

TRADE DISPUTES PANEL, SOLOMON ISLANDS

Under the Unfair Dismissal Act 1982

UD/192/89

Between:

SPENCER BEKU

Applicant

and:

SOLOMON KITANO MENDANA HOTELS LIMITED

Respondent

Hearing at Honiara on 30 October 1990 before:

H Macleman Chairman

O Pokana Member

F Koraimae Member

For the applicant: G Suri, Legal Officer, Solomon Islands National Union of Workers.

For the respondent: C Leong, Deputy General Manager.

F I N D I N G S

Mr Spencer Beku worked at the Mendana Hotel as a shipping clerk from 1 January 1982 until 14 November 1989.

The respondent company admitted his dismissal and so, by section 4 and 6(6) of the Act, had to show both that the dismissal was for a substantial reason and that it acted reasonably in treating that reason as sufficient for dismissal.

The company's reasons are variously set out in a suspension notice dated 1 November 1989, termination letter dated 14 November 1989, Form TDP2, and a letter to the Panel Secretary dated 1 December 1989. They may be summarised as:-

1. Returning late from compassionate leave.
2. Taking absence from work without permission, following a family bereavement.
3. Poor time-keeping.
4. Unsatisfactory work performance, in particular
 - (a) failure to establish a proper filing system, and
 - (b) delay in clearance of goods from wharf.

As the hearing progressed, however, it became clear that the company did not base its case on grounds 1 and 3, but sought to justify the dismissal purely by shortcomings at work.

In respect of 4(a), it did seem that the applicant arranged his papers untidily. He explained this as due to shortage of filing space and as part of a working system which suited his purposes. There was evidence that he had been warned but failed to change his ways; however, there was nothing to show that his methods had any adverse effect on the operation of the company. People vary in the tidiness of their paper-work and an immaculate desk does not always belong to an efficient worker. The Panel members felt that any deficiency shown here did not amount to a substantial reason for dismissal.

As to 4(b), regular and substantial delays in obtaining goods from the wharf, if shown to be the applicant's fault, might well have justified his sacking.

However, the documents produced and evidence led on this point related mainly to periods after the applicant had gone on leave and then been suspended from duty, and so did not establish him to be to blame.

The company has not met the requirements of section 4(1)(a). It produced a 'job description' given to the applicant not long before his dismissal, and there was evidence of verbal warnings. However, the job description merely prescribes the duty of "clearance from Customs", without laying down any detailed procedures. The Panel considers that if the dismissal of an employee engaged for so long in such work was being considered, he was entitled to be told first of all precisely what was expected of him and where he was failing, and to be given a clear opportunity to improve. Thus, in the circumstances, the Panel would not have found that the company had complied with section 4(1)(b) either.

The applicant sought re-engagement, but management was not willing to consider that. We accordingly find it impracticable, and make no such recommendation. Mr Beku had almost 8 years employment, and would have been entitled to a substantial redundancy payment. He has not found another position. His basic wage was \$480 per month. In all the circumstances, we consider fair and reasonable compensation to be \$2000.

AWARD

The respondent unfairly dismissed the applicant and is to pay him compensation of \$2000 (payable immediately and recoverable as a debt under s. 10 of the Unfair Dismissal Act 1982).

EXPENSES

The Panel fixes a contribution of \$200 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 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. 60 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).

This decision is issued in writing, as consented to by the parties at the hearing, on 6 November 1990.

On behalf of the Panel,



(Hugh Macleman)

CHAIRMAN/TRADE DISPUTES PANEL