

**IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS**

Case No. UDF 8/06

BETWEEN: Joseph Kakaro (Complainant)

AND: Guadalcanal Province (Respondent)

Panel: 1. Francis Cecil Luza - Chairman
2. Ken Grossmith - Employer representative

Appearances: Preslie Watts for complainant

No appearance for respondent

FINDING

By complaint lodged to the Panel on 9/3/06, the complainant claimed that he was unfairly dismissed on 16/1/06.

On 4/4/06, the panel secretary issued three TDP2 forms (notice of appearances) to the respondent to be completed and returned to the panel within 21 days.

At the lapse of the 21 days, however, the forms were never completed and returned as required of the respondent.

On 10/1/07, the panel secretary wrote to the respondent reminding it of its failure to complete and return the said forms. In that letter, the secretary had also advised the respondent to apply for an extension of time to file the TDP2 forms if it wished to take part in the proceeding. The matter was then listed for pre-hearing on 6/2/07 at 09.30am.

On 6/2/07, however, there was still no appearance from the respondent except the complainant. Subsequently, the complainant applied for an order to bar the respondent taking any part in the proceeding which was granted by

the panel. The panel then further adjourned the matter to a date to be fixed to hear the complainant's case exparte.

The complainant's case was eventually heard on 19/4/07. In his sworn evidence, the complainant told the panel that he began his employment with Guadalcanal Province (the respondent) on 12/5/95 as office orderly. After a period of one year, he was promoted to accounts clerk, a position held until terminated on 16/1/06. He received a fortnight salary of \$568.00.

In his sworn evidence, the complainant told the panel that initially he was given 14 days suspension (on full pay) to allow investigations carried out into allegations made against him. This was the effect of a written letter issued to him by the then Provincial Secretary, E. Tangirongo on 26/2/05 (exhibit 1).

No investigations however were conducted into the allegations against the complainant as stated in that letter (exhibit 1) until he was advised of his dismissal by letter dated 16/1/06 (exhibit 2). That letter was issued to the complainant by the then Provincial Secretary, Mr. Justus G. Deni.

The complainant told the panel that he was surprised that he was never investigated like other colleague of his who were actually investigated by police. The complainant told the panel that he totally denied all allegations made against him.

In unfair dismissal cases, the burden is on the employer to prove that the dismissal is not unfair. In this case, the respondent had lost its opportunity of discharging such burden for being barred from taking part in the proceeding through its own acts or failures.

On the sole sworn evidence of the complainant, however, the panel is satisfied the complainant was dismissed for no reasons. If there was any ground at all, they were never substantiated. Apparently, there should have been investigations conducted into the allegations made against the complainant so as to allow him the opportunity to answer to those allegations.

Having said that, the panel finds that the respondent had dismissed the complainant without any reasons, and if there was any, the complainant was not given the opportunity to state his case (contrary to the rule of natural justice) before a decision could be made to terminate him.

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

AWARD

In considering award, the Panel notes that the complainant had worked for the respondent for a period of over ten years. That he was not paid one-month pay in lieu of notice. The complainant had not secured any formal employment since termination.

The compensation is therefore calculated as follows:

(1) one-month pay in lieu of notice	- \$1,250.00
(2) Loss of employment (9 x 1,250.00)	- \$11,250.00
Total	- \$12,500.00

The panel having taken into account the conduct of the employer and the complainant both before and after the date of dismissal considers an award of \$12,500.00 as fair and reasonable in all the circumstances.


ORDER

1. The respondent is to pay \$12,500.00 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:


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CHAIRMAN/TRADE DISPUTES PANEL

