

**IN THE TRADE DISPUTES PANEL  
SOLOMON ISLANDS**

Case No. 74/04

**BETWEEN: Adriana Baidani (Complainant)**

**AND: National Bank of Solomon Islands (Respondent)**

Panel:  
1. Francis Cecil Luza - Chairman.  
2. David Iro - Employer representative.  
3. John Houanima - Employee representative.

Appearances: Billy Titiulu for the complainant

Andrew Radclyffe for the respondent

Date of hearing: 2/8/06 & 6/3/07

Date finding delivered: 9<sup>th</sup> July 2007

**FINDING**

By complaint lodged to the Panel on 4/11/04, the complainant claimed that she was unfairly dismissed by the respondent on 5/8/04. The grounds for her complaint are as follows:

**“(i) The Bank has experienced at least one past experience where the Teller overpaid the same Sullivan’s employee but the Bank did not terminate the Teller.**

**(ii) The Bank has wrongly taken into account previous warnings which were more than one year old when it decided to terminate me.**

**(iii) In view of the fact that the Teller involved in the incident (1) above was not terminated by the Bank, the Bank’s decision to terminate me is discriminatory and unfair.**

**(iv) The Bank did not caution me or forewarn me that the statement which it has requested me to provide and which has been provided would be used**

against me. This lack of warning had led me to provide a statement to the Bank which was later used against me.

(v) The Bank failed to advise me during my termination of my right to appeal to the Board or the Managing Director if I was not happy with Manager Treasury and International's decision."

In its notice of appearance (TDP2 form) filed on 25/4/05, however, the respondent claimed that the complainant was dismissed for "gross neglect of duties."

### FACTS

The complainant was employed by the Bank for 26 years. She has a contract of employment with the Bank. At the time of her termination she was a Teller supervisor. She received a gross fortnight salary of \$1, 544.95.

On 3/8/04 the complainant was working at the International Branch, Point Cruz. At about 10.00 am she assisted a teller, Frank Mataimoana who was busy sorting out the previous deposits putting them into the draw. After he had done that, Mr. Mataimoana then served another customer from the Sullivans who was also making deposits. Whilst Frank Mataimoana was still serving that customer, the complainant had to attend to another customer from Victory Enterprises who was left unattended at the next counter. Mr. Mataimoana's client from Sullivans actually made three deposits totalling \$26,340.20.

At the end of the day, however, as Frank Mataimoana was trying to balance of his account, he found out that there was a short fall of \$20,000.00. The amount could not be recovered and therefore had to be written off by the Bank.

### Respondent's case

The only one witness for the respondent, Mr. Kevin Durkin told the Panel that when Frank Mataimoana realised the short fall of \$20,000.00, he went straight to his supervisor (the complainant) to report the matter. The complainant however responded by saying "it was alright."

Mr. Durkin further stated that he did discuss the matter with the complainant which she would not give a proper account of what had happened which resulted in a decision to terminate her. Upon questioning, the complainant said the transaction took place half an hour before closing time, but when contacting Sullivans, late Nick Constantine confirmed it was done in the morning and not as stated by the complainant.

In any case, Mr. Durkin said that the complainant was not dismissed for fraudulently involved in the transaction but for gross neglect of duties. She was negligent not to have acted reasonably in trying to find out what had happened about the \$20,000.00 short fall

when the matter was reported to her by her officer, Frank Mataimoana. Mr. Durkin said his decision to terminate the complainant was made in consultation with the General Manager, Mr. Godwin.

### Complainant's case

In her sworn evidence, the complainant told the panel that, whilst, the Sullivans customer was still making deposits with Frank Mataimoana, the complainant went to assist another customer from Victory Enterprises. The complainant did not go back to Frank Mataimoana until about eleven or going up to 12 mid-day when Mataimoana approached her in the teller room to inform her of the \$20,000.00 short fall.

In respond she asked Mr. Mataimoana if he had not got it from the customer as he was doing the deposit. She told Mr. Mataimoana to recount all the monies again as she immediately contacted Sullivans to find out who actually made the deposits on behalf of Sullivans on that day. She was told it was Samuel. At that time it was about 3pm. Samuel confirmed having that amount actually deposited. She then accompanied Mr. Durkin to the Sullivans where they had actually spoken with Samuel and late Nick Constantine who confirmed completing the deposit as shown in exhibit 2.

On their return to the Bank they watched the surveillance camera which confirmed the involvement of both Frank Mataimoana and the complainant in the transaction. The next day both the complainant and Frank Mataimoana were asked to write their statements. On that day, one Mike Crockrone invited the complainant into his room to remind her about the written statements. At that time Mr. Crockrone also cautioned her that he has the right to terminate her. The complainant submitted her written statement the following day (5/8/04), the same day she was also terminated. The Manager Administration, McMara actually called the complainant into his room and handed her the termination letter.

The complainant further told the panel that she was not advised of her right to appeal to the General Manager as provided for under the agreement between the Staff Association (of which she was a member) and the Bank. The complainant also claimed that the Bank was also wrong to take into account warnings that were already over one year old in its decision to terminate her. She stated that under paragraph 10 of the signed agreement between the staff association and the Bank, a warning can only be valid for a period of one year.

### **Was the reason substantial and of a kind justifying the dismissal of the complainant?**

Mr. Durkin for the respondent told the Panel that the complainant was not terminated for fraudulently involved in the transaction but for gross negligence having not acted reasonably in trying to find out about the \$20,000.00 shortfall when it was reported to her by her officer, Frank Mataimoana. Instead, she responded to the officer saying "it was alright."

The complainant however in her sworn evidence told the Panel that when Mr. Mataimoana had told her about the shortfall, she asked him if he had not collected the money from the customer when the deposits were made at the counter. He then told Mr. Mataimoana to recount all the money again whilst she contacted Sullivans to find out the person who had actually made the deposits on that day. Upon contacting Sullivans she found out it was Samuel. Straight after that, she accompanied Mr. Durkin to Sullivans where they had spoken with both Samuel and the late Nick Constantine.

Having considered the evidence of both Mr. Durkin and the complainant, the Panel cannot find where and how the complainant's action amounts to gross neglect of duties as claimed by the respondent. The mere statement which says "it's alright", when responding to Mr. Mataimoana by the complainant cannot be taken as an ignorance of what Mr. Mataimoana had said. Such statement could also mean that the complainant took note of what Mr. Mataimoana had said and that she (the complainant) was going to do something to try and find out about the \$20,000.00 shortfall, which the panel accepts she did, when immediately contacting Sullivans to find out who had actually involved in the transaction and by accompanying Mr. Durkin herself to Sullivans straight after that.

In any case, with the only evidence of Mr. Durkin, which we find difficult to accept, the panel is not satisfied that such statement was ever used by the complainant in responding to Mr. Mataimoana, and hence, there was no evidence to substantiate the act of gross negligence on the part of the complainant as claimed by the respondent.

The panel therefore finds that there was no substantial reason justifying the complainant's dismissal in this case.

**Did the respondent act reasonably in treating the reason as sufficient for dismissing the employee?**

Even if the panel finds that the reason for dismissing the complainant was substantial justifying the complainant's dismissal, the manner in which, the respondent had treated that reason as sufficient dismissing the complainant was not proper. The respondent failed to take into account the length of service the complainant had rendered to the Bank when deciding whether or not she should be terminated on that ground. In doing so, the respondent was also wrong in taking into account two expired warnings. The respondent had also failed to advise the complainant as to her right of appeal to the General Manager as provided for in the signed agreement between the Bank and the Staff Association for which the complainant was a member.

Accordingly, and in all the circumstances, the panel finds that the complainant was unfairly dismissed.

**AWARD**

In considering award in this matter, the panel notes that the complainant had worked for the Bank for 26 years. She was not paid one-month salary in lieu of notice. She had later secured a formal employment with the Law and Justice Programme.

The compensation is therefore awarded as follows:

1. One-month pay in lieu of notice	- \$ 3,089.90
2. Loss of employment (9 months salary)	- \$27,809.10
<b>Total</b>	<b>- \$30,899.00</b>

The panel having taken into account the conduct of the employer and the complainant both before and after the date of dismissal in this case considers an award of **\$30,899.00** as fair and reasonable in all the circumstances.

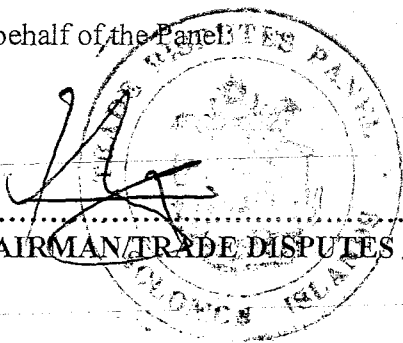
**ORDER**

1. The respondent is to pay **\$30, 899.00** to the complainant within 14 days.
2. The respondent is also to pay **\$500.00** towards panel expenses within 14 days.

**APPEAL**

Right of appeal to the High Court is 14 days.

On behalf of the Panel



CHAIRMAN/TRADE DISPUTES PANEL