

IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS

Case No. L9/10/09

Between: Solomon Island Government (Applicant)

And: S. I. Public Employees Union (Respondent)

Panel : 1. Francis Cecil Luza - Chairman
2. Sika Manupangai - Employer representative
3. Mary Ida Susurua - Employee representative

Appearances:

Attorney General, Mr. Gabriel Suri for the applicant.

General Secretary, Mr. Paul Belande for the respondent.

Date of hearing – 3/11/09 & 5/11/09

Date finding delivered: 16th November 2009.

FINDING

By letter dated 21/8/09, the Permanent Secretary for Public Service, Mr. Ishmael Avui referred a trade dispute to the Trade Disputes Panel between the applicant (hereinafter referred to as "the government") and the respondent (hereinafter referred to as "the union").

The dispute relates to a number of claims contained in a log of claims submitted to the government on 27th July 2009. They include:

1. Housing entitlement awards 2009.
2. Allowances and awards 2009.
3. Boarder claims 2009.
4. Tsunami ex-gratia.
5. Variable COLA 2009 -66%.
6. New terminal grant for Permanent Secretaries (\$250,000.00).

After having accepted the referral from the government, the Panel convened on 25/8/09 and ordered the parties to return to the negotiating table to negotiate the claims.

At the lapse of the given 21 days, however, none of the issues were settled except the tsunami ex-gratia claim – claim number 4.

The Panel reconvened on 22/9/09 during which it formed the view that there was still room for the parties to negotiate a settlement to the dispute. It had then appointed two conciliators to try and assist the parties reached an amicable solution to the dispute.

Unfortunately, the parties were unable to reach a settlement as anticipated even with the assistance of the two conciliators. The Panel was therefore required to make its determination on the claims of which we now do so. We will deal with the issues (except tsunami ex-gratia claim) one by one.

1. Housing entitlement awards 2009.

Under the current government rental scheme the government pays accommodation for public servants according to their rental entitlements. It means therefore that once a public servant secures accommodation at a rate of \$3,000.00 per month and the officer is only entitled to a rental of \$2,000.00 under the scheme, such officer must meet the difference (\$1,000.00) by himself or herself, unless a "waiver" has been approved that the government meets the full monthly rental of \$3,000.00. The public servants' rental entitlements are as shown on the table below:

LEVEL	RENTAL ENTITLEMENT	RENTAL DEDUCTIONS/FORTNIGHT
1	\$1,000.00	\$18.71
2	\$1,000.00	\$18.71
3	\$1,200.00	\$35.43
4	\$1,300.00	\$48.05
5	\$1,600.00	\$48.05
6	\$1,800.00	\$48.05
7	\$2,100.00	\$59.83
8	\$2,200.00	\$59.83
9	\$2,300.00	\$59.83
10	\$2,400.00	\$59.83
11	\$2,500.00	\$59.83
12	\$2,600.00	\$77.33
13	\$2,700.00	\$77.33
SS1	\$3,500.00	\$93.20
SS2	\$4,000.00	\$103.56
SS3	\$4,000.00	\$103.56

The union now seeks to change the current government rental scheme so that each public servant receives his/her entitlement paid direct into his/her salary. In that way, the union claims the scheme will be easy to administer as the responsibility shall be shifted on the public officers themselves to manage their own rental that would also help deflate the market rental value in the open market. The scheme will also relieve the government on its rental burden which will only require the diversion of around \$44 million from SIG's budget provision for annual rentals into the proposed housing scheme. It will relieve the government from entertaining waivers which the union claims to have been unproductive and yet still practiced today.

The union proposed the following housing rental scheme:

LEVELS	NO. OF EMPLOYEES	PAYROLL NO.	RENTAL RATE	MONTHLY COSTS	ANNUAL COST
L1-3	214	01	1,200.00	256,800.00	3,081,600
L4-6	482	01	2,200.00	1,060,400.00	12,724,800
L7 only	143	01	2,500.00	357,500.00	4,290,000.00
L8-10	289	01	3,500.00	1,011,500.00	12,138,000.00
L11-13	76	01	4,500.00	342,000.00	4,104,000.00
SS1-SS3	27	01	5,000.00	135,000.00	1,620,000.00
Grand Total	1,454			\$3,674,2000.00	\$44,090,400

On the other hand, the government submits that the union's proposed housing scheme may sound simple but its implementation may also have negative impacts even to the public servants themselves. It submitted that, once accepted, public servants may be tempted to use up their rental entitlements on unnecessary things. As a result they may be forced to live in squanders.

The government also submitted that currently direct payment of rentals by the government to the Landlords attract a withholding tax. If rental monies are paid into public servants payrolls, such payments will be treated as income under the Income Tax Act.

Furthermore, the government submitted that tenancies are entered into between SIG and Landlords at different dates. If the proposed scheme is made to commence on a specific date, the government may be forced to terminate tenancy agreements prematurely that it may be held liable for payment of damages to landlords for breach of contract.

The government also indicated in its submission that whilst the proposed scheme may have some advantages, it needs time to carry out further assessment on the scheme before considering whether or not to accept it.

Considering both submissions, the Panel declines to make any award on the claim on the basis that the government has yet to decide whether or not it should accept the scheme as proposed by the union. Clearly, the government needs time to properly study the scheme before deciding whether or not to accept it.

It must be pointed out that under law the employer is only obliged to pay housing allowance where housing cannot be provided (see section 69 of the Labour Act (cap 75). It does not even say how much allowance it should pay the employee in-lieu of housing.

On the other hand, the law does not restrict any employer to adopt a housing scheme that it may consider suitable for its employees, as long as such scheme is workable and is beneficial to both parties.

In this case, the union has submitted very good points in support of its claim for a new housing scheme that the Panel would recommend the government to also consider when making further assessment on the proposed housing scheme or any new scheme for that matter.

2. Allowances and awards 2009.

The union seeks to amend Chapter F of the General Orders to cater for certain increase to the allowances payable to public servants under that chapter of the General Orders. The allowances include touring, hard touring (domestic), leave entitlement, special responsibility allowances, risk allowances, dirty allowances, motor vehicle allowances, tool allowances, distribution allowances, sitting allowances, outfit allowances (overseas), rural posting bonus, amenities and non amenities and long service benefit.

Considering submissions from both parties, the Panel finds that a thorough review of the General Orders is timely. There are obviously other chapters in the General Orders that also need changes, and therefore it will only be sensible to do it together. The government has made its position clear in its submission that they are in the process of reviewing the General Orders and in doing so they will be inviting submissions from stake holders including the union.

Since the government is committed to undertake thorough review of the General Orders we will encourage the union to work together with the government in carrying out such review. The government must also ensure that such task must be given priority so that the Panel would expect the government to complete the task by the end of April 2010.

3. Boarder Claims 2009

The union claims a total amount of \$886,424.04 in respect of public servants serving at the Western border of Solomon Islands during the height of the Bouganville crisis. This very claim was also a subject of a trade dispute matter referred to the Panel in 2003 referenced, L9/20/03. The Panel did not make any determination on the issue as it was confirmed to have been settled. Why the claim has popped up again this year (some six years later) is a question.

In any case, such claim does not have any legal basis, hence cannot be entertained.

The claim is therefore dismissed.

4. Variable COLA 2009 -66.6%

The union claims 66.6% cost of living adjustment (COLA) based on the disparity between Public Service Salaries and consumer prices from December 1996 to April 2008.

In his sworn statement, the Chief Statistician at the Ministry of Finance and Treasury, Mr. Joachim Gaiafuna stated that the union derived the 66.6% COLA claim from two-third of the percentage difference between the CPI and PSSI from a figure of one hundred percent (100%) as of April 2008. He further explained with an attachment annexed to his sworn statement that comparing the PSSI with the CPI, the former rose 35% from December 1996 to April 2008 whilst the latter has increased by 170% during the same period. He stated that with such a disparity it means that the public servants can only afford half of the goods they used to buy in 1996 as at 2008. He also stated that the increasing disparity between the two indexes (PSSI and CPI) over time also indicates that the public servants have been accumulating debts over the years.

Mr. Gaiafuna further stated that the official Annual Inflation Rates as indicated in his attachment (graph) dropped from 13.9% in May to 9.5% in June and further fell to 5.9% in July. The graph however shows that prices are still increasing on annual basis, but at progressively lower rates. The gap between Public Service Salaries and the CPI as at the end of July 2009 rose even higher to 116% compared to 100 % where it used to be at the end of April 2008.

The union therefore submits that its claim for 66.6% will not make their members richer but at least can afford at least two-thirds (2/3) of the goods they use to consume in April 2008.

In response, the government submitted that PSSI had not increased since 2006, whilst the cost of living did increase over the same period. It would be erroneous to rely upon the PSSI and to make comparison between CPI and PSSI on the ground that: (1) the PSSI was produced for purposes of the pension scheme by the statistics office, and so it may not be a complete or accurate index for the purposes of measuring the gap between cost of living and consumers affordability. An example was given that the PSSI only measures housing allowance but does not measure any other allowances, such as overtime, special duty allowances, dirty allowances, danger allowances and clothing allowances which are also enjoyed by public servants; (2) Comparing CPI over a long period of time (eg, 13 to 19 years) could produce unreliable results. Although such long period comparison may give a good general indicator of price change, it does not compare prices accurately. For example, the period in question spanned through periods of ethnic tension and immense upheaval in the country; (3) The purpose of salary/wage increase is to enable an employee meet some of the rises caused by inflation, thereby sustaining the employee's purchasing power at the relevant period. The relevant period must be the period the salary/wage increase will be spent on goods and services, eg, when public servants receive the 4.5%, they will spend it in the week, month or year they receive the award. They will not and cannot spend it in the years 2007 or 2006.

The government has therefore invoked the traditional approach as well as the 2/3 x RPI Rule established by the Trade Disputes Panel in 1990s as a maximum guide in determining wage/salary increase.

The government further submitted that the union's claim for the 66.6% cost of living adjustment (COLA) is untenable given its difficult financial position this year. In his sworn evidence, Permanent Secretary for Finance and Treasury, Mr. Shadrach Fanega explained to the panel that the union's claim for 66.6 % COLA is just unaffordable given the financial constraint currently faced by the government. It is even more difficult when such claim is not budgeted for in the 2009 budget.

There is also no provision for borrowing in that budget. As to the 4.5% COLSA recently paid to teachers and the public servants, Mr. Fanega told the panel that that could only be achieved through the unused budget allocations for the freeze vacancies for 2009. He explained that should there be any increase to the payroll there will also have to be cut back on other services, something that the government or anyone would not want to happen. He further explained that the financial constraint currently experienced in 2009 will continue in 2010 as focus on economic growth is only 1%. This will really have adverse effect on the private sector that pays tax to the government revenue.

Upon hearing submissions from both parties, the panel finds it difficult to accept the 66.6% COLA as claimed by the union. Instead, the Panel makes an award of 12% cost of living salary adjustment of which 4.5% shall be backdated to January 2009 (if not yet paid) and 7.5% to be paid to the public servants with effect from the first pay in January 2010. The 12% as awarded by the Panel shall be calculated on the basic salary of each public servant.

NEW TERMINAL GRANT FOR PERMANENT SECRETARIES (\$250,000.00)

The union sought to request the government to adopt a new terminal grant of \$250,000.00 for Permanent Secretaries.

The government however submitted that the Permanent Secretaries had agreed at their meeting on August 2009 to disassociate themselves from this claim. This was also confirmed by the sworn statement of Ishmael Avui, Permanent Secretary for Public Service filed on 3/11/09.

On that basis, the panel is of the view that the union does not have the mandate or even the standing to represent permanent secretaries in matters concerning their terms of employment with the government, even if some of the said permanent secretaries still pay membership to the union for unknown reason.

This claim is therefore dismissed.

ORDER

Both parties are ordered to contribute **\$3,000.00** each towards Panel expenses within 7 days.

Dated the 16th day of November 2009.

On behalf of the Panel:

