

IN THE TRADE DISPUTES PANE )  
OF SOLOMON ISLANDS )

Case No. L9/2 of 1996

IN THE MATTER of the Trade  
Disputes Act 1981

AND IN THE MATTER of a Referral  
of a Trade Dispute

BETWEEN: SINUW  
Applicant

AND: TEMOTU PROVINCE  
Respondent

Hearing: 16th February 1996, Honiara.

Award: 16th February 1996.

Panel: A. N. Tongarutu - Chairman  
D. Bale - Employee member

Appearances: H. Jeans, Legal Advisor for the Respondent  
J. Ilifanoa, Legal Advisor for the Applicant.

---

## FINDINGS

---

On the 16th of January 1996 the applicant (hereinafter referred to as the union) gave notice of a trade dispute to the Panel pursuant to sections 4(1) and (6) of the Trade Disputes Act 1981 on behalf of its members who are direct employees of the Temotu Provincial Government (hereinafter referred to as the employer). The dispute centred on two major issues namely, Long Service Benefit entitlement and Dirty and Danger Allowances for the employees in the Medical Division.

Set out hereinunder are the three issues.

- "1. Whether or not the direct employee of the Respondent are entitled to benefit from a long service benefits scheme to be incorporated in the current existing signed collective agreement between the Applicant and the Respondent.
2. Whether or not such a long service benefit scheme for the benefit of the Applicant's members who are employed by the Respondent can be negotiated between the Applicant and the Respondent.
3. Whether or not the direct employees who are employed in the Medical Division are entitled to dirty and danger allowances under the collective agreement."

On the 17th of January 1996, both parties were notified of the acceptance of the referral. By the same letter the parties were notified of the preliminary inquiry set for the 30th of January 1996 at 10.30 am. At the preliminary hearing the respondent did not appear without any explanation however, the applicant's representative Mr Ilifanoa submitted that the issues referred were not new issues in that they had already been agreed to between the Union and the administrators of the Respondent. The issues were turned down when the proposed agreement was presented to the Executive of the Province for the reason that the proposal was going to prove expensive for the Respondent. The case then was referred to a full inquiry for the 16th of February 1996 at 9 am. Both parties were duly notified of this by the Secretary's letter dated 30th January 1996. On the 5th of February 1996 the Minister responsible Hon. O. Zapo was duly notified of the full enquiry into the matter as required under the Trade Dispute Act. At the enquiry today the applicant appeared late whilst the respondent party was in the process of presenting her submission. Both parties were duly served notice of the full enquiry as required under Rule 5(2) of the Trade Disputes Panel Rules 1981 which is not less than 7 clear days from the date of the enquiry. Despite proper notification Mr Ilifanoa appeared late at the enquiry and as such he forfeited his opportunity to make representation of the applicant's case to the Panel.

The respondent's case was that the negotiations on the issue of long service benefit had been strung out over the last three years. The Provincial Government has been unable to endorse the SINUW's request for various reasons. A little bit of back ground to this case should put as clearly in the picture of the relationship between the parties to case. The relationship between these parties is governed by a memorandum of agreement made on the 30th of May 1992 which has since been renewed on 17th of May 1995. Appendix I of the Agreement contains the SINUW's draft Long Service Benefit to which both parties signed an agreement to refer the matter to the Trade Disputes Panel. Appendix 1 of the Agreement states, and I quote

"Long Service Benefit

That Temotu Province Direct Employees be entitled for a long service benefit if he/she unfair dismissal, retired or resign from his/her job after completion of the following years of service,

- (i). 5 years and more - \$300.00,
- (ii). 10 years and more - \$400.00,
- (iii). 15 years and more - \$500.00."

This document was duly signed by both parties. Appendix II, to the Agreement contains the Wage Structure, Allowances and Incentives and it is under this Appendix which contains the danger and dirty allowances as follows:

"2. Danger Allowance

That workers who are engaged on task agreed as dangerous shall be eligible for a payment of a danger allowance of \$2.80 per day.

3. Dirty Allowance.

The employees who are normally engaged in category A shall be paid an allowance of \$2.80 per day.

3.1 Dirty Allowance.

That workers engaged on duties involved human excreta shall be paid \$3.51 per day.

DEFINITION TO DANGER AND DIRTY ALLOWANCE "A" AND "B" AS FOLLOWS;

DIRTY ALLOWANCE "A"

1. Rubbish collectors - involving collection of normal rubbish including tractor drivers.
2. Plumbers - As per its meaning except it involves the installation of a new plumbing system.
3. Machines - As per its meaning except where a tractor is used nor any other implement for purposes to keep the Airstrip station or any other area.

DIRTY ALLOWANCE "B"

1. Involving human excreta - To remain as per its meaning.
2. Laundry workers - To remain as per its meaning.
3. Cleaners - As per its meaning.
4. Hospital Aids - As per its meaning".

On the first issue paragraph 1 of the referral the Respondent party contained that sections 15, 16 and 17 of the Employment Act 1981 make provision for Long Service Benefit for those employees who would not benefit under the National Provident Fund Act 1973. Since the implementation of this Act the 1976 employees who do not fall within the category are not entitled. In that the employer has already makes contribution to the fund as a substitute to long service benefit.

It further contains that no direct employee of the respondent is eligible for statutory long service benefit as provided for in the Employment Act. Ms Jeans cited the 1981 High Court case of MAHIBA against CHAN WING MOTORS LTD. Its third contention was that the National Provident Fund makes provision for long service benefit for all employees and that the Respondent provides for the long service benefit of direct employees. By making contributions on behalf of direct employees to the National provident fund and employees entitlement to NPF contributions represent the considerable benefit in the case of an employee working for respondent for 5 years an earning an average of \$60 dollars per week the respondent will make a contribution to the NPF for that employee of \$4.50 per week and \$234.00 per year.

The province will make a total contribution of \$1,170.00 over 5 years. In addition interest will approve .

Further to this the Employment Act is drafted so as to avoid an employee obtaining double benefit from statutory long service benefit. That Appendix 2 of the Collective Agreement between the parties contains the terms conditions employment of direct employees. These terms and conditions do not include entitlement to long service benefit. As such benefit is provided for under the provisions of the NPF Act 1973.

Ms Jeans further argues that the Trade Disputes Panel has limited powers to vary any collective agreement between the parties as provided for under section 7(2) of the Trade Disputes Act 1981. The Respondent contains that the Panel's power to vary the collective agreement does not include power to reworked respectively impose a new clause into the contract of employment contain in appendix 2 of the collective agreement that section 7(4) of the Trade Dispute Act imposes a limit on the panel when making an award which will varied terms of employment such a variation is not to be inconsistent with the terms of any written law. In this regard the applicant requests for the inclusion of long term service benefit into the terms and conditions of employment would be inconsistent with section 16 of the Employment Act. Section 16 cuts off an entitlement to long service benefit. At the date when the provisions of the NPF Act 1973 came into force in 1976. Third, that the applicant has failed to give details of how the long service benefit is to be calculated or how an employee will become entitled. The applicant has not given sufficient detail in this referral enable the panel to make an award. Forth, that section 6(4) of the Trade Disputes Act 1981 requires the panel to consider the effect of the economy of an award by the panel. Respondent will request the panel to consider the financial impact of an award on the Provincial Government of Temotu Province. The Provincial grant for 1995/1996 was \$748,430.00 and the total salary payable to direct employees was \$345,600.00. It is likely the Provincial grants shall not vary for 1996/1997 and that salaries will again account for almost half of the income of the province reducing money available for the provision of services within Temotu Province third issue within Temotu Province.

In this regard considerable servicing of an employee as to be weighed against the detrimental effect on the Provinces Budget. On the issue of direct employees the respondent contained that the direct employees working under the medical division presently receive dirty and danger allowances. This the respondent does not dispute. A letter from Dr. Kevin Bisili to dated 2-2-96 submitted to the panel confirms that all direct employees are paid both danger and dirty allowances on completion of specific job so as the nurses way dirty and danger allowances are included in their special duty allowances. However, the Health and Medical services Division has since last year been recentralised and the province no longer receives a service grant for this service. All medical direct employees have been paid from central funds allocated by the Ministry of Health & Medical Services.

As such the respondent's submitted that the Ministry of Health and Medical Services should be a party to the negotiations between the applicant and respondent.

The Panel's determination on the submission or that in view of the legislative restrictions the Long Service Benefit although agreed by the parties to be referred to the panel for its determination should not be included in its present format should not be included in the collective agreement. Secondly, whether to negotiate or not is a matter to be decided upon by the parties but on this point of the referral, the Panel is of the opinion that it is not a dispute connected with a trade dispute as outlined in the schedule to the Trade Dispute Act and as such it cannot make an award. On the issue of dirty and danger allowances entitlement appendix three to the collective agreement has to be varied to cater for the current practise in that this allowances have been decentralised and as such payment thereof is the responsibility of the ministry of Health and Medical Services.

#### AWARD.

The direct employees of the respondent are not entitled to benefit from a long service benefit scheme to be incorporated in the current existing sign collective agreement between the applicant and the respondent.

2. The direct employees in the Medical Division are not entitled to be paid dirty and danger allowances by the Province as stipulated in the collective agreement. Their dirty and danger allowances are paid by the central government.

#### PANEL EXPENSES

Panel expenses of \$70 dollars is to be equally paid by the parties to the Ministry of Justice and Legal Affairs.

On behalf of the Panel,

A. N. Tongarutu  
CHAIRMAN/TRADE DISPUTES PANEL