

IN THE MATTER of the Unfair Dismissal Act 1982

AND IN THE MATTER of a complaint of Unfair Dismissal

BETWEEN: ROBERT ATA'A

Complainant

AND: HONIARA HOTEL

Respondent

Hearing: 01 September, 2009, Honiara.

Decision: 18th September 2009.

<u>Panel:</u>	Wickly Faga	Deputy Chairman
	Mark Corcoran	Employee Member
	Elijah Gui	Employer Member

Appearances: Selson Fafale (COL), counsel for the Complainant
 Primo Afeau, counsel for the Respondent

FINDING

The complainant filed his complaint of unfair dismissal pursuant to section 6 of the Unfair Dismissal Act 1982, Cap77, on the 6/11/08. He stated in his TDP 1 Form that he was employed by the respondent as security guard from June 2006 until his termination on the 22nd September 2008. He claims unfair dismissal on these grounds;

1. That I was never warned previously.
2. The alleged offence was a daily occurrence at the Hotel.
 i.e. removal of used cooking oil.

3. *There was no notice served on me.*

4. *The reason for dismissal is not substantiated.*

In its response, respondent admitted that it dismissed the complainant. It then sought to resist the claim on the following grounds;

1. *Warned previously for negligence of duty.*

2. *Terminated after admitted to removing used cooking oil from restaurant kitchen. This practice had been going on for some time and was only brought to the attention of the management in September.*

3. *Hotel Policy: Stealing will result in direct dismissal.*

The facts as agreed were; that the complainant was employed as Security Guard from June 2006 until 22nd September 2008. He was receiving \$360-00 per fortnight. The offence for which he was terminated was admitted. The complainant was terminated under paragraph 15 of the Hotel Policy, which is like the terms and conditions of employment. It was also agreed that the complainant was paid a month's salary in lieu of notice, and lawful deductions were made as appropriate. However no holiday pay was payable since the complainant had just returned from holiday.

Paragraph 15 of the Hotel Policy stipulates that;

"Any Staff who are guilty of stealing or taking things without permission from the company, customers or house guest will be handed to police and face legal action and be automatically terminated."

In the Panels view, the reason for dismissal is substantial reason that justifies his dismissal. As a security guard, his prime responsibility is to ensure the safety and security of clients and properties of the respondent and not stealing anything from it.

The only point of contention raised by Mr. Fafale is with regards to the fair application of paragraph 15. The complainant stated in his evidence that other staff were also taking used oil from the kitchen, but were never dismissed. Such evidence is refused in the absence of corroboration. But if it was indeed a daily occurrence, it does not excuse the complainant from his

wrong doing. The complainant holds an important position and ought to have known that stealing is exactly why he was recruited to ensure that it does not happen. As an employer, the respondent is fully entitled to consider the offence as serious and it took appropriate steps to deal with it. The Panel accepts the complainant's submission that in a large organization like the respondent, it usually takes time for reports to reach the management, and for them to make their final decision. Ms. Rose stated in her evidence that, as operation manager, she talked to the complainant about taking used oil from the kitchen without lawful permission after the chief cook made a complainant. She told the complainant that used cooking oil from the kitchen is property of the respondent, whether good or bad. She then advised him not to commit the same offence. Two weeks later he was terminated. The decision to terminate lies with the Manager, who actually made the decision to terminate the complainant. In the Panel's view, two weeks is not excessive, and in the circumstances, the respondent had acted reasonably.

The respondent had made out its case; that the reason for dismissal was substantial and the respondent had acted reasonably in reaching its decision. Accordingly the complaint is hereby dismissed.

There is a right of appeal within 14 days on a point of law only.

Dated the 18th of September 2009.

On behalf of the Panel



Wickly Faga

Deputy Chairman/Trade Disputes Panel