

TRADE DISPUTES PANEL, SOLOMON ISLANDS

Under the Unfair Dismissal Act 1982

UD/250/88

Between: PATRICK SANGA Applicant

and: LEVER SOLOMONS LIMITED Respondent

Hearing at Honiara on 26 September 1990.

H Macleman Chairman

O Pokana Member

J Adifaka Member

For the applicant: C Waiwori and G Suri, Solomon Islands National Union of Workers.

For the respondent: Matthias, Administrative Officer

FINDINGS

Lever's employed Mr Sanga from October 1981. On 22 August 1988 he gave notice on a standard company form of his intention to resign. By an undated memo apparently sent around late September he sought to withdraw his resignation. Lever's declined, saying that arrangements had already been made to fill his post.

On 19 October 1988 Sanga lodged complaint of unfair dismissal. The company denied that he was ever dismissed. It was therefore for the applicant to establish that he was. He produced a copy of a letter by Lever's Administration Manager to the National Provident Fund dated 11 October 1988 in these terms:-

"Mr Patrick Sanga (NPF No. DD584)

The above person has been terminated from the employment of Lever Solomons Limited w.e.f. 7.10.88.

Grateful please process his NPF accordingly and thanks for your co-operation."

There was also produced a copy of a termination notice, again on a standard company form, dated 6 October 1988 and bearing to be effective from 7 October 1988.

The applicant told the Panel that in August 1988 there had been a redistribution of duties in his department following the departure and non-replacement of another employee. He had asked the administration manager if his additional duties would result in him receiving higher pay in the form of an "acting allowance". The administration manager in turn took this up with the personnel manager whose response was, "If Patrick is not happy tell him to fuck off and resign". This had so upset him that he had felt compelled to complete the resignation form.

The respondent explained the documents which indicated a termination by the employer as an attempt to enable the applicant to withdraw his entitlement from the National Provident Fund, which is open to employees who have been sacked but not to those who resign. The complainant said he had not asked for such documents to be produced.

The Panel is aware that employees who leave their jobs voluntarily often ask employers for evidence of their employment being terminated for National Provident Fund purposes. It appears that some employers comply. That is a very misguided practice. Not only does it expose the employer to a possible unfair dismissal claim which might be difficult to resist, it renders anyone who takes part guilty of the criminal offence of fraud, or attempt thereof. However, that is not the issue in this case; our first task is to decide whether Sanga was dismissed, either constructively or directly.

His representatives at the hearing did not appear to have a clear idea of what case they were putting forward on his behalf, and tried to argue that the employer's decision not to agree to withdrawal of the resignation was unreasonable and unfair and amounted to dismissal. We do not think that can be so. If the resignation was genuine and voluntary, then simply to refuse consent to its withdrawal could not in our views amount to dismissal, the employee himself having already put an end to his contract. We do not accept the documents by the company in September and October as constituting a termination then. We are satisfied they were a fabrication for National Provident Fund purposes. Thus the only dismissal Sanga could hope to establish was a constructive one as at 22 August 1988.

The applicant's account of the personnel manager's attitude was one which might, if we accepted it, have entitled him to treat himself as dismissed, and the respondent company did not choose to call that individual as a witness; but the applicant could not satisfactorily explain why, even if he had felt forced out of his job, he had chosen to complete and submit a formal resignation, without appending any explanation. We did not believe the applicant when he said that he knew nothing of the letter to National Provident Fund, but strongly suspected

that he instigated it. In examination-in chief the applicant said he had never worked since leaving Levers, but when it was put to him in cross-examination he had to admit having been in full-time employment as a clerk to Central Province since October 1989. We did not accept his later explanation that he had meant only that he had not worked for Levers again; our view was that he tried to mislead us, not expecting his deception to be exposed. The applicant produced a written statement by the holder of the post of administration manager at Levers in August 1988 but it is bare and lacking in detail and we do not find it significantly to assist his case.

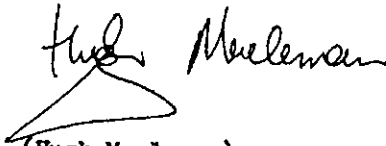
For the reasons we have given, we were not impressed by the applicant's evidence.

We find that he has not persuaded us that he was dismissed in any sense, rather than having voluntarily resigned. Accordingly we dismiss the complaint.

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

Issued to parties 1st October 1990.

On behalf of the Panel



(Hugh Macleman)

CHAIRMAN/TRADE DISPUTES PANEL