

TRADE DISPUTES PANEL, SOLOMON ISLANDS

Under the Unfair Dismissal Act 1982

UD/124/89

Between:

ALICK MISIRII

Applicant

and:

FIELDERS INDUSTRIES (SI) LIMITED

Respondent

Hearing at Honiara on 11 October 1990.

H Macleman Chairman

O Pokana Member

H Creighton Member

For the applicant: T Kagovai, Solomon Islands National Union of Workers.

No appearance for the respondent.

---

F I N D I N G S

---

Fielders employed Mr Alick Misirii from 7 December 1988 until 26 October 1989, when it admitted dismissing him, specifying the reasons in its notice of appearance as:-

"(1) Dishonesty

(2) Stealing warrants dismissal under working rules and regulations."

Although the company in terms of section 4 and 6(6) of the Unfair Dismissal Act 1982 had thus assumed the burden of establishing that the dismissal was for a substantial reason and that it acted reasonably in coming to its decision, it was not represented at the hearing.

The applicant told us that on the date of his termination he had reported to work and taken his time-card from its usual place, filed under his works number, and punched in at the time-clock to record that he had started work. He had failed to notice that another man's card had been misplaced under his number so he had, in error, punched the wrong card, without punching his own card at all. The matter was noticed by a supervisor and he was taken to the office and instantly sacked.

On the evidence available to us the dismissal was founded on nothing but a genuine and understandable error, and there is nothing to suggest the applicant intended dishonestly to benefit himself in any way. That clearly must

be held to have been unfair. We assess compensation at the equivalent of the payment to which the applicant would have been entitled in case of redundancy, one month's pay at \$240, and interest to date.

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

$$\begin{array}{rcl}
 7.12.88 - 26.10.89 & = & 46 \text{ weeks} \\
 46 \times \frac{1}{26} \times (240 \times 12 + 52) & = & \$ 97.99 \\
 1 \text{ month} & & 240.00 \\
 & & \hline
 & & \$ 337.99 \\
 & & \hline
 & & \hline
 \end{array}$$

#### AWARD

The respondent unfairly dismissed the applicant and is to pay him compensation of \$337.99 plus interest at 15% per annum from 26 October 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 \$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. 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).

Issued to parties 17th October 1990.

On behalf of the Panel



(Hugh Macleman)

CHAIRMAN/TRADE DISPUTES PANEL