IN THE TRADE DISPUTES PANEL)
OF SOLOMON ISLANDS. **) Case No. L9/3 of 1997**

IN THE MATTER of the Trade Disputes Act 1981

AND IN THE MATTER of a notice of referral

BETWEEN: Eagon Pacific Plantation Ltd (EPPL)
Applicant

AND: SINUW
Respondent

Hearing: 18th & 21st April 1997.

Decision: 1st May 1997

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

Appearance: T.T.Kama for the Applicant
B.Tuhenua for the Respondent

FINDINGS

On 28th February 1997 Solicitor for the applicant gave notice of a trade dispute to the Panel Secretary between the applicant (hereinafter referred to as the company) and its employees who are represented by the respondent (hereinafter referred to as the union). The issues in dispute are centered on (i) entitlement claim on minimum wage of $1.50 per hour under the Labour (Minimum Rates of Wages) Order 1996 and (ii) wage increase of 8.5% backdated to 1st July 1996. There was no recognition agreement between the parties. This was in the process of being negotiated when the workers withdrew their labour without any notice to the company.

The union's argument was that on 7th February 1997 the workers made an official complaint to the management on three matters namely:

i) Why EPPL workers were excluded in the 1996 negotiations between the union and Eagon Resources Development.

ii) Why the EPPL & ERDC are separate entities and,

iii) Why EPPL and the union are aware that EPPL and ERDC are independent of each other & why this knowledge was not communicated to the workers.

A copy of the letter was submitted and claimed to have been received by the General Secretary (ag) of SINUW on 26th February 1997. Following this complaint a draft memorandum of agreement was put to the company by the union. A copy of this document was also submitted.

Representative of the union disagreed that a deadlock had been reached. On 27th March 1997 the parties still failed to reach our agreement but it was decided that the dispute over the interpretation of whether Eagon Pacific Plantations Ltd(EPPL) was an agriculture plantation company be referred to the High Court. It was submitted that the strike was caused by the difference of opinion on adopting two collective agreements & the question of recognition. However, a majority of workers resumed work on 28th February 1997 when negotiations resumed.

The applicant company was incorporated in April 1996 & started operating in May 1996 at which time some employees of Eagon Resources Ltd were transferred to the Arara Camp but because the applicant was a separate legal entity from Eagon Resources Development Company it cannot adopt the same collective agreement and the workers were not entitled to a backpay. In July 1996 employees of Eagon Resources received backpay and this stirred the employees of EPPL claiming similar entitlement. According to the evidence of the inhouse company solicitor, EPPL & Eagon Resources Development Company (ERDC) are separate entities but are members of the Eagon Group of Companies. These two companies come under separate management which the union was unaware of. The activities of the applicant company were, planting & nursery, maintenance research and harvesting and therefore falls within the definition of an agriculture company. EPPL was prepared to pay wage increase to workers transferred from ERDC but not to new employees who were still paid daily rate of $1.20 per hour. At the end of October 1995 some workers were transferred from Eagon Resources to EPPL. The majority resigned from Eagon Resources to join EPPL & recruitment commenced at the beginning of 1996. These new recruits were paid $1.20 per hour but the

transferred workers were paid their old rates & a majority of them were paid $1.50 per hour. The new wage structure was already implemented and a minimum wage rate of $1.50 for old employees was implemented.

The unions position was that if the company was going to fell trees, then it is a logging plantation & not an agriculture based company. The SIPL cannot be used as a comparison. The felling of trees involved logging. A plantation company involved in the planting of trees for harvesting would commonly be regarded as a logging company.

On the dispute over the minimum wage rate, the first question for the Panel to deal with was the interpretation on whether or not EPPL was an agriculture company within the purview of the 1996 Order.

Paragraph 3 of the Labour (Minimum Wage Rates of Wages) Order 1996 states:

The minimum rate of wage for all workers:

> ***"(a) in the Fishing and the Agricultural Plantation Sector shall be One Dollar and Twenty Cents ($1.20) per hour; and,***
>
> ***(b) in all other sectors shall be One Dollar Fifty Cents ($1.50) per hour.***

The applicant company contends that its operation falls within category 3(a).

The traditional definition of agriculture shows that it is the art & practice of cultivating the land. The employer company contends that it is an agricultural based company because of the nursery, planting and harvesting activities of the company. The company's argument may be correct insofar as the nursery and planting operations of the company are concerned but the overall operation of the company shows that it is a logging company and that its ultimate objective is in harvesting of the trees for logging or milling purposes. This poses a new dimension which must be accomodated in the definition and the question for the Panel to determine is whether the harvesting operation of the company disqualifies it from being an agriculture company. In this context the interpretation hinges on the nature of the product which is harvested. In the agriculture sector a majority of the products do not require a licence for harvesting as opposed to timber trees as provided for in the Forest & Timber Ordinance 1970. This Act makes it mandatory for entities engaging in felling and milling of timber trees to obtain a licence from the Commissioner of Forests.

This, in the Panels view differentiates an agriculture company from a forestry based company, which is EPPL. Therefore, EPPL is a forestry company and its operation falls within the "other sector" category which is paragraph 3(b)of the 1996 Order.

The Panel was satisfied that EPPL is a separate legal entity from Eagon Resources Development Limited and the union is responsible for educating its members about the legal entity of EPPL. The employees strike action is not justified just because of the failure of their union representatives to educate its members. The Panel was also satisfied that the company can afford to pay a wage increase of 8.5% to its workers who were transferred from ERDC.

Award

1. The company is to pay all its employees who are members of SINUW and who were transferred from Eagon Resources Ltd in 1995 an 8.5% wage increase and backdated to 1st February 1997. New recruits & probationers are not covered by this award.

2. A minimum wage rate of $1.50 per hour to be paid to the applicant company's employees inclusive of new recruits who were appointed after 1st March 1996.

Appeal

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

Panel Expenses

Pursuant to section 11 of the Trade Disputes Act 1981 the respondent is to pay Panel expenses in the sum of two hundred dollars ($200.00) and the applicant in the sum of one hundred dollar ($100.00) within 14 days of receipt of this Finding.

On behalf of the Panel

A. N. Tongarutu
CHAIRMAN/TRADE DISPUTES PANEL