

IN THE TRADE DISPUTES PANEL
OF SOLOMON ISLANDS

) Case No: UD328 of 1991

IN THE MATTER of the Unfair
Dismissal Act 1982

AND IN THE MATTER of a
complaint of unfair
dismissal

BETWEEN: LOUISA TUEPA
Applicant

AND: TEKAHA COMPANY LIMITED
Respondent

Hearing: 19th May & 22nd June, 1994, Honiara.

Decision: 27th June 1994.

Panel: A.N. Tongarutu - Chairman
J. Korinihona - Employer Member
G. Kuper - Employee Member

Appearances: M.B. Samuel, Public Solicitor's Office, Counsel
for the Applicant
J. Hawkins, Counsel for the Respondent.

DECISION

By a notice of complaint filed with the Panel on the 2nd of November 1991 pursuant to section 6(1) of the Unfair Dismissal Act 1982 the applicant who was employed by the respondent company as a cook at the Honiara Fish Market since January 1991 claimed that she was unfairly dismissed from her employment on the 14th of November 1992 on the grounds that she was automatically terminated from work without notice when her husband's employment was terminated.

The respondent, whilst having admitted the dismissal for the reasons of failing to obey instructions and giving company food to relatives resisted the applicant's claim on the grounds that:

- “(i) the applicant was not dismissed because of her husband's dismissal.
- (ii) the applicant was instructed that employees were not allowed to eat company food, other than the rations provided.
- (iii) the applicant was the cooking supervisor and, catering to the instructions referred to in (ii) above permitted her husband to the company food.”

In support of its contention counsel for the respondent relied on the evidence of Mr. Tekaha, the owner of the respondent company and Ms.M.Gomi, a cashier at the Honiara Fish Market. Their evidence

was that the applicant, who was the supervisor in the cooking section was aware that her husband, (Allan) who was employed by the respondent as a fish vendor was occasionally helping himself to the fish and chips prepared for customers but failed to reprimand him. Both the applicant and her husband were fully aware of the rule concerning eating fish and chips unless permitted by the management. Ms. Gomi's evidence also showed that Mr. Tekaha's wife was well aware of Allan's behaviour and had spoken to him about it. She did not tell Mr. Tekaha about these incidents until after the applicant and her husband had been dismissed because she thought it was the spouse's responsibility to report these incidents to Mr. Tekaha. According to Mr. Tekaha, the applicant's husband was instantly dismissed for slacking around during working hours and consuming fish and chips causing consumer supply shortage. For this he was instantly dismissed and a day later the applicant was dismissed following reports from the employees that the applicant encouraged her husband to consume fish and chips. The applicant in her supervisory capacity in the cooking section was entrusted with the responsibility to ensure that no one ate fish and chips unless authorised by management; that packaging was done in a proper manner and that cooking was maintained at a steady pace. Mr. Tekaha having claimed that the applicant was one of his best employees stated that he sacked the applicant because he was very annoyed with her as she should not have allowed her husband to eat fish and chips. The applicant denied the allegation but was not given any opportunity to explain herself because in his opinion she had been fairly warned. Due to the nature of the business operation the company operates under numerous regulations and all the fourteen staff employed in the three sections at the Fish Market have been warned as a group not to consume fish and chips prepared for consumer consumption unless authorised to do so. Their daily lunches were catered for by the company. At the time of dismissal, the applicant was paid termination payment of \$200-00 which included wages in lieu of notice. During her employment Mrs. Tuepa was paid a monthly salary of \$184, cooking allowance of \$80-00 and housing allowance of \$40-00 monthly, including overtime allowances. Daily working hours were from 7am to 5/6 pm and occasional overtimes would not normally exceed 9pm. The odd hours claimed by the applicant was disputed by Mr. Tekaha who contended that the odd hours worked by the applicant were unauthorised. The applicant's evidence on wages and allowances except for the termination payment differed from Mr. Tekaha's and in the absence of any form of employment contract entered into by the parties they failed to substantiate these monetary matters.

In her closing submission counsel for the respondent submitted that there was little doubt from the evidence of the respondent's witnesses that the applicant's husband did consume company food although they were allocated \$30-00 daily luncheon allowance. It was the applicant's responsibility to ensure that the fish and chips cooked for customers was not consumed by the employees and before dismissing the applicant the following day, Mr. Tekaha gave due consideration to her involvement as a supervisor. In due consideration of all the circumstances the applicant was not unfairly dismissed.

The applicant's evidence disputed the respondent's grounds of resistance in the notice of appearance and denied any knowledge of her husband's behaviour although she agreed that at times her

husband would come into the kitchen area but at no time did she give company food to him or her relatives and that she was unaware of her husband helping himself to company food when unauthorised to do so. She attributed her husband's dismissal to 'playing around' during working hours and for 'reporting certain monetary matters to Mr. Goh.' This was supported by her spouse's evidence who also denied being given company food by the applicant. Because of her husband's dismissal she was dismissed on the same day. According to her evidence Mr. Tekaha instantly sacked her because he was cross with her husband. No reason was given to her then about the row between Mr. Tekaha and her husband and no termination letter was issued. Previously she had not been warned about her responsibilities especially for the allegation that she allowed her husband to eat company food although she was aware of the employment rules. Her evidence also showed that when authorised at times by the management the staff would eat fish and chips for lunch. She did not sign any contract of employment and at the initial stage of employment worked odd hours from twelve midnight until the evening on the following day and due to these odd hours necessitated the presence of her husband in the fish shop. Apart from the termination pay the applicant was not paid any terminal payments. She has been unemployed since her dismissal and although she searched for alternative employment she was unsuccessful.

In her closing submission counsel for the applicant submitted that the applicant party's evidence showed that the applicant did not give company food to her husband. The applicant was terminated without notice for no substantial reason but merely because her husband was terminated. At the time of termination she was not informed of the reason for termination so that she could explain herself. During her term of employment she was not given any personal warning and at no time warned about the things stated in the notice of appearance.

In the notice of appearance the respondent admitted having dismissed the applicant. By the provision of s.6(6) of the Unfair Dismissal Act 1982 the onus is on the respondent to show that it fairly dismissed the applicant and had satisfied both limbs of s.4(1) of the Act. In its assessment of the evidence and the submissions the Panel unanimously found that there was insufficient evidence to substantiate the respondent's alleged reasons for dismissing the applicant. On the contrary, there was sufficient evidence to show that the respondent acted unreasonably in treating those reasons as substantial reasons warranting instant dismissal. In all the circumstances the respondent had failed to satisfy the elements which constitute a fair dismissal. The Panel took into consideration the evidence relating to the working environment at the Fish market and was of the opinion that more probable than not the applicant's husband occasionally consumed company food but there was insufficient evidence to conclude that the applicant permitted him to do so. There was also no evidence to show that the applicant actively encouraged her husband to consume company food and further no evidence to show that the the applicant gave company food to relatives. What was evident was the lax attitude of the management/owners of the respondent company towards consumption of company food and in particular, Mr. Tekaha's spouse's knowledgeable of Allan's behaviour but failed take serious measures to curb his attitude

And although being aware of Allan's attitude the applicant was not personally warned about permitting him to consume company food. Infact, Mr. Tekaha considered the applicant to be one of his best employees and to be instantly dismissed for allegedly slacking in her responsibilities is somewhat mysterious. The Panel was not satisfied that Mr. Tekaha gave due consideration to the case before dismissing the applicant. On the contrary, no opportunity was given to the applicant to explain herself. In all the circumstances the Panel found that the applicant's dismissal was a spin-off effect from her husband's dismissal which showed Mr. Tekaha's uncontrollable annoyance with her in relation to her supervisory role. In the absence of any documentary evidence pertaining to terminal payments and terms and conditions of employment the respondent is advised to take cognisance of its legal obligation under s.18 of the Employment Act to engage its employees on a written contracts of employment. In all the circumstances the applicant was unfairly dismissed and the Panel assesses a fair and reasonable compensation pursuant to s.7(2) of the Unfair Dismissal Act 1982 and s.3 of the Labour Act as follows:

Basic Award

Date of commencement	:	26th January 1991	
Date of termination	:	14th November 1991	
Qualifying period	:	39 weeks	
Benefit	:	<u>39 x 1/26 x (\$200 x 12 - 52)</u>	
		<u>39 x \$46.15</u>	= \$ 69.22
		26	
Loss of earnings	(2 months)		\$400.00
Wages in lieu of notice	(1 month)		\$200.00
			<u>\$669.22</u>

Award

The respondent unfairly dismissed the applicant and is to pay compensation to Louisa Tuepa in the sum of \$669.22 being payable immediately and is recoverable as a debt under section 10 of the Unfair Dismissal Act 1982.

Appeal

The appeal provisions under the Unfair Dismissal Act 1982, Trade Disputes Act 1981, Trade Disputes Panel Rules 1981 and the High Court (Civil Procedure) Rules 1964 apply to this decision.

Panel Expenses

Pursuant to s.12(3) of the Unfair Dismissal Act 1982 the respondent is required to pay a contribution of two hundred and fifty dollars (\$250-00) towards panel expenses. This is to be paid to the Ministry of Commerce, Employment and Trade within 14 days from the date of receipt of this decision.

On behalf of Panel,

