

IN THE TRADE DISPUTES PANEL)
OF SOLOMON ISLANDS.)

Case No. L9/9 of 1995

IN THE MATTER of the Trade
Disputes Act 1981

AND IN THE MATTER of a Trade
Dispute referral

BETWEEN: ACOR ALLIANCE
CORPORATION LIMITED
Applicant.

AND: SOLOMON ISLANDS NATIONAL
UNION OF WORKERS
Respondent.

Inquiry: 23rd August 1995, Honiara.

Award: 30th August 1995, Honiara.

Panel: A. N. Tongarutu - Chairman
J. Korinihona - Employer Member
D. Bale - Employee Member

Appearances: Mr. Prince , for the Applicant.
Mr. Tony Kagovai, for the Respondent.

F I N D I N G S

On 4th April 1995 the Managing Director of the applicant company (hereinafter referred to as the employer) referred a trade dispute to the Panel between itself and SINUW (hereinafter referred to as the union) following the issuance of a 14 days strike notice by the union on behalf of its 43 members who are employees of the applicant company. The strike notice was in relation to a dispute between the parties on the following issues contained in the employees 1995 log of claims and submitted by the union :

- "1. That a general increase of 20.7% be awarded across the board on wages, allowances and incentives.
2. That a security allowance of \$20.00 be paid.
3. That transport of \$20.00 fortnightly equivalent to bus fares.
4. That a housing allowance of \$40.00 fortnightly. As leave houses in Honiara cost \$100.00 per month as subsidy from the employer.
5. That Saturdays worked to be paid as 8 hours or paid at double time."

The employer's refusal to negotiate the union's log of claim hinged on the fact that the union was late in submitting its log of claim. The existing collective agreement between the parties stipulate an annual review of allowances and incentives and customarily January was considered to be the closing month for such reviews. With this case the union ignored the deadline for negotiations and submitted

the log of claim in March whilst being aware that consultations between the employer and the workers committee on wage increase took place in January. Correspondence showed that in January the union was notified about these consultations and had agreed to the wage increase but delayed its response until March when it submitted the log of claim referred to above. At this stage management and the workers committee had agreed to a new wage structure and the implementation of the 20.7% wage increase was already underway. The employer's position was that its annual budget and other financial planning had been completed and it would be unfair to disturb it.

Whilst the union agreed on the percentage of increase its proposal was for the increase to apply to security, housing and transport allowances as well. This was not the intention of the agreement between the employer and the employees. Presently the employees are paid transport allowance of \$20 and housing allowance of \$30.00 per fortnight respectively. There is no security allowance. The current practice is a incentive of \$5 reward paid to a shop attendant who confronts an offender. On overtime the employer relies on clause 11 of Appendix II to the Collective Agreement which stipulates that the total number of working hours weekly is forty four (44) hours. Under this clause the employees are required to work eight (8) hours daily and 40 hours weekly. The remaining four hours are worked on Saturdays when the workers are paid normal wages for the first four hours and thereafter are paid overtime at twice the normal rate. They do not take time off during week days except for Sundays which is a public rest day.

The union's case was that there was no formal negotiations between themselves and the employer apart from the meeting between management and the workers committee. Mr. Kagovai submitted that the normal practice was for the log of claim to be formally submitted to the employer by the end of January for negotiations but in this case the log of claim was submitted late in March after internal agreement on the wage increase was made. Nevertheless whilst the union agreed on the increase of 20.7% it did not agree with the employer's approach that the increase be restricted to wages. They requested for the increase to apply across the board to include security and transport allowances. The union's argument on security allowance was premised on the risk inherent in the job and that \$5.00 daily allowance which was paid only during peak periods was insufficient. Apparently Mr. Kagovai and Mr. Prince were on a different wave length on this issue in that the employer's practice was to reward a shop attendant who confronts an offender and that this was treated as an incentive. On transport and housing allowances Mr. Kagovai submitted that the cost of living adjustment on the CPI had increased and as such any increase should affect the employees allowances. The housing allowance currently paid is insufficient even to rent a leaf house. On overtime the union requests overtime payment of 8 hours on double pay for the reason that employees have to work on Saturdays whilst others take time off.

After having considered the arguments raised by the parties the Panel unanimously reached a determination that the 20.7% increase

is to strictly apply to wages primarily because it is a generous increase by the employer and that it would be unfair to capitalise on this increase to have a broader application when an agreement had been reached by the parties directly affected and that the financial implications had been incorporated in the annual budget. Further, that the union was given ample time to endorse or disagree with the proposed negotiations but failed to respond until March 1995. The parties have a different understanding on the application of the security allowance and this needs to be further discussed and negotiated by the parties concerned. The transport and housing allowance and the overtime wages should be scheduled for the next round of negotiations. The current allowances should remain as they are. It was the union's failure to respond at the relevant time and any review on these issues should be dealt with at such time and not on adhoc basis. As a party to the agreement primarily representing the interests of its members, the union must be seen to be fair do so. By the same token the employer party is expected by the union to observe its obligations. The union must realise that the employer completed its budget in January and any award made now in the light of the union's failure to observe time limitations in the collective agreement would not only unduly upset their budget but set a bad precedent for industrial relations.

On Saturday overtime wages, the Labour Act by virtue of s.11(1) clearly states that in cases where no minimum hours of work is stipulated, it shall not exceed 45 hours. Appendix 2 of the collective agreement makes reference to the total number of working to be 40 hours weekly. By virtue of this agreement the employer adjusts Saturday working hours accordingly. This is the Panel's opinion is wrong in law in that overtime rates must be observed and treated differently from normal rates.

It is the Panel's opinion that this referral could have been avoided if the Union had been serious about representing its members interest and being conscientious about deadlines for negotiations. Even though the union was aware of the consultations between the employer and the worker's committee in January, it did not respond until March 1995. This is surprising considering that the log of claim was in their interest. And instead of alleviating the situation they further issued a strike notice which was unfair and further delayed the matter instead of referring the matter to the Panel. Even after the dispute was referred to the Panel, Panel proceedings were further delayed by the union's failure to appear or respond to the hearing dates. If the union had participated the Panel proceedings could have been dealt with earlier. It was the union's fault to delay the negotiations. In view of this the Panel is of the opinion that there is no award on security, transport and housing allowances as well as Saturday overtime wages. These issues remain open for negotiations in the new year.

AWARD

That the employer to continue paying to its employees a 20.7% increase on wages and that this increase should also include the month of January 1995.

Appeal:

Pursuant to the Trade Disputes Act 1981 the parties may 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 parties are to pay the Ministry of Justice & Legal Affairs the sum of \$150. The union is to pay \$100 and the employer \$50 within 14 days of receipt of this Findings.

On behalf of the Panel

A. N. Tongarutu
Chairman/Trade Disputes Panel