

IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS

CASE NO. UDF 4/12

BETWEEN: Rose Dawea Boape (COMPLAINANT)

AND: Solomon Island Tobacco Company Ltd (RESPONDENT)

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

Appearances: Maru S. Tongarutu for the complainant

Silverio Lepe for the respondent.

Date of hearing: 18/9/13, 17/9/14, 19/9/14 & 22/9/14.

Date of finding: 29/12/14.

FINDING

By complaint lodged to the Panel on 2/2/12, the complainant claimed she was unfairly dismissed by the respondent on 20/12/11. The grounds for her complaint were stated as follows:

"11.1 The complainant is not responsible for the allegation level against her particularly for the loss of the goods that were unaccounted for. In the allegation concerning adequate controls in place over finished goods" the Respondent admitted that weaknesses were identified at many other points.

11.2. The Complainant performed her duty diligently as prescribed in her role profile. Other employees' failures to perform their duties were unfairly levelled against the complainant.

11.3 The process engaged by the Respondent in the Complainant's dismissal is contrary to the rules of natural justice.

11.4 The Complainant had a good working record.

11.5. The dismissal of the complainant was not founded on a substantial ground that was sufficient enough to justify her dismissal.

By notice of appearance filed on 26/3/12, however, the respondent stated that the complainant was dismissed for serious breaches of company policies and procedures, particulars of which are stated as follows:

- "i. The Complainant failed to ensure adequate control are in place over finished goods as outlined thereto in her role profile and operation accountability;
- ii. The Complainant's stock reconciliation showed incomplete data and she was not able to provide/show when was the last time she reconciled the finished goods stock. The data the complainant provided showed that she reconciled SAP numbers against itself instead of doing physical stock count;
- iii. The complainant breached Financial Procedures when she adjusted the system without authorisation;
- iv. The Complainant breached IT codes by using Suzie Osiramo's (another employee of the Respondent) password to adjust the system to balance stock without authorisation;
- v. The complainant did not highlight to management the magnitude of the stock variance;
- vi. All of the above resulting in the Complainant's contribution to a massive accountability of at least 106 cartons of tailor made cigarettes and 42 cartons of Twist.

BACKGROUND FACTS

The complainant began her employment with the respondent on 22/5/93 as an Assistant Accountant. She made her way up to the position of Operations Finance Executive (OFE) and later as Marketing Finance Executive (MFE), a position she held at the time of her dismissal on 20/12/11. She received a monthly salary of \$5,452.00.

In 2009, the complainant from her position as OFE swapped roles with Patrick Maelaua to take up the position of MFE. As MFE, two of her key roles include, "ensure adequate control exists over finished goods stock with monthly reconciliation to SAP" and "ensuring that all Sales data entry is accurately captured and reconciled to SAP on a daily basis." (Exhibit 4).

FACTS LEADING TO THE COMPLAINANT'S DISMISSAL

In July 2011, audit was conducted in which some discrepancies were discovered. At least 106 TMC cartons and 42 TOB cartons were unaccounted for. Both the complainant (MFE) and Patrick Maelaua (OFE) were separately interviewed regarding the missing stock.

The complainant was interviewed on 20/10/11. She was interviewed by a Panel consisting of the Manager Finance, Peter Sogoilo, Human Resource Manager, Joe Sanga and Eddie Soaki, Manager Security (Exhibit 1). Following the interview, the HRM wrote to the complainant on 21/10/11 putting to her allegations which she was to respond by 1st December 2011. The allegations were as follows:

1. You failed to ensure adequate controls are in place over Finished Goods stocks as per your role profile operational accountability;
2. Your stock Reconciliations showed incomplete data. You were not able to provide/show when the last time you

reconciled finished goods stock. The data you provided showed you reconciled SAP numbers against itself instead of physical stock count;

3. You breached Finance Procedures when you adjusted the system without authorisation;
4. You breached IT codes by using Susie's Osiramo's password to adjust the system in order to balance stock without authorisation;
5. You did not highlight to management the magnitude of the stock variance;
6. All of the above resulting in your contribution to a massive accountability of at least 106 cartons of TMC and 42 cartons of Twist.

By 1st December 2011, however, the complainant failed to make any response. The respondent then decided to extend the due date to 9/12/11 to allow the complainant respond to the allegations. Having informed of the due date extension, the complainant verbally told the HRM that she would respond but did not do so until 15/12/11. The complainant's response however only relates to allegation one (Exhibit 9). She stated as follows:

"I will only respond to the first allegation levelled against me.

1. There are adequate controls in place over Finished Goods. It is the persons implementing the control measures that failed.

- Who set up the Depots, I do not know as I was not a party to this and I was not involved in how this was set up.
- When stocks left the premises, I understand they had documents for them, when stocks returned, they had documents for them, when they got invoiced they should be invoiced

against where the stocks were transferred, when stocks are in the Depots, it is the responsibility of the TMR to give an account of the movement in stocks because the ownership had transferred to them.

I am just surprised why I had to be blamed for all of these. I have verbally informed you of what had happened and I have nothing to hide. I performed my job with no intention to hide anything and all records are in file and in SAP should you want to check."

Having considered that response, the respondent made a decision to terminate the complainant as conveyed to the complainant by letter dated 20/12/11 (exhibit 10).

Guiding Principles

In unfair dismissal cases, the guiding principles in determining whether a dismissal is fair or not is found in section 4 of the **Unfair Dismissal Act, Cap 77**, which states:

"(1) 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;

(b) in all the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissing the employee.

Was the reason for dismissing the complainant substantial and of a kind justifying a dismissal of an employee holding the complainant's position?

The respondent's case is that the complainant's dismissal was a result of her failure to perform her duties diligently, a result of which 106 TMC cartons and 42 cartons of Twist were unaccounted for. When the allegations were put to the complainant, she did not bother to properly respond to the allegations. She said she was not responsible for ensuring adequate controls are in place over finished goods.

At the hearing she indicated that other employees should be responsible for the goods that were unaccounted for and yet from the evidence it is clear that one of her key roles under her role profile was to ensure adequate controls are in place over finished goods and if there is variance identified at certain points she must report it to Finance and Administration Manager to investigate (Exhibit 16).

The respondent also alleged that the complainant's stock reconciliations showed incomplete data. That they did not show when the last time she reconciled finished goods stock. The data that she provided showed that she had reconciled SAP numbers against itself instead of physical stock count.

In her evidence, she told the Panel she was not provided documents for stocks in Auki and Noro depots to allow her make the relevant SAP entry. Despite this, however, she did not report this to management. In fact, the complainant was aware that variances had occurred (see exhibit 1, p.1) and yet did not bother to report it to the Finance Manager.

The complainant was said to have also breached Finance Procedures when she adjusted the system without authorisation. Whilst she did not deny this, the complainant stated she had done it in good faith to correct mistakes of other employees handling the stock.

In his sworn evidence, however, Peter Sogoilo told the Panel that for such discrepancies or variances, the complainant is responsible to report it to him (Peter Sogoilo) and it is for him to decide whether to write off the variance or report it to their head office in Australia or Papua New Guinea.

From the evidence of Ms Ramo, which the Panel accepts, the complainant had to ask Ms Ramo during working hours and entered into SAP after hours. The question is, why chose to do that after hours? The only conclusion, as the Panel accepts, is that she chose to do that after hours by herself in order to make false reconciliations manipulating the record to look as if they were balanced. By doing that, in effect the complainant was also in breach of the IT and Financial policies.

On the evidence, the Panel is satisfied that the complainant had failed to do proper and timely reconciliations; did not take measures to ensure accuracy of sales data and reconciliation with SAP on daily basis and to ensure adequacy of control over finished goods stock with timely monthly reconciliations. Failing to perform these duties as required of the complainant under her role profile had clearly resulted to the loss of the 106 cartons of TMC and 42 cartons of Twist. Such act or omission by the complainant in the Panel's view is serious negligent of duties that justifies a dismissal of an employee holding the complainant's position.

The aggravated part, according to the evidence, as accepted by the Panel also was the complainant's act of dishonesty in which she made false reconciliations manipulating the record to look as if they were balance. Although, the complainant is known to have worked for the respondent for a period of 17 years with good record, dishonesty itself, as proved against the complainant in this case, is a serious breach that warrants summary dismissal.

Having said that, and in all the circumstances, the Panel is satisfied that the reason for dismissing the complainant as stated above is substantial, and of a kind that justifies a dismissal of an employee holding the complainant's position.

Did the employer act reasonably in treating that reason as reasonable in terminating the complainant?

The Panel answers this question in the affirmative. The complainant after being interviewed was placed to respond to

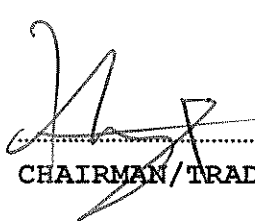
certain allegations. She was given more than enough time to respond to the allegations. She however chose not to respond to all the allegations except one, which was not accepted by the respondent resulting to her termination. She was therefore given the opportunity to be heard.

Having said that, and in all the circumstances, the Panel finds that the complainant's dismissal was not unfair.

Appeal

Right of appeal to the High Court within 14 days.

BY THE PANEL


CHAIRMAN/TRADE DISPUTES PANEL

