

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

UD/259/88

Between: MOFFAT JOSEPH ALEGATA

Applicant

and: SOLOMON ISLANDS HOUSING AUTHORITY

Respondent

Hearing at Honiara on 2 and 5 October 1990.

H Macleman Chairman

G Kuper Member

H Creighton Member

For the applicant: M B Samuel, Public Solicitor's Office.

For the respondent: J C Corrin, Barrister & Solicitor.

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F I N D I N G S

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Solomon Islands Housing Authority employed Mr Moffat Joseph Alegata from 31 October 1983 as a plumber. In its notice of appearance the Authority denied the dismissal and gave as its grounds for resisting the claim:-

"The applicant terminated the contract of employment by failing to carry out his duties, failing to attend at work, and failing to report to the employer.

See attached report."

The concept of self-dismissal has a very limited part to play in the law of employment and generally does not apply where the employer has the option of continuing to employ the employee if he so wishes: See the discussion in Harvey, Industrial Relations and Employment Law, II, Paras 214 - 220. In any event, the Authority accepted the burden of leading at the hearing.

The case centres on Alegata's movements around north Malaita in mid-1988, as to which there was a good deal of confusing and sometimes contradictory evidence, notably from the applicant himself. The Panel found the following established as the essential history:-

29.6.88 - applicant sent to complete plumbing works at Ata'a and Takwa.

1.7.88 - radio call to Solomon Islands Housing Authority as to

Alegata's arrival.

- 11.7.88 - radio call from Gounatolo Clinic, Sulufou, from Alegata and colleague to Solomon Islands Housing Authority to effect job completed as far as possible with materials available and they would await receipt of further materials per M.V. Solomon Princess.
- 20.7.88 - materials delivered to site, unknown to applicant, per J. Tuita.
- 5.8.88 - service message transmitted by Solomon Islands Housing Authority requesting applicant to return.
- 18.8.88 - further service message intimating failure to report by 22.8.88 "will be regarded as voluntary termination of employment".
- 5.9.88 - Alegata reports back to Solomon Islands Housing Authority and given termination letter.

It was accepted by the employer that the applicant had completed the job as far as was possible before going to wait at Sulufou, which was his workmate's home village. Essentially the Authority's case was that the applicant should have waited at the workplace for arrival of the materials, and was not entitled to stay elsewhere. The Authority did not provide accommodation, however, although it paid subsistence, and in the circumstances, the job having been completed for the time being, and having made a call to state his whereabouts, we see nothing to criticise in taking up temporary residence at Sulufou. It was a failure on the part of management to communicate to Alegata at his last known point of contact that the materials had been despatched and work could recommence. Had that simple step been taken, this case would never have arisen. Nor does there appear to have been any investigation or opportunity for Alegata to give his side before the termination letter issued on his return. The Panel members agree that the Authority has not established either a substantial reason for dismissal or that it acted reasonably in coming to its decision, and the dismissal was accordingly unfair.

The applicant's own conduct, however, was scarcely above criticism. Although he did take the essential step of sending the required message from Sulufou, he appears thereafter to have been prepared to sit back indefinitely, at some stage attending a wedding feast in the bush for 3 days. He did not hear either service message directly and it was impossible to say which one he had been told about, but it may also be that he did not act on the information with the maximum of haste. We take account of his conduct in assessing compensation at a

significantly lower figure than we would otherwise have done, and fix a fair and reasonable figure at the equivalent of the redundancy payment to which he would have been entitled at 5 September 1988, one month's basic wage, and interest to date.

Applying the formula under s. 7 of the Employment Act 1982:-

$31.10.83 - 5.9.88 = 256 \text{ weeks}$	
$256 \times \frac{1}{26} \times (160 \times 12 + 52) =$	\$ 363.55
One month	160.00
	\$ 523.55
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#### AWARD

The respondent unfairly dismissed the applicant and is to pay him compensation of \$523.55 plus interest at 15% per annum from 5 September 1988 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 \$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 *qu*, October 1990.

On behalf of the Panel



(Hugh Macleman)

CHAIRMAN/TRADE DISPUTES PANEL