

TRADE DISPUTES PANEL, SOLOMON ISLANDS

Under the Unfair Dismissal Act 1982

UD/71/89

Between: ALICK NGAINA Applicant

and: ATTORNEY GENERAL Respondent

Hearing at Honiara on 20 September 1990.

H Macleman Chairman

O Pokana Member

H Creighton Member

For the applicant: C Waiwori, Assistant General Secretary, Solomon Islands National Union of Workers.

For the respondent: P Afeau, Attorney-General's Office.

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F I N D I N G S

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Solomon Islands Government employed Alick Ngaina as a survey worker in the Ministry of Agriculture and Lands from 26 November 1973 until 31 April 1989. His basic salary was \$224 per month.

On 7 June 1989 Mr Ngaina lodged complaint of unfair dismissal. Notice was sent to the Ministry of Agriculture and Lands but Forms TDP2 were not returned. At a "preliminary hearing" before the Chairman on 20 July 1990 Mr Taigwata from that Ministry appeared and sought to oppose the application on the basis that dismissal was justified on medical grounds.

The case was accordingly set down for pre-hearing assessment by a full Panel. Mr Afeau asked us to extend the time for lodging under Rule 14 so that the respondent might take part in the proceedings. Unfortunately the only explanation for the failure to lodge timeously amounted to one of neglect and administrative incompetence. The Panel has repeatedly said that such reasons will not suffice. If extensions were to be granted in such circumstances the time-limit would be deprived of all force. We refused, and proceeded to a full hearing.

On 12 February 1987 Mr Ngaina suffered an injury to his knee in an accident at work when he slipped while carrying a batter. The doctor at Gizo treated him, kept him off work for two weeks, then told him he was fit to resume light duties only. He reported back and was assigned to cleaning and brushing around the

Gizo Office.

In 1989 the Principal Medical Officer (Western) was asked for a report, and wrote to the Ministry on 20 January:-

"Examination shows the knee to be weak and heavy exertion is NOT recommended, or it may deteriorate further.

I would therefore suggest he be given light duties only, until his knee improves."

On 16 February 1989 the Permanent Secretary of the Ministry wrote to the applicant terminating his services on medical grounds.

The applicant told us that he would have accepted light work at either Gizo or Honiara, that he felt his knee had now improved, and that he had been able to find only occasional casual work since being sacked.

On the evidence the employer made not the slightest effort to try to fit the employee into some other suitable available job. We think it almost certain that with a little effort some post could have been found. The members agree that there is nothing to show either a substantial reason for dismissal or that the employer adopted a reasonable procedure, and find the dismissal unfair.

Mr Ngaina has received \$1,314.89 under the Workmens Compensation Act, but that is in respect of his injury, not loss of employment. In the circumstances we assess compensation at the equivalent of the redundancy payment to which he would have been entitled, three further months' net pay (which we take at the rate of \$200), and interest to date.

Applying the formula under s. 7 of the Employment Act 1981:-

$$\begin{array}{rcl}
 26.11.73 - 31.4.89 & = & 800 \text{ weeks} \\
 800 \times \frac{1}{26} \times (224 \times 12 + 52) & = & \$ 1590.53 \\
 3 \times 200 & = & 600.00 \\
 & & \underline{\hspace{1.5cm}} \\
 & & \$ 2190.53 \\
 & & \text{=====}
 \end{array}$$

#### AWARD

The respondent unfairly dismissed the applicant and is to pay him compensation of \$2190.53 plus interest at 15% per annum from 31 April 1989 until payment (all payable immediately and recoverable as a debt under s. 10 of the Unfair Dismissal Act 1982).

#### APPEAL

(1) There is a right of appeal to the High Court within 14 days on a question

of law only: Unfair Dismissal Act 1982, s. 12; Trade Disputes Act 1981, s. 13; Trade Disputes Panel Rules 1981, r. 11; High Court (Civil Procedure) Rules 1964, O. 30 r. 3.

- (2) Any party aggrieved by the amount of compensation awarded may within one month of the date of the award appeal to the High Court: Unfair Dismissal Act 1982, s. 7(3).

Issued to parties on 28 September 1990.

On behalf of the Panel



(Hugh Macleman)

CHAIRMAN/TRADE DISPUTES PANEL