

IN THE TRADE DISPUTES PANEL)

OF SOLOMON ISLANDS)

Case No: UDF 44 of 2008

IN THE MATTER of the Unfair
Dismissal Act 1982

AND IN THE MATTER of a
complaint of Unfair Dismissal

BETWEEN: CHARLES IVO

Complainant

AND: POLY LOGGING LIMITED

Respondent

Hearing: 15th September , 2009, Honiara.

Decision: 6th November, 2009.

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

Appearances: Mr. Aaron Mane, counsel for the Complainant
No appearance (**Barred**) for the Respondent

FINDING

The complainant was employed by the respondent from July 2007 until his termination on the 8th July 2008. He filed his complaint of unfair dismissal with the Panel Secretary on the 7/10/09. He made the complaint on the ground that his dismissal was for no reason at all.

The respondent was informed of the complaint in a letter from the Panel Secretary dated 27/11/08. Enclosed in the same letter were triplicates of TDP 1 forms to be completed by the respondent and returned within 21 days from the date of receipt. By another letter dated 20/04/09, the respondent was again reminded to complete and return copies of the TDP 1 forms. The letter also informed the respondent that if it wished to take part in the proceedings, it must apply for an extension of time under rule 13(1) of the Trade Disputes Panel (Unfair Dismissal & Redundancy) Procedure Rules, cap75. The respondent was further advised that a prehearing date for the matter was set for 05/05/09 at 9.00am. During the first prehearing on the 5th May 2009, none of the parties attended. The matter was then relisted for 2/06/09. During the hearing on the 02nd/06/09, only the complainant party attended. A further prehearing was set for 21/07/09. At the further prehearing, only the complainant party attended. The respondent failed to inform the Panel of any reasons for their non-attendance. The complainant then made an application to bar the respondent from taking part in the proceedings of the matter on the grounds that they failed to attend on two previous occasions, and failure to file TDP 2 form within 21 days as required by r7(1). The application was granted and the matter was listed for full hearing.

The matter proceeded uncontested. The Panel heard evidence only from the complainant. In his sworn evidence, the complainant told the Panel that he used to work for the respondent, a logging company, as mechanic at its Mata logging camp, in Malaita Province. He commenced work on the 1st July 2007 and was terminated on the 9th July 2008. He told the Panel that he was receiving \$900.00 plus per month, at an hourly rate of \$4.30 at the time of dismissal.

According to the complainant's story, he informed the camp manager, one, Mr. Peter Apu in June 2008 that he would take his annual leave in July 2008. In or about 1st July 2008, the said Mr. Apu gave the complainant his sea fare and salary, and advised the complainant to travel to Honiara so that he could collect his sea fare, payments and other travel expenses from the respondent's head office. He boarded M.V. Solomon Express on 2nd July 2008 and arrived in Honiara the same day. On the 4th July

2008, he went to the respondents head office at Ranadi to collect his sea fare and other payments. He spoke to one, Roselyn, who was the respondent's accountant. The said Roselyn told the complainant that she did not know him so she needs to call the camp Manager at Mata camp to verify his identity. On the 8th July 2008, the complainant again went to the respondent's head office and spoke to the said Roselyn. Roselyn advised the complainant against taking his leave at his home village in the Weather coast, Guadalcanal. Roselyn also advised the complainant that no members of his family would be paid sea fares apart from himself. On the 9th July 2008, the complainant went to the Labour Office and told them his story. He told the Panel that a letter was written by an officer from the Labour Office, and he took the letter and hand delivered it at the respondent's head office. On the same day, he was paid \$2,218.40. Payment voucher showing calculations was tendered and marked "Ex-1". The Managing Director, Wong also told the complainant that his employment with the respondent had ended. The complainant thought Mr. Wong was joking.

The complainant went for his holiday in July 2008 and returned to Honiara at some time towards the end of July. He went to the respondent's head office to find out when he should resume duties. The respondent through Roselyn advised that his employment with the company (respondent) had been terminated. No reason was given for his termination. This was communicated to him verbally.

In the first week of August 2008, the complainant went to the respondent's head office, with the intention of finding out the reasons for his termination. He was instead given a letter dated 8 July 2008 and signed by a person identified only as Camp Manager. The letter was tendered and marked as "Ex 2". The said letter was referenced; "Redundancy Letter" and the contents read as follows;

"This is to inform you that with effect from 8th July 2008, you have been terminated and no longer be our employee."

"This letter is served as a notice letter to you and the calculations of your entitlement is attached."

The complainant took the said letter and sought legal advice from the Public Solicitors Office. He spoke to Anderson Kesaka of the Public Solicitor's Office who wrote a letter dated 30th September 2008, seeking explanations from the respondent whether the complainant was terminated or made redundant. A copy of the said letter was tendered and marked "Ex-3". The respondent had since not responded to the letter. The complainant denied any problem with the management of the respondent company or any staff. He also told the Panel that during his employment with the respondent, he had not received any warning, whether verbally or in writing.

In his closing submissions, Counsel for the complainant, Mr. Mane stated that his client was dismissed for no reason, and on that basis his client's dismissal was unfair.

The Panel did not have the benefit of looking at the respondent's appearance to say whether the respondent was dismissed or not. However, having had time to consider the available evidence, the Panel is satisfied that the complainant was dismissed from his employment, under the disguise of redundancy.

The crucial question to consider then is, whether the complainant's dismissal was fair or not. In proving unfair dismissal, the complainant has the civil burden of proving that he was dismissed for no reason, or that the reason was not substantial. The Panel had time to consider complainant's evidence, and the submissions, and is satisfied on the balance of probabilities that the complainant was dismissed for no reason at all. The Panel therefore finds that the termination of the complainant's employment without any reason was unfair.

In awarding compensation, the Panel takes into account the fact that the complainant was employed for only one year. The Panel makes a reasonable compensation award, and is calculated using the basic wage of \$825.60 per month as shown in the payment voucher as exhibited. This is calculated as follows:

Award

BW x (52-27=35) = Compensation Award

\$206.40 x 35 = \$7, 224.00

The respondent unfairly dismissed the complainant and is to pay \$7, 224-00 to Charles Ivo being payable immediately and is recoverable as a debt under section 10 of the Unfair Dismissal Act 1982.

Appeal

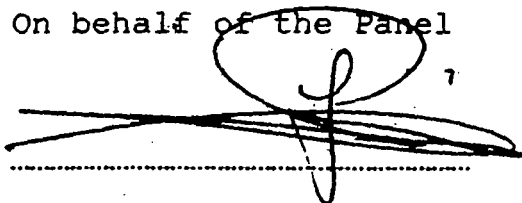
There is a right of appeal to the High Court within 14 days on points of law only, and any party aggrieved by the amount of compensation awarded may within one month of the date of the award appeal to the High Court as provided for under the Unfair Dismissal Act 1982, S. 7 (3).

Panel Expenses

The Panel fixes a contribution of \$500-00 to cover Panel expenses, and this amount is to be paid by the respondent within 14 days from the date of this decision.

Dated the 6th of November 2009

On behalf of the Panel

A handwritten signature in black ink, appearing to be 'Wickly Faga', written over a horizontal dotted line. The signature is stylized and somewhat cursive.

Wickly Faga

Deputy Chairman/Trade Disputes Panel