

TRADE DISPUTES PANEL, SOLOMON ISLANDS

Under the Unfair Dismissal Act 1982

UD/11/89

Between:

ROBERT MARA

Applicant

and:

DEVELOPMENT BANK OF SOLOMON ISLANDS

Respondent

Hearing at Honiara on 4 October 1990.

H Macleman      Chairman

F Mahlon        Member

F Koraimae      Member

Applicant in person.

For the respondent:    T Kama, Barrister & Solicitor.

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F I N D I N G S

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Development Bank of Solomon Islands employed Mr Robert Mara as a trainee loans officer from 14 January until 16 December 1988. The dismissal being admitted, by section 6(6) and 4 of the Unfair Dismissal Act 1982 the Bank had to show that it was for a substantial reason of a kind such as to justify the dismissal of an employee holding his post and that, in all the circumstances, it acted reasonably in treating that reason as sufficient for dismissing him.

The appointment was on the basis of an initial 6 months probation. On 1 August 1988 Mara sent a memo to the Manager Administration enquiring as to the outcome of his probationary period. His branch manager completed a Performance Appraisal Report in broadly favourable terms and submitted it with a recommendation that appointment be confirmed. The final decision was made by a Staff Committee comprising the Managing Director and two other Senior Staff. Mr Mara was told by letter dated 6 September 1988 that his probationary period was to be extended by a further 3 months. The letter did not give any reason for the extension, nor did it advise the applicant of any areas in which he required to improve.

On 19 October 1988 a Senior Loans Officer submitted a further Performance Appraisal Report, the recommendation again being to confirm the appointment. This Report is also broadly favourable, and in fact demonstrates an improvement over the first Report.

The Staff Committee met again on 13 December 1988 and by memo dated 14 December the Bank terminated the employment as "... in the view of management your performance and personal qualities are not suited for continued employment with the Bank".

Thus although the Bank produced a fairly complete written record of events, that did little or nothing to advance its case.

Evidence was given by Mr Philip Wong, Managing Director. He explained that he and the Staff Committee had not accepted the Reports, as his staff found it difficult to be frank about employees' weaknesses when completing them. The Committee had found Mara's work performance not up to the standard it would expect of a graduate trainee. The Committee members had looked at specimens of his work, in particular at loan appraisals, and found these to be poor. The only training given was "on the job", and there had been difficulties and changes at the level of the applicant's immediate management, but it was decided nevertheless that his work was such that he should be dismissed.

The applicant told us that he had accepted the ratings in both Reports, and his explanation for the gradings he had given himself on the first part of the forms persuaded us that he had a realistic approach to his performance at the Bank. Training had been virtually non-existent. He had to educate himself by looking at prior files for precedents. His loan appraisals had not been commented on, nor returned to him for rewriting. He had not been told of any respects in which he had to improve, nor been warned of the consequences if he did not succeed in going so.

The only explanation Mara could offer for his dismissal was that senior management had been prejudiced by his active role as President of the Staff Association, to which he had been elected very soon after his appointment. He produced a copy of a memo to Manager Administration by Manager Operations dated 7 December 1988 endorsing the second Performance Appraisal Report and the recommendation for permanent employment which contains the passage:-

"Robert Mara's election as the President of the Staff Association, particularly when he is still in probation is not very helpful."

That may bend somewhat to support the applicant's suspicions but there is a lack of evidence to lead us to the conclusion that he has correctly identified the reason for dismissal.

However, it was not for him to do that, and we were not impressed by the Bank's efforts to show reasons. The allegations of poor performance were vague and unsubstantiated. Not a single example of badly done work was mentioned or produced.

If there were shortcomings, it seemed to us more than likely these were due to poor supervision and inadequate training. It was also obvious that the Bank had failed to explain to Mara why his probationary period was extended, failed to point out the areas in which he needed to improve, failed to point out the likely consequences if he did not, failed to ensure he had the opportunity of improvement in terms of clear guidance about his duties, and failed to give him any chance to make representations before the decision was reached. The Bank has established neither a substantial reason for dismissal nor that it acted reasonably in coming to its conclusion.

Mr Mara worked for the Bank for less than a year. By mid-February 1989 he had found employment with the Public Service, which he enjoys and on the responsibilities of which he appears to thrive. Nevertheless, his sacking a year after graduation must have come as a bitter blow to his early hopes. His basic salary was \$423 per month. We shall take a broad approach and, taking account also of the passage of time, we think a fair and reasonable figure for compensation would be \$500.

#### AWARD

The respondent unfairly dismissed the applicant and is to pay him compensation of \$500, 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 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 9th October 1990.

On behalf of the Panel

*Hugh Macleman*

(Hugh Macleman)  
CHAIRMAN/TRADE DISPUTES PANEL