

IN THE MATTER of the Unfair
Dismissal Act 1982

AND IN THE MATTER of a
complaint of Unfair Dismissal

BETWEEN: DANNY LAU

Complainant

AND: SOLOMON SECURITY SERVICES

Respondent

Hearing: 14th July, 2009, Honiara.

Decision: 16th September 2009.

<u>Panel:</u>	Wickly Faga	Deputy Chairman
	Mary Ida Susurua	Employee Member
	Sika Manupangai	Employer Member

Appearances: Mr. Anderson Kesaka, Counsel for the Complainant
 Mr. Andrew Radclyffe, Counsel for the Respondent

FINDING

The complainant was employed by the respondent company (respondent) as security guard from mid 2003 until his termination in September 2007. He claims unfair dismissal on the following grounds;

1. *Termination was done without giving a chance for me to explain my side of the version of event relied on by my employer for my termination,*

2. The allegations relied on by my employer to terminate me aren't true and

3. My termination was therefore under these circumstances unfair.

The respondent filed its appearance and admitted dismissing the complainant. Under Paragraph 5 of its TDP2, the respondent listed the grounds on which it intended to resist the claim, as follows;

1. Removed toys from the area and entertain of wife and kids in the area, ~~tenant not satisfied with such action,~~

2. Removed fuel (diesel) from reserves of generator, house girl witness for own use, and Phillip next door guard witness,

3. Removed doors from area without asking tenant instead ask visitor whom have no right,

4. All the knives (bush & brush), file missing from area, when he finish

5. Always have children and wife while on duty in the area and not performing duties, firm lose job from his action,

6. Unnecessary absenteeism from duty without reason, leaving one guard to work long hours.

7. Explanation of side done between Danny and Office Supervisor John Au after 29/09/07 notice.

The Panel heard evidence from Mr. Leslie Mani, who is the owner of the respondent. He told the Panel that the complainant joined the respondent as security guard in mid 2003. No formal employment contract was signed between the complainant and the respondent. However there were terms and conditions [Ex 1] which govern the employment relationship between the respondent and its employees. Those terms and conditions were usually displayed at each guard house.

Mr. Mani also gave evidence that the complainant and another three were assigned for duties at Tasahe where an expatriate by the name of Matt Hodge was staying. Three of the officers work on a rotational shift system, where one officer is assigned per shift during day, and two during night time, and the fourth as a relief officer.

Mr. Mani further told the Panel that the complainant was warned previously for sleeping during duty hours. A warning letter dated 15 August 2006 and signed by John Suinao [Ex 2] was issued to the complainant. In September 2007, the complainant and another were named for removing toys from the property they were looking after, and having wantoks visiting the property when the tenants were overseas on holiday. This was communicated to Mr. Mani in an e-mail dated 28 September 2007 from Gary Frost [EX 3]. The said Mr. Frost was a Senior Accommodation, Logistics, Security, and Operation Procurement Advisor of the RAMSI Governance Support Facility. In the e-mail Mr. Frost advised Mr. Mani as follows;

"With effect 0800 tomorrow Saturday 29 Sep, Solomon Security Services are no longer required at the Arnold House. As per below, whilst the tenants were away on holiday the guards removed some toys as well as having wantok visiting the property."

Mr. Frost took the action after a complaint by Matt Hodge. In his e-mail to Mr. Frost, the said Mr. Hodge informed as follows;

"...We have found out that Charles and Daniel have taken some of our kids' toys to their place for their kids and returned just before we got back." "Also one of them had some of their wantoks on our property too."

According to Mr. Mani, the allegation was serious. As security guards, they were supposed to be looking after the property, and not removing anything from it. The incident also resulted in the termination of the respondent's contract to provide security on the property. Mr. Mani then decided to terminate the complainant from employment. The complainant received his pay for period he had worked. His termination letter was dated 28th September 2007, the same date Mr. Mani received an e-mail advising that the services of the respondent were no longer required. In cross examination, Mr. Mani admitted writing the complainant's termination letter on the 28th September 2007. When put to him that the complainant was not called to verify the allegations, Mr. Mani stated that he sent out the letter and it is for the complainant to come to his office and discuss the allegations. The letter may have reached the complainant on the 29th September 2007. He further stated that his Supervisor deals with issues and report back to him.

The complainant admitted receiving a warning letter in 2006 for sleeping during working hours, but denied that he removed toys from the area or invited wantoks onto the property. In his evidence, he told the Panel that after receiving his pay on 28th September 2007, he stayed at home for two weeks. In mid October 2007, he went to the respondent's office to find out about his posting. Instead, his Supervisor, Mr. John Augwata gave him an envelope. He went outside, opened it, and saw his termination letter. That was when he knew he was terminated and the reasons for his termination. When asked in cross-examination why he had to wait for two weeks, the complainant stated that he was too busy looking after his children during the two weeks. He also said under oath that he did go back to the office on the 29th September 2007, but denied receiving his termination letter then. After learning of his termination, he made attempts to talk to Mr. Mani but he was always out from his office.

The Panel also heard evidence from the complainant that he was aware of the terms and conditions of employment but had not seen any being pinned up at the guard house where he was working.

One Panel member was of the view that the complainant's denial must be accepted in the absence of any evidence to show that he was responsible for the removal of toys, or that he had invited wantoks onto the property. A majority view of the Panel, however, was that the company is fully entitled to act on any information on serious matters that are prejudicial to the interest of the company. The complainant being in a position to ensure that nothing is removed from the property without the consent of the owners, had failed to perform, resulting in toys being removed from the property. He must therefore be blamed for not performing. The Panel is also satisfied that the termination of the respondent's contract to provide security on the said property is a direct result of Mr. Hodge's complaint about the removal of toys from his residence, and inviting wantoks onto the property. The majority view therefore is that the complainant was dismissed for a substantial reason that justified his dismissal.

The Panel however considered that, the respondent's decision to terminate the complainant without giving him an opportunity to respond to the allegation against him is unreasonable. Accordingly we find that the dismissal of the complainant was unfair.

The complainant seeks compensatory relief, and having regard to the circumstances of this case, the Panel assesses a reasonable compensation, and calculated as follows:

Award

1. BW x (52Wks - 32Wks=20Wks) = \$273-00 x 20Wks = \$5,460-00

The respondent unfairly dismissed the complainant and is to pay \$5,460-00 to Danny Lau 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 16th of September 2009

On behalf of the Panel



Wickly Faqa

Deputy Chairman/Trade Disputes Panel