IN THE TRADE DISPUTES PANEL OF SOLOMON ISLANDS)
) Case No: L9/14 of 1997

IN THE MATTER of the Trade Disputes Act 1981

AND IN THE MATTER of a trade dispute referral pursuant to section 4(2) of the Trade Disputes Act 1981.

BETWEEN: SOLOMON ISLANDS NATIONAL UNION OF WORKERS

(Union)

AND: EARTHMOVERS (SI) LIMITED.

(Company)

Hearing:	29th & 30th January 1998, Honiara.
Date of Findings:	4th February 1998.
Panel:	A. N. Tongarutu - Chairman P. Sute - Employee Member J. Adifaka - Employer Member
Appearance:	C. Ashley, A.A. Legal Services, for the Union L. D. Tepai, Motis Pacific Lawyers, for the Employer.

FINDINGS

On the 31st of October 1997 the Minister for Commerce, Employment and Tourism gave notice of a dispute between the SINUW (hereinafter referred to as the Union) and the Company (hereinafter referred to as the employer) to the Panel pursuant to section 4(2) of the Trade Disputes Act 1981 seeking conciliation settlement to the long standing dispute between the said parties over the issues of recognition and the employees 1997 log of claim. The referral was couched in the following terms:

(1) **That the Company to formally negotiate with Solomon Islands National Union of Workers as the eligible and legal representative of employees who are financial members of the Union.**

(2) **That a 11.8% on wages increase across the board on wage structure, allowances and incentives to be back dated to 1st January 1997 and,**

(3) **Signing of a collective agreement after formal negotiations and**

(4) **The employment status of the employees who were terminated from employment on 9th October 1997 consequent upon taking strike action on 29th September 1997.**

At the preliminary hearing on the 11th of November 1997, the Panel ruled against the employer's submission that the Panel did not have jurisdiction to deal with the matters referred pending High Court action by the company seeking declarations on the validity of the strike and the status of the employees The basis of the Panel's ruling was that it had original jurisdiction to inquire into the matters raised in the Notice of Referral except for the matter of the status of the striking employees and the issue of strike. This ruling was appealed against by the employer party following an application for leave filed at the High Court by the employer party in which case the High Court granted leave to the employer and prohibited the Trade Disputes Panel from further proceeding with the case. Following a further application by the Union party to set aside the Court's Order infavour of the employer party the High Court in its judgement dated 14th January 1998 found that the Trade Disputes Panel had the jurisdiction to deal with the issues referred to in the Notice of Referral and that the status of the sacked employees was a matter plainly within the Panel's jurisdiction. On this basis the Panel proceeded to make an enquiry into the whole of the dispute referred to it by the Minister on 31st October 1997.

Briefly, the background facts and issues involved in this case are that by its letter of 2nd September 1997 the union issued a strike notice pursuant to the Essential Services Act following a refusal by the employer to negotiate recognition and the log of claim issued to the employer on 25th August 1997. The employer's contention was that both letters were received by the employer on 3rd September 1997 and it was adduced in evidence by the employer that the letter containing the log of claim although dated 25th August 1997 was merely backdated but infact had not been sent to the employer on or immediately after the 25th August 1997. The employer did not to respond to both letters on the premise of non-

recognition of the Union representing the employees and in the absence of any recognition agreement it was not obliged to negotiate with the Union party. On this basis, evidence showed that the company left matters in limbo and advised its workers not to go on strike. On the other hand the Union maintains that it has a

recognition agreement. Documents showed that the parties had a valid collective agreement signed on the 15th of June 1995 for a minimum period of 12 months commencing 1st January 1995. This agreement according to the employer expired in December 1995. The Memorandum of Agreement stipulates that the duration and operation of the Agreement shall and I quote, "remain in force for a minimum period of 12 months provided that the minimum period will be reviewed at the end of the 12 months period". Furthermore, the Memorandum of Agreement provides that the Collective Agreement and the Appendices which includes the Recognition Agreement shall be read and construed as one document. Appendices 1,2 and 3 of the Agreement may be amended at the end of the 12 months period.

Appendix 1 incorporates the Recognition Agreement, Appendix II incorporates the Terms and Conditions of Service and Appendix III incorporates the Wages Structure, Allowances and Incentives. It is important at the outset to set out the relevant provisions of the Recognition Agreement.

Paragraph 1 states,**"The employer agrees to recognise the Solomon Islands National Union of Workers has been a properly constituted and registered trade union and representative of local employees who are eligible to be members of the union and who are agreeable that the union should represent them on matters concerning wages and other conditions of employment".**
Paragraph 3 states, **"The employer will withdraw his recognition of the union should it at any time cease to be registered or should it fail to abide by the terms of its own constitution and rules".**
Paragraph 4 states, **"Furthermore should the number of union members among the employees of the company fall to a number which is less 50% of those employees eligible for membership of the union, the employer may withdraw his full recognitions of the union which**

will thereafter be limited to dealing with the employer in matters concerning only individual employee members which have no implications affecting any other employees".

Paragraph 10 states, **"The negotiating committee of the union shall comprise of union officials and four elected employees representatives who may present any request or demands in relations**

to terms and conditions of employment to the employer for consideration and attention. Discussions on matters put forward may take place between the committee and the employer in negotiations with the view to reaching a settlement to the issues raised" and paragraph 12 states, "The parties shall not resort to strike or lockout or any other direct industrial action until all agreed and prescribed negotiations have been completed and exhausted".

The union's claim was that although the Collective Agreement expired in December 1995, in principle it was still valid. The duration & operation clause only prescribed a minimum period of 12 months and that further, in 1996 the union submitted a log of claims to the company but received no positive response except to advise the union that the General Manager was absent and negotiations were pending upon his return. However, upon his return thereafter, no negotiations took place but the company offered a 10% wage increase which the union accepted and was prepared to incorporate this in an award but the employer was hesitant to do so. Documents and evidence showed that the union's initial log of claims was sent to the company on the 15th of May 1996 and a supplementary claim was sent on the 31st of May 1996. In response to this, the company made the 10% offer. Thereafter there was no wage increase until the union again requested an 11.8% wage increase for 1997 on the basis that the average increase in costs of living over the previous 12 months in 1996 was 11.8% accordingly to the Honiara Retail Price Index. The basis of the workers claim was as follows:

(a) **Prior to the new legal minimum wage of $1.50 per hour, announced in 1996, the minimum rate in Earthmovers Group of Companies was $1.44 per hour, which represented a 4% increase.**

(b) **The workers were conscious of the fact that the prices of round logs were sky rocketing in the international markets,**

at this time, and this influenced their demand for an 80% increase in wage rates.

(c) The workers also felt that due to the above factors the company should institute an overall wage restructuring, besides any adjustments, to reflect on the increase in cost of living.

There was no question of affordability of increases in wages and allowances since the employer was trading in a lucrative business. In 1997, the company traded under four subsidiaries and exported an average of 5 shipments each month between January and October 1997. The company's position was that it could not afford an 11.8% wage increase because of the downturn in the roundlog export market. This however was not substantiated.

At this stage the employer's position was that the recognition agreement between the parties had lapsed and therefore, the company was not in a position to recognise the union. This was conveyed by a letter dated to the Union dated 3rd October 1996 by the Company's Solicitor following a notice of strike by the union. Although this was the position taken by the employer, documents showed that by its attitude, it recognised the union as the body representing its employees concerning the 1996 wage increase and dismissals.

It was the union's case that it legally represented the workers of the company on the basis of their financial membership. The company however still refused to meet with the union to negotiate. This resulted in the January 1997 log of claim sent to the employer in August 1997 and culminated in the strike action.

It was claimed by the union that the company had issued an internal circular threatening to sack its workers if they went on strike. Nevertheless the employees went on strike and consequent upon this strike they were issued with termination of employment letters on 9th September 1997. It was submitted that out of the 400 workers about 200 have returned to work under new contracts of employment. The union claims that it has issued a legal strike notice

encompassing its members who work under essential services on the basis of the employer's refusal to recognise the Union and on the justified wage increase claim based on the Honiara Retail Price index. After this strike, the union wrote to the employer inviting them for a dialogue. On the 14th of October 1997, Solicitor for the company wrote to the union agreeing to a meeting which eventuated in October, but due to the offer made the union rejected the

employer's offer to re-engage the sacked workers on new terms and conditions of employment.

The Panel finds on the basis of the evidence that upon expiration of the 1995 Collective Agreement, the employer in principle continued to recognise the Union except that it stubbornly refused to formalise this unwritten recognition by entering into a written recognition agreement. Evidence also showed that the Union had made several attempts to formalise this recognition agreement but to no avail. It is important to focus the Union's case within the ambit of the 1995 Collective Agreement so as to justify its claim of recognition. Firstly, the operation and duration clause catered for a minimum period of 12 months but that this period would be reviewed at the end of the 12 months period. This implies that the Collective Agreement was in principle still operational in that there was no maximum period. As such, the employer did not honour its obligation to review this minimum period. Also, the company failed to notify the union in early 1996 that it had withdrawn its recognition until October 1996. In the framework of the memorandum and recognition of agreement as provided for in the paragraphs quoted earlier the Panel was of the opinion that in principle the agreement had not lapsed and the provisions in the Agreements could not be limited to the period between 1st January to 30th December 1995. It was the minimum period that was subject to review. The union's financial memberships had not fallen below 50% as provided for under paragraph 4 of the Recognition Agreement and that it had not breached paragraph 3 otherwise the employer would have withdrawn its recognition. Now, even if it were established otherwise, being that the agreements expired in December 1995, the union's persistent claim of having majority membership of the employees and culminating in the strike notice in 1996 would oblige

a responsible employer to enter into negotiations knowing that its workers opted for union representation. However, it adopted a "wait and see" attitude until the September strike notice expired and proceeded to terminate the workers. Whether the notice was issued under the Essential Services Act or not was irrelevant for the purposes of issuance of notice to avail a lightning strike. It was not in dispute that the employer was given sufficient notice to take proper cause of action. On the basis of this assessment

the Panel finds that the strike notice and strike action taken was in pursuit of a trade dispute. The relevant provisions of the Trade Disputes Act provides and I quote: **"A dispute between employees and employers, or between groups of employees, which is connected with one or more of the following matters**

(a) terms and conditions of employment or the physical conditions in which employees are required to work;

(b) engagement or non-engagement, or termination or suspension of employment or the duties of employment, of one or more employees;

(e) membership or non-membership of a trade union; and

(f) machinery for negotiation or consultation, and other procedures relating to any of the matters mentioned above, including the recognition of any trade union by an employer."

This then brings us to the status of the employees. The workers who went on strike in pursuit of a trade dispute and were terminated were unlawfully terminated. In the case of Agvsipeu[SILR 1985/86] which involved employees going on strike in connection with the sale of Government houses the Court held that the strike was in furtherance of a trade dispute. In SINPF -V- SINUW the Court also held that the strike action was in furtherance of a trade dispute except that in that case the employees went on a lightning strike.

In Solomon Taiyo Limited -V- SINUW [1985/6] SILR, the Court held that the Panel was correct in treating the dismissal of the employees as part of a "trade dispute" as defined in the Act and not as "unfair dismissal in terms of the Unfair Dismissal Act 1982 since the dismissals were connected with the trade dispute and the strike that followed.

On the basis of the Panel's findings that there was in existence a trade dispute and that the union was mandated by the workers to issue a strike notice pursuant to the said dispute, the Panel makes the following awards.

Award

(i) That the employer to formally negotiate with the Union's proposed Recognition and Collective Agreements.

(ii) That the dismissed workers to be re-instated with effect from the date of termination.

(iii) The employer party to pay to all its employees represented by the union an increase of 10% across the board on wages, allowances and incentives with effect from 1st January 1997.

Appeal

The appeal provisions in the Trade Disputes Act 1981 apply to this Findings.

Panel Expenses

Pursuant to section 11 of the Trade Disputes Act 1981 the Panel hereby orders Panel expenses in the sum of five hundred dollars ($500.00) to be paid by the employer party.

On behalf of the Panel

A. N. Tongarutu
CHAIRMAN/TRADE DISPUTES PANEL