

TRADE DISPUTES PANEL, SOLOMON ISLANDS
Under the Unfair Dismissal Act 1982

UD/88 and 96/89

Between: VISUA NARAYAN AND JOSEPH LEO Applicants
and: MENDANA HOTELS LIMITED Respondent

Consolidated hearing at Honiara on 1 and 8 August 1990.

H Macleman Chairman
G Kuper Member
F Koraimae Member

For the applicants: G Suri, Legal Officer, S I National Union of Workers.
For the respondent: D Campbell, Barrister and Solicitor.

F I N D I N G S

Mendana Hotel Limited (now Solomon Kitano Mendana Hotels Limited) employed both applicants in its accounts section until they were sacked by letters from the Chairman of the Board of Directors dated 18 July 1989.

The dismissals being admitted, by s. 6(6) of the Unfair Dismissal Act 1982 it was for the respondent company to show the reason(s). There were some relatively minor and rather vague allegations against the applicants but it was clear that the critical consideration was contained in paragraph (c) of each letter in identical terms:-

"Fraudulently obtaining a signature from the board of directors for an unauthorised pay cheque on 17.5.89 for \$16,653.70. You were informed by the financial controller that this cheque was not to be paid and you were aware that Coopers & Lybrand had refused to sign the cheque. You also telephoned the company secretary who told you not to cash the cheque.

You hold a position of trust within the Hotel and are aware of certain procedures relating to signing of cheques to safeguard the interests of the Hotels. You used your knowledge of these procedures to circumvent the systems to obtain signatures on unauthorised cheques."

On 9 May 1989 the General Manager of the respondent company, Mr Gabriel Chuma, signed a collective agreement with Solomon Islands National Union of Workers on behalf of the Hotel employees. The applicants were Chairman and Vice-Chairman of the Union Committee within the hotel. The agreement included a 10% pay rise, back-dated to 1 January 1989. On 12 May 1989 the General Manager instructed Mr Narayan, in writing, to proceed with calculation and payment of the pay arrears. There was then prepared a pay summary, a wages requisition marked "back pay", and relative cheque for \$16,653.70. Hotel cheques require signature by any two of the General Manager, the Chairman, a director, and the Company Secretary. Mr Chuma signed the cheque and it was sent for counter-signature to the offices of Messrs Cooper & Lybrand, Chartered Accountants, whose Mr Wayne Morris is the Company Secretary. Mr Morris did not give evidence but it appears that he was of the view at that time, ^{that} in signing the agreement on 9 May Mr Chuma had exceeded his authority, that the company might be entitled to repudiate it, and that pay arrears should not meantime be paid.

(As it turned out, the agreement did irrevocably bind the company.) Mr Morris declined to sign the cheque. At this point there is the only significant conflict of evidence. The respondents called Mr David Boardman, then an employee of Messrs Cooper & Lybrand engaged full-time in the hotel as Financial Controller. He stated that he took the cheque back to the hotel accounts office, left it on a desk there, and told the staff, including the applicants, that it was not to be cashed, whereupon Mr Narayan and Mr Leo became irate, shouting and swearing. The applicants, however, said that the cheque was merely left on a desk without anything being said, so that they took it that Mr Morris had simply not been available to sign it. Mr Leo then went with the cheque to the office of Mr Gina Tekulu, the Chairman, with the supporting documents, mentioned the purpose of the transaction and obtained his signature. In favour of Mr Boardman's account it may be said that when Mr Leo gave evidence he did not conceal his resentment of Mr Boardman's role in the hotel nor the sense of triumph in obtaining the payment which he conveyed to Mr Morris when speaking to him on the telephone the following day. On the other hand, that evidence remains consistent with the applicants' account that they became aware of the opposition to the payment only the day after it was made. It is also puzzling why, if the company secretary intended to block payment, he returned the cheque to the accounts section and did not retain or destroy it. The other witness for the hotel was Mr George Hiele, a director, who recalled signing a wages cheque around that time. He recalled checking that the payment was vouched by supporting documents, but not any mention of "back pay", and his signature was

the first on the cheque, not second. It is not surprising that the witness could not recall precise details of an apparently unexceptional transaction so long ago. The Panel's view is that it was some other cheque which Mr Hiele signed and that the cheque with which this case is concerned was signed, as the applicants said, by Mr Tekulu, who was not called by either side.

The Panel need not resolve the main conflict in the evidence. On either account, the respondent company's case amounts to this - it sacked Mr Narayan and Mr Leo for discharging as back pay the proceeds of a cheque which the General Manager had instructed to be prepared for that purpose and had signed, and which the Chairman had countersigned. On all the evidence produced, they knew what they were doing. There was no evidence whatsoever of "fraudulently obtaining signatures" nor that the cheque was in any way "unauthorised". There may have been dissension at higher levels of the company over the appropriateness of the payment. The applicants may even have known that the Company Secretary opposed payment. Nevertheless the payment implemented the company's legal obligations, and, more importantly, the applicants acted on the express authority of both Chairman and General Manager. Such action could not in any way justify their dismissal.

Neither applicant has been in employment since 18 July 1989. Mr Narayan is shortly to emigrate to Canada. Mr Leo is content to remain as a farmer and is not now seeking paid employment.

In all the circumstances the Panel assesses compensation at the equivalent of a redundancy payment, 3 months salary, and interest.

R Narayan 12.6.80 - 18.7.89 = 473 weeks

$473 \times \frac{1}{26} \times (460 \times 12 + 52) =$ \$ 1931.18

3 months gross salary (3 x 460) = 1380.00

3311.18

Interest 18.7.89 to (say) 31.8.90

i.e. $\frac{409}{365} \times 3311.18 \times 15\% =$ 556.55

3867.73

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J Leo 2.10.81 - 18.7.89 = 405 weeks

$405 \times \frac{1}{26} \times (430 \times 12 + 52) =$ \$ 1547.71

	\$ 1547.71
3 months gross salary (3 x 430) =	1290.00
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	2837.71
Interest 18.7.89 to (say 31.8.90	
i.e. $\frac{409}{365} \times 2837.71 \times 15\%$ =	476.97
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	3314.68
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AWARD

The respondent unfairly dismissed both applicants and is to pay compensation to Visua Narayan of \$3311.18 and to Joseph Leo of \$2837.71, in each case with interest at 15% from 18 July 1989 until payment (all payable immediately and recoverable as a debt under s. 10 of the Unfair Dismissal Act 1982).

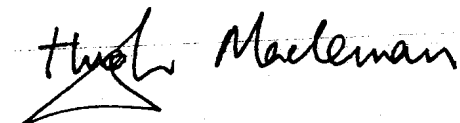
EXPENSES

The Panel fixes a contribution of \$150 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. 4(3).

On behalf of the Panel



(Hugh Macleman)

CHAIRMAN, TRADE DISPUTES PANEL