

IN THE TRADE DISPUTES PANEL )

OF SOLOMON ISLANDS )

Case No: UDF 14 of 2007

IN THE MATTER of the Unfair  
Dismissal Act 1982

AND IN THE MATTER of a  
complaint of Unfair Dismissal

BETWEEN: Dasi Peter Sam

Complainant

AND: Eagon Pacific  
Plantation Limited

Respondent

Hearing: 6<sup>th</sup> May, 2008, Honiara.

Decision: 30<sup>th</sup> May 2008.

Panel: Wickly Faga Deputy Chairman  
Elijah Gui Employee Member  
- Employer Member

Appearances: Kylie Walsh, of the Public Solicitor's office  
for the Complainant

No Appearance (Barred), for the Respondent

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### FINDING

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By an application made on the 9<sup>th</sup> July 2007, the complainant's representative filed a complaint of unfair dismissal pursuant to section 6(1) of the Unfair Dismissal Act 1982[cap 77].

The complainant was employed as mechanic with the respondent company, Eagon Pacific Plantation Limited, (the respondent) since March 2002 and was terminated on the 26<sup>th</sup> of May 2007. He claimed unfair dismissal on the following grounds:

"1. The Company failed to afford him natural justice to give him the opportunity to explain his actions;

2. His reason for dismissal as contained in his termination letter dated May 26, 2007, was not that envisaged in section 12.4 (1) therefore was not substantial of a kind such as to justify the complainant holding his position as a mechanic of the company; and

3. In all circumstances including, inter alia, the fact that I have no previous warnings the company acted unreasonably in treating the said reason as sufficient for dismissing the complainant."

The respondent failed to file the Form TDP 2 within 21 days as required by r7(1) of The Trade Dispute Panel (unfair Dismissal and Redundancy) Procedure Rules (the rules) even though it was reminded to do so on two separate occasions, first by a letter from the Panel Secretary dated 19/07/07 and again by a letter from the Panel Secretary dated 16/10/07. During a prehearing of the complaint on the 29/04/08, the complainant through his representative made an application seeking an Order of the Panel to bar the respondent from taking part in the proceedings on the grounds that the respondent failed to file the Form TDP 2 and failure to attend the prehearing. The application was accepted and the respondent was barred from taking part in the proceedings under r7 (2) of the rules. The matter was then listed for full hearing on the 06<sup>th</sup> May 2008. The full hearing of the complaint proceeded in the absence of the respondent.

The Panel therefore does not have the benefit of hearing evidence from the respondent that admits or not the dismissal of the complainant. Usually in unfair dismissal complaints, the onus is on the employer to prove that it dismissed an employee and that the dismissal is fair. The respondent had waived the opportunity to do so, despite being given time. The complainant therefore would have to show that he had been dismissed, and that his dismissal was unfair. During full hearing of the complaint on the 6<sup>th</sup> May 2008, the Panel heard evidence only from the complainant.

The complainant provided evidence by producing a copy of his certificate that he successfully completed a two year mechanic course at Batuna Vocational School in the Western Province, in 1998. He started employment with the respondent in March 2002. He works at the respondent's log pond at Putagita (the log pond), and was accommodated at its log camp at Arara (the camp), Western Province. He was receiving \$500.00 per month, and if he works overtime, he would receive between \$600.00 to \$700.00. From Monday to Saturday the complainant travels to work at the log pond and returns to the camp by a truck operated by the

respondent. The log pond is located approximately 18 kilometers away from the camp. His standard hours of work at the log pond were between 6.30 am to 5pm.

The complainant's case was that on the 25<sup>th</sup> May 2007, he went to the camp as usual to attend to mechanical duties. He was in charge of the mechanical section at the log pond. He finished work at 5pm, but the truck that was supposed to pick up workers back to the camp did not pick up the complainant. In his evidence, the complainant told the Panel that he waited for two hours to be picked up by the transport provided by the respondent. ~~No truck went to pick him, and by then it was getting dark, so he resorted to utilizing the respondent's loader. He also gave evidence that there was no food at the log pond. The respondent only provides lunch. He also told the Panel that there was no radio contact. There was also no accommodation at the log pond, and besides he has with him his heavy tool box, with no secure place to store it at the log pond. Also in his sworn evidence, the camp is 18km from the log pond which is too far to walk with his heavy tool box. The only way to get to the camp is to use the loader. He admitted using the loader to transport himself and his tool box back to the camp. When he arrived back at the camp he informed his supervisor of the fact that he transported himself back to camp on the loader. It was claimed by the complainant that the supervisor did not take issue of the fact that he drove the loader back to camp. It was however claimed, that the Manager, one Jacob Lee found out that the complainant drove the loader back to the camp and was cross with him. The complainant further told the Panel that Lee would not listen when he tried to explain the reason for driving the loader back to the camp. He denied the respondent's allegation that he damaged the loader. He further stated in evidence that he never done that before during his six years working for the respondent. He only did so because that is the only way to get back to the camp.~~

In a letter dated 26<sup>th</sup> May 2007, the complainant was subsequently terminated from employment with the respondent, citing the reason that the complainant "breached the terms and conditions of Service of the Company under section 12.4(1)." The Panel did ~~not have a copy of the terms and conditions of the respondent.~~ We therefore do not make any comments regarding that.

The complainant gave evidence that the respondent paid him a month salary in lieu of notice and repatriation costs to return to his home island of Choiseul. The respondent issued the complainant with a Certificate of Work. The certificate reads;

...it is hereby certified that Peter Sam who was holding a position of a mechanic in Arara camp had succeeded in doing his work from March 2002 to May 2007. During his operation, he shows us the best enthusiasm and is the role model of the other workers..."

The certificate was signed by the Manager, Jacob Lee.

In the Panel's view, the complainant had been dismissed from employment with the respondent as of the date of the termination letter referred to hereinbefore.

The crucial question to look at then is whether his dismissal was for a substantial reason of a kind such as to justify his immediate dismissal, and that the respondent had acted reasonably in treating that reason as sufficient for dismissing the complainant as envisaged in Section 4(1) of the *Unfair Dismissal Act 1983*[cap 77] (the Act). That section states that;

**"An employee who is dismissed is not unfairly dismissed if-**

**(a) he is dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding his position; and**

**(b) in all the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissing the employee.**

The complainant claimed that the reason for his dismissal was that he drove the respondent's loader from the log pond back to the camp. Having had the opportunity to consider the complainant's uncontested evidence, the Panel is satisfied that there is enough evidence to show that the respondent dismissed him from employment because he drove the loader back to the camp. The Panel is of the view that the reason for his dismissal was not substantial of a kind such as to justify the complainant's immediate dismissal. In his 6 years employment with the respondent the complainant had never been warned of any similar act. Also, the circumstances were such that the only alternative to get to the camp is by using the loader. The respondent failed to give due consideration to the urgent situation that the complainant was in, whereby he had to make a choice from two options. First, whether to remain at the log pond and go without food, and no accommodation, and a insecure storage for his heavy tool box at the log pond and, two; whether to drive the loader back to the camp as the only alternative to take the 18km journey back to the camp where there is food, accommodation and guaranteed security for his tool box. The

complainant chose the latter. When he arrived, he informed his supervisor who did not take issue, but the General Manager, Jacob Lee did. He would not listen to the complainant's explanation.

It was further claimed by the complainant that the respondent alleged he damaged the loader. The complainant denied the allegation. The Panel dismisses the allegation by the respondent that the complainant occasioned damage to the loader. We accept the submission on behalf of the complainant that the alleged damage to the loader as further ground of dismissal is unfounded.

Ms. Walsh stated in her closing submission that the respondent failed to see the justifiable reason for using the loader, denying him of natural justice. It also failed in its duty of care to the employee. He was left by himself at the log pond without food, and with a heavy tool box.

The Panel had after careful consideration of the evidence of Peter Dasi and submission of Ms. Walsh on behalf of the complainant is satisfied that the reason for dismissing the complainant was not of a kind such as to justify the immediate dismissal of the complainant who was a mechanic for the company at the time of his dismissal. We therefore find that the dismissal of the complainant by the respondent was unfair.

In awarding compensation, the Panel notes that the complainant had worked for the respondent for 6 years with an unblemished record. We also take into consideration the respondent's willingness to issue the complainant a work certificate. The complainant does not claim one month in lieu of notice and repatriation. The panel has in its discretion refuses to award order for travel costs of the complainant. In all the circumstances, the Panel awards a fair and reasonable compensation pursuant to section 7 of the Unfair Dismissal Act [cap 77]. This is calculated as follows:-

1. Basic Award	BW x 52 wks = compensation	
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	$\$162.70 \times 52 =$	$\$8,460-40$
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2. Loss of Earnings		
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(6 months)	6 months x \$650-00 =	$\$3,900-00$
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<b>TOTAL</b>		
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		$\$12,360-40$
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**AWARD**

The respondent unfairly dismissed the complainant and is to pay compensation to Dasi Peter Sam in the sum of \$12,060-40 being payable immediately and is recoverable as a debt under section 10 of the Unfair Dismissal Act 1982 [cap 77].

**COSTS**

The respondent is ordered to pay \$500-00 towards Panel expenses within 14 days from receipt of this finding.

**APPEAL**

The appeal provisions under the Unfair Dismissal Act 1982, Trade Disputes Act 1981, Trade Disputes Panel (Unfair Dismissal & Redundancy Procedure) Rules 1981 and The Solomon Islands Courts (Civil Procedure) Rules 2007 apply to this finding.

On behalf of the Panel



Wickly Faga

Deputy Chairman/Trade Disputes Panel