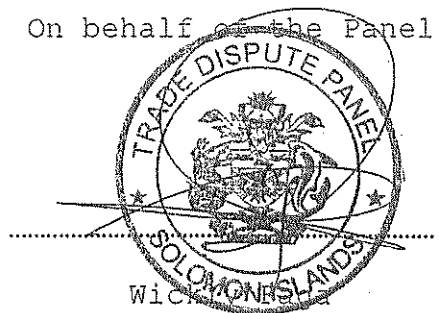
There is a right of appeal to the High Court within 14 days on points of law only, and any party aggrieved by the amount of compensation awarded may within one month of the date of the award appeal to the High Court as provided for under the Unfair Dismissal Act 1982, S. 7 (3).

Panel Expenses

The Panel fixes a contribution of \$500-00 to cover Panel expenses, and this amount is to be paid by the respondent within 14 days from the date of this decision.

Dated the 11th of June 2012

On behalf of the Panel



DEPUTY CHAIRMAN/TDP