

IN THE TRADE DISPUTES PANEL )

OF SOLOMON ISLANDS )

Case No: UDF 29 of 2010

IN THE MATTER of the Unfair  
Dismissal Act 1982

AND IN THE MATTER of a  
complaint of Unfair Dismissal

BETWEEN: RINALDO KOTI

Complainant

AND: SOLOMON ISLANDS ELECTRICITY AUTHORITY

Respondent

Submission: 05<sup>th</sup> November, 2012, Honiara.

Decision: 16<sup>th</sup> April 2013

Panel: Wickly Faga Deputy Chairman  
Sanneth Talo Employee Member  
- Employer Member

Appearances: Selson Fafale, of Commissioner of Labour Office  
representing the Complainant.

Barnabas Upwe, on behalf of the Respondent

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FINDING

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The Complainant in this matter was dismissed by the Respondent for allegedly authorizing a reconnection of power supply, to a customer who has outstanding arrears, without any authority. He is claiming unfair dismissal on the basis that he was not

afforded an opportunity to tell his side of the story. The Respondent admitted that it dismissed the Complainant. The reasons for dismissal are that, "He misrepresented to the on call crew to reconnect installation 03140-61, and paid a \$500.00 to them, and he has no authority to authorize reconnection of an installation."

During a scheduled full hearing of this matter on the 25<sup>th</sup> of September 2012, the parties agreed to have this matter determined by way of sworn statements and written submissions. The Respondent filed sworn statements by Norman Nicholls, Coleman Lokea, Lawrence Aforosimae and Martin Ramo on the 8<sup>th</sup> of October 2012, and that of Frank Ausuta on the 9<sup>th</sup> of October 2012. The Respondents written submission was filed on the 19<sup>th</sup> October 2012. The Complainant, who is sole witness in his own case, filed his sworn statement on the 8<sup>th</sup> of October 2012. His written submission was filed on the 5<sup>th</sup> November 2012.

The facts not in dispute are that, on the 30<sup>th</sup> December 2009 at about 6pm in the evening, three linesmen, Frank Ausuta, Coleman Lokea and Lawrence Aforosimae were working on a fault at Fishing Village. Whilst on the job, the Complainant called up Frank Ausuta's mobile phone and requested his teams assistance in reconnecting power to his cousin sister's house at White River. After completing the work on the fault at Fishing Village, the three linesmen drove up to the then Solex Shop at Ranadi where they met the Complainant, his wife and another person by the name of Richard Berry. They then proceeded together to the Complainant's cousin sister's house at White River. There, one of the three linesmen reconnected power supply to the Complainant's cousin sister's house. After power supply had been reconnected, the Complainant gave \$300.00 to Frank Ausuta, and \$100.00 each to Coleman Lokea and Lawrence Aforosimae.

The Respondent's case is that the Complainant knowingly without authority directed a reconnection of power to a disconnected customer who had outstanding arrears. He also misrepresented to the linesmen on duty that a reconnection memo had been issued, while in fact there was none. This was confirmed in the sworn statement of Martin Ramo at paragraph 4, where he stated that, "On 30<sup>th</sup> December 2009, there was no reconnection memo issued for the reconnection of the account number 03149-61 in the name of Elizah Billy." According to the General Manager, Mr. Nicholls,

the reconnection was done illegally because it was not authorized. Therefore that amounts to gross misconduct. Gross misconduct is a disciplinary offence that attracts summary dismissal and no pay in lieu of notice. Thus, the Complainants dismissal was for a justifiable reason.

It is not disputed by the Complainant that he was dismissed for a justifiable reason. The only ground he advanced in support of his application for a determination of his claim for unfair dismissal is that he was denied natural justice. According to the Complainant, the decision to terminate him was made without giving him the opportunity to tell his side of the story.

The two questions that the Panel must establish to determine whether a dismissal is fair or unfair are clearly stated under section 4(1) (a) and (b) of the Unfair Dismissal Act, 1982, [cap7] (the Act). Section 4 (1) of the Acts states that;

*"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."*

First, the Panel must determine whether the Complainant was dismissed for a substantial reason that justifies his dismissal. Once it is established that the reason for dismissal is not justifiable, the Complainant's dismissal is unfair. But if it is shown that the reason for dismissal was justifiable, the next question to consider is whether, in all the circumstances of this case, the employer acted reasonably in treating that reason as sufficient for dismissing the Complainant.

The first question is made easier because the Complainant accepts that his termination was for a justifiable reason. His only point of argument, which becomes the only issue for determination by the Panel, is that he was not given an opportunity to present his side of the story. The Complainant submitted that failure by the investigator to put its findings to the Complainant amounts to a breach of his right to be heard,

a principle of natural justice. The Complainant further submitted that failure to give him an opportunity to say something before a decision is made to terminate him had rendered the Respondent's action unreasonable.

However, contrary to the Complainant's story, where he claimed to have not been given an opportunity to give his side of the story, he actually stated in paragraph 6 of his sworn statement that, "SIEA (the Respondent) had failed to adequately consider my side of the story." This implies that he had in fact conveyed his side of the story to the Respondent. This is consistent with Mr. Nicholls' evidence that the Complainant wrote a letter dated 5<sup>th</sup> January 2009, saying sorry and apologizing for the action he took to direct a reconnection of power to a disconnected customer. A copy of the said letter was exhibited as "NN1" in the sworn statement of Mr. Nicholls. Principle of natural justice requires that a person alleged to have committed any wrong doing must be afforded an opportunity to respond to such allegations. The Panel is grateful to the assistance by counsel for the Respondent in making reference to an authority in the case of *Temasusu-v-Taupongi (1983) SILR 103*. Daly CJ stated that, "*it is the opportunity to speak that is important; if a party does not wish to deal with any matter that is for him to decide. A record that he was given an opportunity is sufficient.*"

After having taken time to look at all the evidences, the Panel is satisfied that the Complainant had the opportunity to tell his side of the story when he wrote the letter to the General Manager giving reasons why he had to direct a reconnection of power to a disconnected customer. It is however the employer's discretion to accept or refuse those reasons based on its judgment. As an employer, the Respondent refused to accept the reasons, and finally decided that the alleged offence justifies instant dismissal.

The Complainant however, appears to suggest that his action was not wrong because he thought he has a right as an employee to access power. While that may be true, the process was not proper and amounts to theft. The underlying consideration here is that the connection, whether it is meant for him as an employee, was made without proper authority. It is on that basis that the Respondent made the decision to terminate his employment.

In view of the above considerations, the Panel can not be of further assistance to the Complainant, and must dismiss this complaint.

**Appeal**

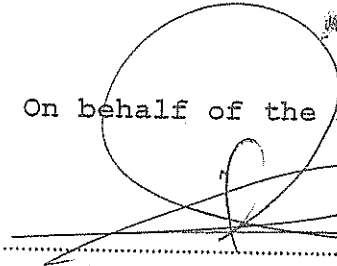
There is a right of appeal to the High Court within 14 days on points of law only.

**Panel Expenses**

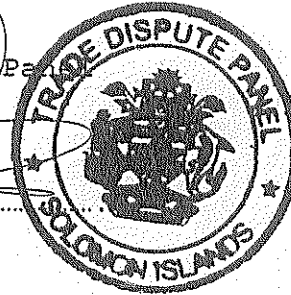
We make no order as to costs.

Dated the 16<sup>th</sup> of April 2013

On behalf of the Pa



Wickly Faga



Deputy Chairman/TDP