

IN THE TRADE DISPUTES PANEL  
SOLOMON ISLANDS

Case No. UDFs 31-32/10

**BETWEEN:** Everlyn Kwarafi and Elina Lule (Complainants)  
**AND:** Solomon Tropical Products (Respondent)

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

Appearances: Selson Fafale of the Labour Office representing the complainants.  
John Vollrath, General Manager for the respondent Company.

Dates of hearing: 1/7/12, 19/7/12 & 29/8/12

Finding delivered: 28/9/12

### Finding

By complaints (TDP Form1s) lodged to the Panel on 7/6/10, the complainants claimed that they were unfairly dismissed by the respondent company on 6/6/10.

By notice of appearance (TDP Form2s) filed on 8/7/12, however, the respondent resisted the claims and stated that the complainants were in fact dismissed for causing "intimidation and harassment" at the work place.

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

### Respondent's case

The respondent called two witnesses, namely Bernadeth Weke (RW1) and Sindy Beula (RW2) to prove that the complainants' dismissals were not unfair. The witnesses were both employees of the respondent Company. In their sworn evidence, they told the Panel that at the time leading up to the complainants' dismissal, the employees (mostly girls who were employed at the tailoring shop of the respondent company at China town) were complaining about their salaries. As a result, they came up with the idea of joining the Solomon Islands National Union of Workers so that the Union can negotiate a pay rise for them with the company. A meeting was then convened by the employees conducted by one of the complainants, namely Everlyn Kwarafi. This was after lunch hour on a date in May 2010 when both Mr. and Mrs. John Vollrath the owners of the company were not in office. When Mrs. Vollrath returned to the office, the witnesses, Bernadeth Weke (RW1) and

Sindy Beula (RW2) told her about the meeting. Mrs. Vollrath was not happy about this so she called the girls and expressed to them her disappointment, especially for having conducted the meeting during working hours without any permission from the management. The next day Everlyn Kwarafi confronted Bernadeth Weke (RW1) and accused her for reporting the matter to Mrs. Vollrath. Everlyn was so angry about this that she slapped the table using the palm of her hand. Consequently, both complainants were issued two warnings each (1<sup>st</sup> and 2<sup>nd</sup> warning) the same date on 11/5/2010. The reasons for the warnings as stated in the warning letters (exhibits 3 and 4) were, "disruption to the work place without proper consultation with company Directors for self gain" and "disobey directors' direction and disrupting the workers with intimidation and bad behavior." The complainants, Everlyn Kwarafi and Elina Lule were eventually dismissed on 25/5/10 and 26/5/10 respectively. The reason for their termination as stated in the TDP Forms 2 filed by the respondent was for intimidation and harassment, although, in respect of Elina Lule the reason for her termination according to her final and termination letter (exhibit 4) was for "bad behavior and undermining the Authority of the Management". Sindy Beula (RW2) further told the Panel that Everlyn Kwarafi had a poor work record. The Panel however cannot accept that evidence as the basis for Everlyn's termination was not for poor work performance but intimidation and harassment as confirmed in the filed TDP 2 forms.

### Complainants' case

In their sworn evidence, the complainants told the Panel that the true reason for their termination was because of their membership with the Solomon Islands National Union of Workers and not for intimidation and harassment as stated in the notice of appearance (TDP Form2) filed by the respondent. Everlyn Kwarafi told the Panel that only two days after she had received the two warning letters (1<sup>st</sup> and 2<sup>nd</sup> warning) the same date on 11/5//10, Mrs. Vollrath called her to her office and verbally told her she was terminated. She said the reason for her termination was that she had influenced the other girls to join the union. She said that and ordered her to leave the work place at the same time. Mrs. Vollrath did the same with the second complainant, Elina Lule. She called Lule to her office and told her she was finished because she had continuously disturbed the Ranadi workers by ringing them to talk about union matters. On cross-examination both complainants confirmed working for 8 1/2 hours per day (except for Friday 6 hours) and having paid at a rate of \$5.00 per hour.

### **Were the complainants not unfairly dismissed?**

The grounds for the complainants' dismissals as stated by the respondent in the notice of appearance (TDP Form 2) filed were "intimidation and harassment". The Panel however finds no evidence to prove this. The only action that may amount to intimidation and harassment was that of Everlyn Kwarafi when she had confronted Bernadeth Weke (RW1) and slapped the table. The incident however had already attracted a disciplinary action, for which Everlyn Kwarafi was given a double written warnings the same day on 11/5/12. As to Elina Lulei, the Panel finds no single evidence to prove that she was intimidating and harassing the workers. The Panel cannot accept that the phone calls made to the girls (workers) at Ranadi amounts to intimidation and harassment. What seems clear from the evidence, as the Panel accepts, is that the respondent was a non-advocator of unionism. It could not accept the union to represent its workers. This was conceded

by the respondent's own witness, Bernadeth Weke (RW1) when she said in cross-examination, "we never discussed anything about pay rise, except union membership, but company cannot agree to workers joining the union." From the evidence, as the Panel accepts, the respondent had to take action to get rid of the complainants (who were already financial members of the union then) for fear that they might influence other workers to also join the union. Such act is clearly a violation of the complainant's constitutional right (freedom of Association) as embedded in the constitution of Solomon Islands.

Having said that, and in all the circumstances, the Panel finds that the complainants were unfairly dismissed.

### AWARD

In considering award in this matter, the Panel notes as follows. Everlyn Kwarafi was employed for a period of only one year whilst Elina Lule for two years. The complainants were not paid one month salaries in lieu of notice. They have both not secured any formal employment since their termination.

The compensation is therefore calculated as follows:

#### Everlyn Kwarafi

1. One month in lieu of notice (5 x \$40 x 4)	- \$800.00
2. Loss of employment (4 months' salary)	- \$3,200.00
<b>Total</b>	<b>\$4,000.00</b>

#### Elina Lule

1. One month pay in lieu of notice (5 x \$40 x 4)	- \$800.00
2. Loss of employment (5 months' salary)	- \$4,000.00
<b>Total</b>	<b>\$4,800.00</b>


### ORDER

1. The respondent is ordered to pay \$4,000.00 to Everlyn Kwarafi and \$4,800.00 to Elina Lule as compensation for their wrongful dismissal within 14 days.
2. The respondent is also to pay \$1000.00 towards panel costs.

APPEAL

Right of appeal to the High Court is 14 days.

On behalf of the Panel:

  
CHAIRMAN/TRADE DISPUTES PANEL

