

TRADE DISPUTES PANEL, SOLOMON ISLANDS

Under the Unfair Dismissal Act 1982

UD/106/88

Between: HARRY MATUVOLOMO Applicant
and: WESTERN PROVINCIAL GOVERNMENT Respondent

Hearing at Gizo on 22 August 1990.

H Macleman Chairman
G Kuper Member
J Adifaka Member

For the applicant: J Hardiker, Public Solicitor.

For the respondent: B G Nichols, Legal Adviser.

F I N D I N G S

The Western Provincial Government employed Harry Matuvolomo as a plumber from 6 February 1984 until 11 February 1988. In his complaint to the Panel lodged on 14 April 1988 he gave his opinion of the reason for his dismissal as:-

"Because I took and repaired an old water tank that had been abandoned by the Province, and because I gave away a tin of paint, belonging to Public Works, that was so old and rusty that it had gone solid."

In its notice of appearance the respondent specified that reasons for dismissal thus:-

"Absence from duty.

Give away Provincial properties to wantoks.

Refusing superior's instructions to return to place of duty twice."

From July 1988 Mr Taro was "on tour" at Korovou and later at Taro Island, Choiseul. The allegation of "absence from duty" was that latterly he stayed with wantoks at a nearby village and did not report to his place of work. There was no evidence to support this point and we disregard it.

The applicant accepted that he had finished his tasks in Choiseul and received both written and verbal instructions to return to Gizo. (In our view, in the circumstances he was bound to return to his principal place of employment even

without express instructions.) A ship was available for him to board in December 1988. The applicant justified his failure to return on it by alleging that he was in debt due to the Province not paying him in September and October, and so had no money either to pay his fare or to provide himself with food for the journey, the ship being due to go around Choiseul rather than travelling directly to Gizo.

After an adjournment for enquiry, the Province was unable to produce receipts which it had hoped to trace at its sub-station at Taro Island, and could not establish that the applicant received his payment for the second pay period in September or the first in October. While not entirely convinced by the manner in which this claim was raised by the applicant, the Panel assumes in his favour that he was not paid for those periods.

Mr Matuvolomo admitted the removal of an older water tank and a single tin of paint. He said that he believed the tank was valueless to the Province and had been discarded; he took it to his relatives' village nearby, re-assembled and repaired it and put it to use. The tin of paint he said was old, hard and rusty. He agreed that he had been asked to bring the water tank back but declined, telling the Provincial officials to arrange transport themselves.

One member of the Panel felt that Mr Matuvolomo had been placed in a situation of financial difficulty by his employers and so could not reasonably be expected to take ship to Gizo, and that the items he removed were of negligible value; while he had been at fault, a warning would have been enough to mark the gravity of the offence. This member of the Panel would have held the dismissal to be unfair.

The other members of the Panel, however, were of the view that the applicant was perfectly well aware that his fare would be met by the Province on arrival at Gizo as was usual practice, and that he was quite capable of providing for himself for the journey - as he had to do wherever he was. His failure to return was wilful. These two members were also of the view that the items taken must have held some significant value to attract the applicant to them, that he knew very well he was not entitled to appropriate them, and that, having been detected, his attitude to the return of the water tank was quite unsatisfactory. These members are of the opinion that the Province gave clear warning to the applicant that he would be at fault if he failed to return to Gizo and gave him ample opportunity to comply, so that he has no reason to complain of the manner in which he was treated.

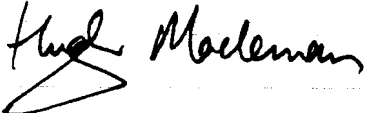
Thus the Panel, by a majority, finds that the respondent has shown both substantial reasons to justify the dismissal and that it acted reasonably in treating

those reasons as sufficient.

The complaint is therefore dismissed. We make no order for expenses. There is a right of appeal on a question of law only within 14 days.

Issued to parties on 28 September 1990.

On behalf of the Panel



(Hugh Macleman)

CHAIRMAN/TRADE DISPUTES PANEL