

**IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS**

Case No. UDF 3/2007

BETWEEN: Mathew Lenga (Complainant)

AND: National Bank of Solomon Islands (Respondent).

Panel: 1. Francis Cecil Luza - Chairman
2. Kengross Smith - Employer representative
3. Edith Fanega - Employee representative.

Appearances: Ed Saramo for the Complainant.

Andrew Radclyffe for the Respondent.

Date of hearing: 14th February 2008.

Finding delivered: 11th March 2008.

Finding

By complaint (TDP1) lodged to the Panel on 23/3/07, the complainant claimed that he was unfairly dismissed by the respondent on 5/1/07.

By notice of appearance (TDP2) filed on 8/5/07, however, the respondent resisted the claim stating that the complainant was terminated for continuous poor work performance.

The complainant was employed by the respondent Bank on 12/12/02 as a gardener. His duties basically involved brushing and cleaning up around residences. He was responsible for five residences owned by the Bank in Honiara. They include residences at Panatina ridge, Panatina village, Ngossi, Tavio east and Tavio west, mostly occupied by expatriates. The complainant was to do one residence each day for all five residences. He travels to those work places by himself each day unless he has any reason to go to the other residence during day that he had to request transport from the Bank.

As to the complainant's dismissal, the Bank claimed that he was dismissed for continuous poor work performance. On 14/11/05, the Property officer, Sainiana Foanaota (RW2) in response to a telephone call from the complainant at Ngossi, in which, he raised certain concerns, Ms. Foanaota advised the complainant to work faster since he was to complete the whole compound in one day. In response, the complainant said he would try to improve. All these were recorded in a bank file note ("exhibit 5"). Although, the file note was not brought to the attention of the complainant and was not signed by him, Ms. Foanaota stated that the note itself constituted a verbal warning.

The complainant however failed to improve his work performance. He was not performing to the standard expected of him. As a result, he was issued with the first written warning on 24/1/06 (see file note "exhibit 4"). He was also questioned as to why he changed his work schedule and went to Panatina Ridge instead to Ngossi on the 9th of January 2006. The file note was signed by the complainant himself witnessed by Jenny Waiti (RW1). It was also recorded in that file note that the complainant was advised to improve his work performance which was to be reviewed after a one month period.

Despite the first written warning issued on 24/1/06, the complainant's work performance did not improve. As a result, he was issued another written warning on 16/3/06 (see file note "exhibit 6"). The file note was recorded as a second and final warning. It was issued by the Manager Corporate Services, Tina Guerra and witnessed by Ms. Foanaota (RW2). The complainant also signed the file note. According to that file note, the complainant was instructed a couple of times to cut the grass below the swimming pool area at Tavioa west but when inspection was carried out on 9/3/06 by Grace and Sainiana Foanaota (RW2), 90% of the grass that was supposed to be cut was still there. Instead, the complainant was seen pulling out weeds around the genet shed area. The file note also stated that similar review was carried out at Panatina where it was noted that much of the work that was supposed to be done by the complainant was still not done, although the complainant assured Grace and Sainiana that he would complete the job on that day.

After the second warning, the complainant made some improvement in his work performance. This work performance however did not even last for one year. On 22/12/06, the Manager Corporate Services, the Human

Resource Manager and the Property Officer met with the complainant and advised him of his continued poor work performance which was unacceptable to the Bank. During that meeting the complainant requested further opportunity to improve his work performance. He was then given 31 days to improve. He was also advised then that after the 31 days period his work performance would be reviewed.

On 5/1/07, however, the Manager Corporate Services and the Property Officer again met with the complainant to discuss with him the unacceptable work done by him at Tavioa west and east. Following this meeting, the Bank decided to terminate the complainant's employment. On the same day (5/1/07), the complainant was issued with the dismissal notice ("exhibit 3").

In his sworn evidence, however, the complainant stated that the reason for his poor work performance was lack of tools. He told the Panel that in the period 2002 to 2003 he worked at Lengakiki. At that time he was provided tools such as bush knives, spade and wreck. In 2004, the complainant stated he was not provided with tools. Because of that, the complainant stated he was not able to perform to the standard expected of him, especially when the number of residences he was to look after increased to five. He stated that the west Tavio and Panatina ridge residences were quite big. The area of each of the two residences was said to be as big as the distance from the National Post office to the High Court building. The complainant further told the Panel that he only received warnings from January to March 2006 because at that time he was still without tools. He was only provided tools in April 2006. Having provided with the required tools, the complainant stated that he was able to perform to the standard expected of him. He was applauded for such improved work performance in May 2006 as indicated in the notice of dismissal (exhibit 3.).

At the outset, it must be pointed out that the complainant did not put much emphasis on the nature or the amount of work as the basis for his non-performance. Rather he claimed that the reason for his non-performance was mere lack of tools.

When cross-examined, however, Ms. Foanaota (RW2) told the Panel that tools were in fact provided by the Bank. The tools include brush cutters and knives. Lawnmower was also provided when required. She said she was responsible for ordering tools. There are occasions which the complainant had complained about tools and that she had to bring it to the attention of the

boss. The maintenance officer delivers tools each day and in his absence she does it herself. If tools were not delivered, she would know because the complainant would ring her to let her know.

On the evidence, the Panel cannot accept that the complainant was not able to perform because of lack of tools. The evidence of Ms. Foanaota was reliable in that tools were in fact provided and that when there is a need to purchase tools, she does the ordering herself. The complainant would also contact her when he finds that there was no tool at a work place. The Panel is satisfied therefore that the complainant was only invoking tool as an excuse for not performing his job.

In his evidence, the complainant seemed to also say that his work performance had improved around May 2006 after he was provided with tools in April the same year. The Panel however finds it difficult to accept that as true. It is more convinced however that his work performance had only improved after he was given the second and final warning on 16th March 2006.

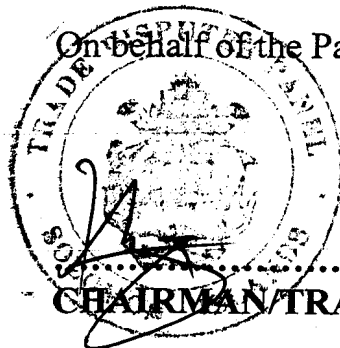
It must be stated that the Bank had kept a well and proper records of the warnings issued to the complainant. The complainant seems to accept the warnings but did nothing to try and maintain or improve his work performance, although he was given ample chances to do so.

Having said that, the Panel finds that the reason for the complainant's dismissal (continuous poor work performance after due warnings given) was a reason of a kind justifying the dismissal of the complainant.

Accordingly, and in all the circumstances, the Panel finds that the dismissal was not unfair.

The complaint is dismissed.

On behalf of the Panel:



CHAIRMAN/TRADE DISPUTES PANEL