IN THE TRADE DISPUTES PANEL)
OF SOLOMON ISLANDS)

Case No: L9/2 of 1995

IN THE MATTER of the Trade Disputes of Act 1981

AND IN THE MATTER of a trade dispute referral

BETWEEN: EDWARD RONIA
Applicant

AND: SINPF BOARD
Respondent

Hearing: 20th February 1995,Honiara.

Findings: 22nd March 1995.

Panel: A.N. Tongarutu- Chairman
J. Adifaka - Employer Member
A. Fatai - Employee Member

Appearances: Applicant in Person.
A. Rose,Barrister & Solicitor)
L.Teama,General Manager ..)for the Respondent

FINDINGS

On the 7th of February 1995 the applicant gave notice of a trade dispute between himself and the SINPF Board (hereinafter referred to as the Board) to the Panel. The issue in dispute centered on the applicant's entitlement to housing. In his application to the Panel the applicant sought the following specific awards:

a) the AGM(F) be provided accommodation by the Fund.
b) AGM(F) be eligible to obtain a loan from Staff Mortgage Scheme (SMS) or Members Urban Housing Loan Scheme (MUHLS) as an executive staff or member or NPF.
c) AGM(F) should not be moved out of the Fund's house by 31/01/95 nor to rent it at all.
d) The board to review the housing conditions of the AGMs.
e) The subsequent general policy of the Board Meeting No. MB94/04 should not override the specific provisions of S.19.1 of the employment contract with AGM(F).

In seeking the Panel's award the applicant relies on clause 19.1 in the Service Agreement dated 9 January 1990 which he claimed gave him the right to occupy a NPF house irrespective of whether he owned a house or not . Under this provision the applicant and his family resided at an NPF house at Tasahe which the Board at its decision made on 29 August 1994 gave him three(3) months to vacate.

In a nutshell,this case pivots on the interpretation of the contract of employment in relation to housing and the Board's housing policy. At the preliminary hearing the employer party did not question the jurisdiction of the Panel to adjudicate on this case although prior to the proceedings a member of the Board was of the opinion that the nature of the referral did not constitute a trade dispute as outlined in the schedule to the Trade Disputes Act 1981. Mr.Rose submitted that whilst the dispute was on housing entitlement,the case revovles on a matter of construction of clause 19 of the contract. The majority was of the opinion that the referral constituted a trade dispute and decided that full proceedings on the matter to be held. With due respect the minority opinion was that whilst the housing issue falls within the definition of a trade dispute in that the dispute concerns **"terms and conditions of employment"**, the nature of the application places the Panel in an awkward situation in that the application seeks a construction and declaration rather than an award. The definition of what a trade dispute is must be read in the light of section 7(2) of the Act in that whether by the nature of the referral the Panel is able to make an award or vary a collective agreement. The answer is in the negative in that in this case the Panel has no jurisdiction to vary the service agreement nor to make an award. Variation of the agreement is a matter for the parties pursuant to clause 31 of the agreement which provides the parties with an opportunity to review the contract. In essence, this case pivots on the interpretation and enforcement of the contract which is beyond the jurisdiction of this Panel. At this juncture the trade dispute case between SINUW-v-MALAITA PROVINCE(L9/36/55/88) provides guiding precedent. In that case the dispute centred on whether a written agreement was drawn up so as to properly reflect prior informal agreement between the parties. The Panel ruled that the nature of the dispute was beyond its jurisdiction and disallowed its procedures from being used to call the validity of the agreement into question. The ruling in that case is couched in the following words,**" The Panel is becoming increasingly concerned at the number of cases coming before t that turn on points that could and should be litigated in a court. The proper function of the Panel is to make awards where parties cannot reach agreement. If they reach agreement but then fall into dispute over what was agreed then it is,in the Panel's view, a contractual matter to be argued before a court."** The nature of the award sought is similar to declarations which is within the jurisdiction of the High Court. Nevertheless, the majority decision was in favour of the case to be listed for a full inquiry in view of the employer's lack of disagreement to the referral.

It is necessary at the outset to briefly set out the background of this case.

The applicant is the Assistant General Manager, Finance (AGM(F)) of the Fund. He took up employment on the 9th of January 1990 by virtue of a contract of employment dated the same. His duties as outlined under appendix 1 of the contract are as follows:

1. Control of financial aspects of the Fund.

2. Preparation of budgets and financial projections.

3. Investigation and appraisal of Investments and Loan proposal.

4. Research and advise on system improvements.

5. Control and supervise periodical and annual financial report.

6. Perform any other duties that may be required from time to time by the General Manager and the Board.

Clause 19 of the employment contract is encouched in the following terms -

19.1 The Board shall provide the employee with a fully furnished house.

19.2 Where the employee is not provided with accommodation by the Board rent free, the Board shall pay rental allowance at the rate of fiftenn percent (15%) of the basic salary."

At the commencement of employment the applicant was provided with a fully furnished house. Thereafter he secured a loan from the Fund through the staff mortgage scheme (SMS) and bought a house at Vura which he eventually moved into due to pressure from the Board. In March 1993 he wrote to the Board informing it of his intention to sell this house and requested its blessing. on the following grounds;(i) constant water supply,(ii) constant repair of the sewage line,(iii)disturbances from a neighbouring workshop and (iv)suspected weakness in the foundation of the house. His request however received an unfavourable response from the Board which clearly advised him that the Board would no longer provide him with accommodation and also would not grant him any more future loans in relation to urban housing.The reasons relied on by the Board were as follows;

(i) the Board would be subject to constant criticism by members of the Fund if the sale was allowed and AGM(F) is provided accommodation by the Fund or provided a further loan for another private urban house,(ii) the sale and further approval of a new loan will amount to speculation on the part of AGM(F), (iii) AGM(F) would make a profit from the sale of the house and

(iv) the Board could not accept the genuity of the reasons for the intention to sell the house. The applicant responded in writing to the Board's response expressing the severity and harshness of its decision and raised similar cases existing cases. There was no response from the Board but the Board's attitude stalled the applicant's intention to sell. Sometime later with the need of financial support for Pea Ministry the applicant through the ANZ bank redeemed the outstanding balance of the loan to NPF so as to place the house on rent and to use part of the rental proceeds to repay the loan and the other part to help with the financial needs of PEA.At the completion of this arrangement the applicant's loan obligation to the Fund was free. In November 1993 when he was General Manager (Ag) he moved into an NPF house at Tasahe and placed his house on rental for the reasons stipulated above. After he moved the Board changed its housing policy and requested him to vacate the house. The applicant relied on clause 19 of the contract to support his housing entitlement. He argued that the usage of the word "shall" in this clause makes it imperative for the Board to honour this provision, even though the Fund provides a housing loan,it is contractually obliged to provide him with a fully furnished house.In his opinion the purpose of clause 19 is to enable good performance from its executive staff.The applicant claims to have made a noticeable input into the operation of the Fund. He argued that any policy decision of the Board should not have affected clause 19 because it is a contract which is specific and private between the parties and which should be honoured. Any changes to the terms and conditions of employment is a matter between the parties and since his emplyment, clause 19 had remained unaltered. Clause 19.2 is a fallback position only when the Board is unable to provide housing.

Whilst solicitor for the respondent agrees with the referral to constitute a trade dispute for the reason that it concerned a housing matter, he further submitted that the issue to be dealt with rests on the true construction of clause 19 of the Service Agreement. Thus it is "an interpretation problem". He further urged the Panel to read and construe clause 19 according to accepted rules of drafting, construction and interpretation. In this context Mr. Rose contended that the general rule of construction became applicable whereby a clause and its subclauses must be read as a whole in its contextual sense. Whilst he agreed with the applicant's argument that by clause 19.1 the respondent is obliged to provide the applicant with a fully furnished house he contended that by clause 19.2 the respondent has an option to provide housing allowance instead. In the learned counsel's interpretation clause 19.1 must be read as subject to clause 19.2.

Mr. Rose agrees that at the early stages of the applicant's service he resided in his private residence and drawing a housing allowance. In November 1992 when he was GM(Ag.) he moved into the NPF executive house at Tasahe at his own accord. The general staff complained because he had his own house at Vura which he had rented out. After he moved into this house he prepared and submitted a Board Paper requesting executive accommodation at Tasahe.

The Board refused the request and stood by its existing policy which was that a staff who rents out a house acquired under the SMS forfeits his/her housing entitlement. Several correspondence between the parties on this issue were made reference to. All in all the respondent was adamant that the applicant would forfeit his housing entitlements if he proceeded with the sale. In the end the applicant offered to rent the house at a monthly rental of $1000.00 if he were allowed to remain. The respondent however requested the applicant to vacate the premise or pay commercial rental. On the other hand the applicant contended that the respondent is contractually bound by virtue of clause 19 of the Service Agreement to provide him with accommodation.

Apart from the interpretation argument the respondent argues that this is a permanent contract and is different from a fixed contract. In a permanent type of contract changes can take place through necessary implication. For instance, a change in the Board's policy can render a change in the contract by reason of necessary implication. On this premise, a Board decision subsequent to the creation of the Service Agreement that a staff member who owned a private house should not occupy a NPF owned residence meant that clause 19.1 is amended by necessary implication.It is on this understanding that the staff including Management who owned private houses have decided to move out of the houses owned by NPF. The Tasahe Village is one of the Fund's investment and the Board as trustee of the Fund has the members money at heart. A prudent trustee would rent out the house. Assuming that the applicant's annual salary is $41,000.00. His housing allowance paid in 12 months at the rate of 15% would be $6150.00. If the respondent were to rent the house at $2750.00 per month the amount of rentals received would be $33,000.00.

The following represents the decision of the Panel on each of the specific requests.

(a) Clause 19.1 of the Service Agreement places an obligation on the Board to provide the applicant with a fully furnished house. This provision makes no reference to whether the applicant has his own accommodation or not and neither to the SMS. Policies are merely cost cutting measures whilst obligations in the contract are requirements under the Labour Act. Other entitlements provided for in the contract such as vehicle entitlement are not to be used as an argument. Mobility of executive members is necessary for the performance of duty.
Any variation to clause 19.1 must be made by a review between the parties as provided for in the Service Agreement and not by having access to Board minutes. On this point , it must be noted that by a joint letter of the two AGM to the Board they had requested for a review of their contract. This was neglected by the Board. On this reasoning, policy changes do not amount to a review of the contract. For the above reasons the applicant is entitled to free accommodation by the Fund and should not be evicted from the Tasahe residence.

On the issue of review the Board should be obliged to respond to the request for a review by the applicant and a proper review to be done. On the issue of entitlement to another loan on whatever condition, the applicant should be entitled because he has redeemed the first loan through the bank, and has no outstanding loan with NPF and moreover no house. In essence he has not acquired a house under the SMS. The Board rejected the applicant's request to sell the land on poor grounds. The house at that time was owned by the Board so why did not the Board make proper investigation. Under the circumstances the applicant would have satisfied clauses 11.2(1) of the members housing & loan scheme. There was no justification for the Board's fear on property speculation.If it genuinely feared this, then why allow the GM to be an exception. Eligibility for another loan depends on affordability of the borrower and the decision of th Board.

The other view is that the Board has fulfilled its obligations under clause 19 of the agreement. The housing problems caused by the applicant were self inflicted. Clause 20 which governs loans had been fulfilled. His arguments on defects is immaterial as well as his financial obligations to PEA.Any defect onthe property is the responsibility of the buyer. After redeeming the loan the applicant decided to manourve clause 19 and encountered problems. He chose out of his own volition to move into the Tasahe house without seeking the Board's approval and its blessing as a courtesy. The applicant byt the nature of its contract and in particular under clause 3.1.5 & 3.1.1 thereof is subjected to the Board's directives. For the above reasons, the Board is not obliged to provide the applicant with accommodation because initially paragraph 19 had been fulfilled. Clause 19.2 is a fallback situation and paragraph 1.6(c) does not make reference to clause 19.2. On the issue of review it is viewed that it is not within the Panel's jurisdiction to direct the Board to review housing conditions. Under clause 20 of the contract, the Board's policies would have an effect on the contract and the Board's decision supercedes previous policies.

Appeal

The parties have the right to appeal to the High Court on a point of law within 14 days from the date of this Findings.

Panel Expenses

Pursuant to section 11 of the Trade Disputes Act 1981 the respondent party is to pay to the Ministry the sum of $100.00 and the applicant party the sum of $50.00 within 14 days of receipt of this Findings.

On behalf of the Panel

A.N.Tongarutu
CHAIRMAN/TRADE DISPUTES PANEL