

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

UD/221/88

Between:

MATTHEW KUVA

Applicant

and:

HYUNDAI TIMBER COMPANY LIMITED

Respondent

Hearing at Honiara on 4 September 1990.

H Macleman Chairman

G Kuper Member

H Creighton Member

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

For the respondent: J Mae, Personnel Manager.

F I N D I N G S

Hyundai employed Mr Kuva from 29 September 1983 until 20 August 1988, and sought to justify his dismissal thus:-

"Being absent from work for seven days (overdue on compassionate leave) without information/permission from his Sawmill Manager.

Period overdue: 8/7 - 18/7/88."

The applicant had sought unpaid leave "For the period of 2 weeks if possible if not then give me a week". His letter has been endorsed by his employer "No!! One week O.K. next month i.e. July 1988. Proceed 1/7/88. To report for duty 8/7/88."

Since it is accepted that the applicant was going on leave to check on his family's health and possibly to bring them back for treatment, and that his home is reached by one to two days travel through the bush, it may be doubted whether it was realistic in the first place to restrict his leave to one week. However that may be, the question is whether Hyundai has satisfied us that the late return from unpaid leave constituted a substantial reason of a kind such as to justify dismissal and that in all the circumstances it acted reasonably in treating that reason as sufficient for dismissal.

On his return the applicant produced to his employers a letter from the Registered

Nurse at Avu Avu Clinic dated 12/7/88 in these terms:

"This is to inform you that your workman - Matthew Kuva - should be on duty yesterday 11/7/88 but due to the fact that he cut himself on his leg so he was unable to resume duty in time. He will be back to resume duty sometime on Thursday or Friday this week."

The original letter has noted at the foot:-

"cut leg on 8/7/88
leave - 1-7/7/88."

Mr Mae told us that he added that note from information given to him at the time by the applicant, its significance being that if the applicant really had any accident, he had already over-stayed his leave by then. Mr Mae also made it clear that he did not accept the "sick-note" as genuine in any event, but regarded it as a convenient fabrication, even though he had no knowledge of the Registered Nurse who signed it and had never seen a letter from him before. He said that Mr Kuva did have the signs of a recent minor injury on his foot. He denied that Mr Kuva had said that he had sent a radio message advising his late return.

The applicant said that while he could not recollect the precise day on which he injured his leg, it was before he was due to travel back to work, and some time before he was able to go to the clinic, a few kilometres away. On 12 July he had arranged for a radio message to be sent from the nearby Catholic Mission to Guadalcanal Province Headquarters to be passed on to Hyundai, to the effect that he was unable to return to work. He produced a letter dated 12 October 1988 from the Secretary to Avu Avu Parish Council stating that he had sent such a message.

While we were not entirely satisfied with the state of the evidence on either side, due at least partly to the lapse of time, we were left in the position that Hyundai did not persuade us either that there was a substantial reason in the sense that Kuva wilfully overstayed his leave or that it acted reasonably in that it fully investigated his explanations.

We therefore find the dismissal unfair and assess compensation at the equivalent of the redundancy payment to which the applicant would have been entitled, three months gross basic pay at \$144.10, interest to date, \$92 in respect of air fares to attend the hearing, and the amount of additional costs caused by the adjournment at the respondent's request from 30 August to 4 September as may be agreed between the parties (or failing agreement, as may be further assessed by the Panel).

Applying the formula under s. 7 of the Employment Act 1981:-

$$\begin{array}{rcl}
 29.9.83 - 20.8.88 & = & 225 \text{ weeks} \\
 255 \times \frac{1}{26} \times (144.10 \times 12 + 52) & = & \$ 326.14 \\
 3 \times 144.10 & = & 432.30 \\
 & & \underline{\hspace{1.5cm}} \\
 & & \$ 758.44 \\
 & & \underline{\hspace{1.5cm}}
 \end{array}$$

AWARD

The respondent unfairly dismissed the applicant and is to pay him compensation of \$758.44 with interest at 15% from 20 August 1988 until payment, plus costs of \$92 and additional costs as above (all payable immediately and recoverable as a debt under s. 10 of the Unfair Dismissal Act 1982).

EXPENSES

The Panel fixes a contribution of \$75 towards its expenses to be apid 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



(Hugh Macleman)

CHAIRMAN/TRADE DISPUTES PANEL