

TRADE DISPUTES PANEL, SOLOMON ISLANDS

Under the Unfair Dismissal Act 1982

UD/247/88

Between: JAPHET IHOMANA Applicant

and: SOLOMON TAIYO LIMITED Respondent

Hearing at Honiara on 7 August 1990.

H Macleman Chairman

O Pokana Member

H Creighton Member

For the applicant: G Suri and C Waiwori, SINUW

for the respondent: P Belande, Personnel Manager.

F I N D I N G S

Mr Ihomana began work for Taiyo on 1 August 1972. On 14 July 1988 he went on compassionate leave from Tulagi to Isabel, both his parents being ill in hospital at Buala. His original leave certificate seems to have been for two weeks. His mother was discharged from hospital on 15 July, died some days later and was buried at her home village on 27 July. The applicant's father was still in hospital. His wife was expecting a child, which was born at Buala on 29 September. The applicant sent a message through police radio to Taiyo at Tulagi, explaining his situation, and wrote a letter to similar effect to the cannery manager. On 19 September Taiyo ^{sent} a service message via SIBC requiring the applicant's return by 30 September. At that time he was in his village in the bush with no radio, but he was told of the message within a few days. He took the next available ship to Honiara, arriving on 3 or 4 October, and reported to Taiyo Head Office, only to be told that he was dismissed for over-staying his leave.

Taiyo did not dispute any of that evidence. The Panel accepts that the applicant returned by the first available ship once he heard the message. Over-staying leave is a serious problem facing Solomon Islands employers, which may often justify dismissal. Each case however turns on its own circumstances. The Panel does not consider it fair to dismiss an employee of 16 years standing

who has taken compassionate leave, has requested an extension, and has returned as promptly as he could when required to do so. Nor does the Panel consider it a reasonable procedure for Taiyo to dismiss without investigating the circumstances, such as availability of transport.

The Panel assesses compensation at the equivalent of a redundancy payment, three months additional salary, and interest to date.

1.8.72 - 5.10.88 = 832 weeks	
$832 \times \frac{1}{26} \times (224.05 \times 12 + 52) =$	\$ 1654.52
3 months gross salary (3 x 224.05) =	672.15
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	2326.67
Interest 5.10.88 - (say) 31.8.90	
i.e. $\frac{695}{365} \times \frac{15}{100} \times 2326.67 =$	664.54
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	2991.21
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AWARD

The respondent unfairly dismissed the applicant and is to pay him compensation of \$2326.67 plus interest of 15% p.a. from 5 October 1988 until payment (payable immediately and recoverable as a debt under s. 10 of the Unfair Dismissal Act 1982).

EXPENSES

The Panel fixes a contribution of \$50 towards its expenses to be paid by the respondent to the Ministry of Commerce and Primary Industries within 14 days of this date.

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. 8(3).

On behalf of the Panel

Hugh Macleman

(Hugh Macleman)

CHAIRMAN, TRADE DISPUTES PANEL