

TRADE DISPUTES PANEL, SOLOMON ISLANDS

Under the Unfair Dismissal Act 1982

UD/32/89

Between: PHILIP BOFA'ATA Applicant
and: HONIARA CONSUMERS CO-OPERATIVE SOCIETY LIMITED Respondent

Hearing at Honiara on 6 September 1990.

H Macleman Chairman
G Kuper Member
J Adifaka Member

For the applicant: C Waiwori, Assistant General Secretary, Solomon Islands
National Union of Workers.

For the respondent: R Tinoni, Personnel Manager.

F I N D I N G S

Consumers employed Mr Bofa'ata as a Costing Clerk from 2 February 1986. In 1987 he was elected as Chairman of the Workers Committee of Solomon Islands National Union of Workers members employed by the company. The General Manager of Consumers at that time was Mr Graeme Haack, an expatriate from Australia. As Chairman of the Workers Committee, Mr Bofa'ata became aware of certain grievances held by various workers against Mr Haack, in particular over what was perceived as a tolerance of misconduct amongst senior management while severe penalties were exacted on junior staff. (In this case the Panel does not need to concern itself with whether these grievances were justified). The applicant felt that such an issue was of a significance to be dealt with by the full-time salaried officials of Solomon Islands National Union of Workers. According to Mr Bofa'ata and Mr John Lee Tekiou, a union official, meetings of Consumers Workers were held at which a majority was in favour of the Union opposing the renewal of Mr Haack's contract.

These matters arose in December 1988 and January 1989, while Mr Haack was on annual leave in Australia. His work and residency permits expired during that period.

Mr Tekiou wrote a letter on 6 January 1989 to the Commissioner of Labour which stated:-

"... This office has been informed by Honiara Consumers Co-operative Society Ltd employees of the intention made by the Board of Directors of Honiara Consumers to renew Mr Graeme Haack's contract with Honiara Consumers which expected to expire sometimes this month January 1989. It has been voiced by employees that they see no good reasons for the Board of Directors to renew Mr Graeme's Contract while some Solomon Islanders are capable of handling the job, therefore this office seek your consideration not to renew or extend Mr Graeme's work permit to avoid disturbance to the normal running of Honiara Consumers Co-operative Society Limited.

I wish to let you know that the working relation between Mr Graeme Haack and all employees of Honiara Consumers Limited is not that good that is why workers seek your assistance on this matter. ..."

That letter was openly copied to the Chairman of Consumers Board.

It seems that Mr Haack experienced some delay in having his permits renewed but there is no evidence that such delay was any longer than is normally encountered nor that it had anything to do with the letter from Solomon Islands National Union of Workers. In any event Mr Haack was back at his desk by 26 January 1989 when he wrote a memorandum to the Personnel Manager under the heading "Union Interference in Board of Directors Directives".

The memo mentions the letter from Solomon Islands National Union of Workers and goes on:-

"... the Acting Chairman of the Board ... is outraged over any moves by the Union or Employees to interfere with the Boards policies and directives. He had advised that a full enquiry into the matter should be commissioned by management and that severe penalties should be imposed on employees who are found involved in interfering with the Board's policies and directives"

It is clear from the memo that the enquiry is to be conducted on the footing that anyone supporting the sending of such a letter is guilty of serious misconduct and the purpose is to identify the guilty parties.

Indeed Mr Haack goes on to suggest that the committee "establish and identify:-

"3.1 - If any employee were involved in deliberately planning to conspire against the Board of Directors or directives, and in particular to stop or hinder the renewal of the General Manager's Work and Residency Permits. ...

4. Recommend appropriate penalties or Disciplinary action to

employees found to be guilty of 3.1."

Against such a background it is scarcely surprising to find that all other employees promptly denied any knowledge of or support for the Solomon Islands National Union of Workers letter and Mr Bofa'ata as a Committee Chairman was left "holding the baby". The Enquiry Committee duly produced a recommendation that Mr Bofa'ata be sacked, by the Board confirmed it, and Mr Tinoni was instructed to issue a termination notice which is dated 6 February 1989 and states:-

"... you have individually instigated moves with the Union Office, thereby grossly misconducting yourself, and since the Board cannot tolerate moves to undermine its policies and directives especially by employees, they have instructed that you be dismissed immediately without notice and without payment in lieu of notice with effect from today"

The reason for dismissal is stated in Form TDP2 as "conspiring against Board of Directors directives and policy".

The only conflict of evidence in this case is as to whether employees supported the proposal to send the letter at the meeting in December. Having heard evidence from Mr Bofa'ata and Mr Tekiou, who were present, and having considered the circumstances under which others later denied support, the Panel is satisfied that the action proposed did command a level of approval amongst the company's employees.

The Panel does not consider that the letter was an appropriate method for the Union to deal with any grievances its members held against Mr Haack. The proper course would have been to investigate fully and then to make any appropriate representations to the Board of Consumers. It smacks of bad faith to immediately address the issue through a third party with a view to taking the decision out of the employer's hands. On the other hand, we do not think that such an approach was more than a misjudgement and it was done out in the open, with no attempt to bring influence deviously to bear. Even more importantly, it was a matter which we feel Mr Bofa'ata was correct in bringing up with his full-time official and, having done so, they should have been much better advised as to how to proceed than he was. He has carried the consequences of an error of judgement which was not basically his fault and we cannot help feeling that the events which took place at Consumers after Mr Haack's return represented a gross over-reaction to the letter in which the gravity of the fault was simply assumed and a scape-goat was sought. Nor, incidentally, is it to be assumed that any representations would deter the Commissioner of Labour from carrying out his task fairly.

The Panel members therefore agree that the respondent company has not shown the

existence of a substantial reason to justify the dismissal. Even if the reason had been substantial, we would not have considered that the employer acted reasonably in terms of section 4(1)(b) in that the committee of enquiry set up following Mr Haack's memo was not composed as envisaged by Appendix II, Clause 21 of the Memorandum of Agreement between the respondent and Solomon Islands National Union of Workers, as it did not include a union committee member, nor does the applicant seem to have been given the right to present his case or be represented.

The dismissal was therefore unfair.

The applicant secured a new position with National Fisheries Development Limited on 22nd May 1989 and told us his salary is better than at Consumers. In all the circumstances, we assess compensation at the equivalent of the redundancy payment to which he would have been entitled, one month's gross pay, and interest to date.

Applying the formula under s. 7 of the Employment Act 1987:-

2.2.86 - 6.2.89	=	157 weeks	
157 x $\frac{1}{26}$ x (224 x 12 + 52)	=		\$312.14
One month's gross salary			224.00
			<hr/>
			\$536.14
			<hr/> <hr/>

AWARD

The respondent unfairly dismissed the applicant and is to pay compensation of \$536.14 with interest at 15% per annum from 6 February 1989 until payment, (payable immediately and recoverable as a debt under s. 10 of the Unfair Dismissal Act 1982).

EXPENSES

The Panel fixes a contribution of \$100 towards its expenses to be paid by the respondent to the Ministry of Commerce and Primary Industries within 14 days of this date.

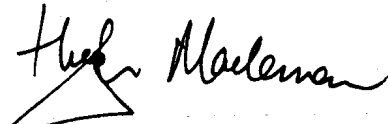
APPEAL

- (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 on 20 September 1990.

On behalf of the Panel

A handwritten signature in cursive script that reads "Hugh Macleman". The signature is written in dark ink and is positioned above the printed name.

(Hugh Macleman)

CHAIRMAN/TRADE DISPUTES PANEL