

TRADE DISPUTES PANEL, SOLOMON ISLANDS

BETWEEN: SOLOMON TAIYO ~~COMPANY~~ LIMITED
AND: SOLOMON ISLANDS NATIONAL UNION OF WORKERS

Hearing at Honiara on 11 December 1991

A. R. Palmer - Chairman
John Adifaka - Member
George Kuper - Member

For Solomon Taiyo ~~Co~~ Ltd - Miss J. C. Corrin

For S.I. National Union of Workers - Gabriel Suri and David Tuhanuku

FINDINGS

This is the findings of the Trade Disputes Panel with regards to the referral made by the Solomon Islands National Union of Workers following the refusal of Solomon Taiyo ~~Company~~ Limited to enter into negotiations with the Union.

On the 3rd December 1991 the Panel held a preliminary enquiry and the case was adjourned to the 11th December for a formal enquiry to be entered into.

The issue by then was the validity of the withdrawal by Solomon Taiyo ~~Company~~ ^A Limited of recognition of SINUW as the Union to represent the employees of its Company.

Learned counsel for the Company, raised four grounds to justify its withdrawal of recognition. I'll start with ground 2.

The Company alleges that some officers of the Union had submitted forged and invalid check-off forms to the Respondent.

A witness was called by the Company in support of its allegation. The Panel has heard evidence of this witness and it does seem that some of the forms have been forged. The matter however is a criminal offence and the Company has rightly referred the matter to the Police.

The results of the Police investigation have not yet been made known. Until such is made known, the Panel is of the opinion that the Company is obliged to continue negotiations with the Union. Of course such irregularities and defects cannot be ignored. The proper course is to point these out to the Union and give them time to explain and rectify any such errors or defects. Where the Company feels that a criminal offence has been committed then it should report the matter to the Police. In this case, this is what the Company has done, but, they have not it seems allowed the Union time to rectify or correct the irregularities in the check-off forms. The allegations are committed by specific officers or workers of the Union who have been specifically identified and therefore could easily be dealt with. What the Union on the other hand must understand is that the actions of its workers can bind the Union and so it makes it all the more important that its workers do carry out their duties with honesty and sincerity.

The Company is correct in saying that a relationship of trust or mutual respect does exist between the parties and that this is important in any negotiations that are being made. Any misconduct or act of irresponsibility of its employees or officers does tarnish the image of the Union. The Company however should give an opportunity to the Union to explain or correct the actions of its officers or demand that the matter be satisfactorily sorted out before negotiations should continue.

The representative of the Union, Mr David Tuhanuku did point out that they did have all their check-off forms re-signed and that he personally supervised it. These forms however, have not been forwarded to the Company due to the refusal to attend any further talks between them. It would seem that the subsequent actions of the Union does indicate their willingness to rectify the wrongs of its officers or workers and to

resume normal negotiations. The Panel therefore considers the blunt refusal of the Company as being unreasonable and difficult.

The fact that there were some forms which appear forged is not a sufficient reason to warrant the withdrawal of recognition of the Union. Even if it is proven on evidence that forms have been forged, the Union should not be unnecessarily penalised and thereby affecting the majority of the workers. If the culprits can be identified then they are the ones that should be disciplined or dealt with.

The third ground raised has already been dealt with in a High Court decision involving the same parties and I do not need to delve into it here. Suffice it to say that where a breach is alleged, then the parties have the right to sue for damages.

The fourth ground deals with the question of breach of section 29(3) of the Trade Union Act.

The Company alleges that there are officers in the SINUW who are not engaged or occupied in an industry, trade or occupation with which the Union is directly concerned for a period not less than one year.

Section 29(3) states:-

"(3) All officers of every trade union shall be persons who have been for a period of not less than one year and still are engaged or occupied in an industry, trade or occupation with which the union is directly concerned, and no officer of any one trade union shall be an officer of any other trade union.

Provided that -

- (a) the offices of president, vice-president, secretary and treasurer may be filled by a person not actually engaged or employed in an industry, trade or occupation with which the union is directly concerned; and*
- (b) no office such as is referred to in proviso (a) shall be occupied at any time by more than one person".*

The word "Officer" is defined in section 2(1) of the Trade Union Act:-

"Officer" when used includes any member of the executive committee thereof and any officer of a branch thereof, but does not include an auditor."

The word executive committee in turn is defined as -

"the body, by whatever name called, to which the management of the affairs of a trade union is entrusted by the members and includes any person for the time being carrying out the functions of President, Secretary or Treasurer thereof".

In his submissions to the Panel, the learned Counsel for the Union submitted a list of the Union's Executive Committee - **Exhibit 11**. This list clearly shows that apart from the President, all the other officers are engaged in an industry, trade or occupation with which the Union is directly concerned for not less than one year. The list submitted by the Company on the other hand is different. It submits that the word "**officer**" included persons like the accountant, the legal officer, registry clerk and others. It should not be restricted only to the members of the Executive Committee.

The Union on the other hand contends that it is restricted only to the Executive Committee. All the others are employees of the Union who comprise the administrative staff of the Union and actually carry out the duties and functions of the Union in practice, but cannot or should not be regarded as officers of the Union.

The word "**Officer**" is defined as including any member of the Executive Committee and any officer of a branch thereof. The second use of the word "**Officer**" is not defined and so again it is presumed it means, "*includes any member of the Executive Committee*" of the branch thereof.

What is clear is that members of the Executive Committee are to be regarded as officers of the Union.

Clause 46 of the Constitution of SINUW states that -

"the officers of the Union shall be those who are members of the National Council."

Part 7 of the Constitution deals with the composition of the National Council. In brief, the officers of the Union are those as submitted by the Union in the list in Exhibit 11.

The Panel notes that the other so-called officers as referred to by the Company have been in existence it seems for many years but no issue has been raised concerning them. The Panel does not wish to venture into considering this point raised by learned Counsel for Solomon Taiyo, as to whether the Legal Officer, Accountant, Industrial Relations Officer, Regional Officer, - Industrial Relations Officer - Western, Assistant General Secretary, General Secretary, Registry Clerk and Typist should be regarded as officers of the Union as well.

If either party wishes to pursue the matter further then they should do so in the High Court.

It is sufficient for the purposes of the Panel to rule that the officers of the Union are as those contained in the list in Exhibit 11 and that there is no breach of the provisions of section 29(3) of the Trade Union Act. The Panel considers it normal to have employees who do work on full time basis for the Union as legal officers, accountants and clerks. These carry out the day to day running of the Union and are not directly involved in the management of the affairs of the Union. In certain situations, they may provide advice and make recommendations, but it is the management body, the executive committee, who makes the final decision and are thereby considered according to the provisions of the SINUW Constitution to be the officers of the Union.

The final and most important ground is on the percentage of members of the Union and employees of the Company.

The total number of employees of Solomon Taiyo ~~Company~~ Limited as given by the Company is 1,779.

The composition in terms of manpower breakdown is as follows:-

Management	:	18
Staff	:	153
Cannery	:	499
Base Operations	:	283
Okinawan - Pole & Line	:	81
Japanese - Purse-Seine	:	13
Pole and Line Fleet	:	681
Purse-Seine Fleet	:	47
Transport Boat	:	4

The total number of union members submitted is 1,379.

The number of union members whose names are also recorded in the list submitted by the employer is 706.

The total number of employees who are eligible to become members of SINUW is 1,514. (This figure is obtained by excluding management (18), staff (153), Okinawan (81) and Japanese (13) employees from the total).

The percentage of members of SINUW whose names are recorded in the employer's list therefore is 46.63% $(706 \div 1514) \times 100$.

The percentage obviously is below the 50% figure. The minimum figure required to achieve a 50% mark is 757.

The extra number of members required to achieve this mark is 51.

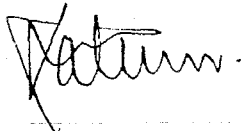
The Panel has taken the time and effort to check and re-check the names from the Employer's list and the list submitted by SINUW. It has not been easy to cross check the names because they have not been submitted in some orderly form. A computer could have made the work a bit easier, but this was not thought of earlier on, and so the work has been done manually.

There have been spelling differences and in some instances the surname submitted from the Employer's list is the first name in the Union's list. Certain names too were repeated a couple of times in the Union's list.

The Panel does take responsibility for any mistakes that may later be discovered. However, it is satisfied that the final figure of 706 gives a fair and almost accurate number of the names of Union members that are recorded in the Employer's list. It also wishes to point out that even with an error of 50 names being inadvertently omitted, the final figure would still be less than 50% of the number eligible for membership.

This final ground for withdrawal by the Company therefore succeeds and the Company may withdraw recognition pursuant to Clause 4 of the Recognition Agreement.

Costs in this matter are to be borne by the parties on a 50:50 basis.



Acting: Chairman

TRADE DISPUTES PANEL