

TRADE DISPUTES PANEL, SOLOMON ISLANDS

Under the Unfair Dismissal Act 1982

UD/169/89

Between:

MICHAEL WATE

Applicant

and:

QUAN CHEE CORPORATION LIMITED

Respondent

Hearing at Honiara on 8 November 1990 before:

H Macleman Chairman

F Mahlon Member

J Adifaka Member

For the applicant: F Anohere, Solomon Islands National Union of Workers.

For the respondent: D Quan, Managing Director.

F I N D I N G S

Quan Chee Corporation Limited employed Mr Michael Wate as a shop assistant from 1985. Around September 1989, he was absent from work for one or two months as he was recovering in hospital from facial injuries. According to the applicant, he sent word to his employer through two workmates. When he returned to his duties, he worked for one day only, and was paid off at the end of business that day, no explanation being given. The employer did not admit any dismissal. Mr Quan said that the applicant had not advised the company of his incapacity, but had nevertheless been permitted to resume his employment. He had worked one day but then simply failed to turn up ever again, although told his job was still open to him.

In cross-examination the applicant had amplified his evidence by saying that although David Quan had told him to resume work, his father, who was in the store, had told him during the day that he was to "finish", and that evening David Quan had concurred with his father, paid him for the day and told him that was final.

The parties were agreed that the essential issue was one of fact and credibility: if the applicant had not been told at the end of the day that he was dismissed, he had no case; if he had been told that, the dismissal was unfair.

One member of the Panel found that the accounts were finely balanced and he could not prefer one to another, so that the applicant would have failed to prove his case.

The other two members, however, found Mr Wate's story more consistent than Mr Quan's, being particularly struck by the fact, emphasised by Mr Anohere, that he was paid at the end of the day, although pay was monthly. They were not impressed by the allegation that this was a cash advance, but felt it confirmed the applicant's account that he was told to go. They accepted that he still wanted his job and there appeared to be no reason for him to desert it.

The Panel's decision is therefore, by a majority, that the dismissal was unfair. Having considered all the circumstances, including the period of employment, ^{and} rate of pay, we assess fair and reasonable compensation at \$300.

AWARD

The respondent unfairly dismissed the applicant and is to pay him compensation of \$300, 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).

The decision is issued in writing, as agreed by parties at the hearing, on 13 November 1990.

On behalf of the Panel



(Hugh Macleman)

CHAIRMAN/TRADE DISPUTES PANEL