

IN THE TRADE DISPUTES PANEL  
OF SOLOMON ISLANDS

)  
) Case No: UDF 10 of 2008

IN THE MATTER of the Unfair  
Dismissal Act 1982

AND IN THE MATTER of a complaint of  
Unfair Dismissal

**BETWEEN: HELLEN GAMALI**

**AND: DIOCESE OF CENTRAL MELANESIA**

Complainant

Respondent

Hearing: 11 November, 2008, Honiara.

Decision: 31<sup>st</sup> March 2009.

Panel:  
Wickly Faga Deputy Chairman  
Gabriel Waleora'a Employee Member  
Sika Manupangai Employer Member

Appearances:  
Karl Kuper, for the Complainant  
Andrew Radclyffe, for the Respondent

FINDING

The complainant, through her representative from the Commissioner of Labour Office, filed with the Trade Disputes Panel (TDP) on the 7/3/08, her complaint of unfair dismissal pursuant to section 6 (1) of the Unfair Dismissal Act 1982, Cap 77.

The complainant was employed by the respondent as Office Cleaner, and she held the post from March 2006 until the 19<sup>th</sup> December 2007. The basis of her complaint of unfair dismissal is that;

1. "There was no notice served on me"
2. "The manner of termination is not proper, i.e. denial of natural justice"

3. "Non procedural termination, i.e. no written warnings"

The respondent admitted in its appearance filed on the 2<sup>nd</sup>/6/08, that it dismissed the complainant. The respondent sought to resist the complaint of unfair dismissal on the grounds that;

"...Hellen Gamali demonstrates her disinterest to work for this diocese by her frequent and unauthorized absences (during official hours) to attend Mothers Union activities at All Saints Chapel..."

The facts not in dispute are that the complainant was employed by the Diocese of Central Melanesia (DoCM) as office cleaner. The complainant accepted her appointment as office cleaner for the DoCM on the 8<sup>th</sup>/3/06. Paragraph four (4) of the letter clearly states the duties of "office cleaner", which is:

"...to maintain at all times in reasonable clean and good condition the office rooms, corridors, passages, stairways and conveniences."

The complainant's appointment was subject to the provisions of the "General Terms and Conditions of Employment for Lay Employees" (the "terms and conditions"). Section 7 of the terms and conditions deals with disciplinary procedures for any misconduct by employees of DoCM.

The respondent's case was that the complainant had shown disinterest in working for DoCM by her frequent and unauthorized absences from work to attend Mothers' Union activities at All Saints Chapel. Therefore her dismissal was fair. The Diocesan Secretary of the Diocese of Central Melanesia (DoCM), Mr. Katea, gave evidence in support of the respondent's case. The evidence of Mr. Katea showed that the complainant began employment with DoCM on March 2006 and ended on the 18<sup>th</sup> December 2007. He told the Panel that during the complainant's time with DoCM, she had a problem of attending to Mothers' Union activities during working hours. She is a member of All Saints Parish in Honiara, and attends to meetings called by the Mothers' Union within the Parish. Mr. Katea also told the Panel that he gave the complainant several verbal warnings. He recalled that he talked to the complainant, about her attendance to those meetings during official hours, on roughly five different occasions. According to Mr. Katea, the complainant always responds by saying, "waka blo God tu mi go lo hem ia" (English interpretation "This is also God's work that I attend"). He also gave evidence that whilst the complainant usually asks to attend those meetings, he always informs her that she can only attend to those meetings after hours. He did not refuse her attending to such meetings.

According to Mr. Katea, the complainant was dismissed on the 18<sup>th</sup> December 2007. Mr. Katea told the Panel that the complainant's termination came following her absence from work the whole of morning of 18<sup>th</sup> December 2007 to visit inmates at Rove Prison. In cross-

examination, it became evident that the day Mr. Katea was referring to; that of which the complainant was claimed to have been absent the whole of the morning, was in fact Monday the 17<sup>th</sup> of December 2007. Mr. Katea said in evidence that at about 3.00pm on that day, after he learnt of the complainant's long absence from work, he told the complainant to go back to her house [home] and wait while he decides on her case. The next morning Mr. Katea saw the complainant cleaning the office corridor. He then told the complainant that he asked her not to come to work until he made his decision. The complainant's response was that, the Labor Office had advised her to continue working until she receives a termination letter. Mr. Katea then proceeded to make one in the letter dated 19<sup>th</sup> December 2007[EX3], thus terminating the complainant's employment with the respondent. The complainant was paid the days she had worked. She was receiving \$437.37 per fortnight at the time of her dismissal.

In his closing submission, Mr. Radclyffe submitted that the complainant applied and was recruited as office cleaner. Her duty was to perform those of a cleaner. Mr. Katea gave several warnings before terminating the complainant. Hellen denies and said only once, that was when she was terminated. Katea had stated in his evidence that he could not have acted that way if it was only once. To be a warning you do not have to use the word warning. So if the employer talks to the employee, as not coming to work is already a warning. Mr. Radclyffe stated that following procedures does not render that the dismissal is unfair. He submitted that the letter is sufficient which reflects the circumstances of the case and is fair dismissal.

The complainant's case was that the manner of termination was not proper and non-procedural. That there were no prior written warnings. On that basis, it was claimed, her dismissal was unfair. The complainant gave evidence that she is a member of the All Saints Parish Mothers' Union in Honiara. She attends meetings of the Union and when the meetings take place during working hours she always asks her boss, the Diocesan Secretary of DoCM, Mr. Katea. She only attends when he allows. She told the Panel that her relationship with Mr. Katea was good but usually talks hard at her. She also told the Panel that she was terminated after she and other Members of the All Saints Parish Mothers' Union visited inmates at Rove Prison. She recalled that on the morning of the 17<sup>th</sup> December 2007, she arrived at about 8.00am and started work. The Typist also arrived but Mr. Katea had not arrived yet. At about 10.45, Father Jack arrived to pick her and other members of the All Saints Mothers' Union members to go to Rove Prison. The complainant also said in evidence that she wanted to inform Mr. Katea about her going to Rove Prison but he still did not arrive in his office so she wrote a note and left it in Mr. Katea's pigeon hole informing of her absence. She also asked the office security to inform Mr. Katea that he was not around when the truck arrived so she had to

join the others. The mission to Rove Prison took about two hours. The complainant gave evidence that she arrived back at the office at about 1.30pm and continued working. She was dusting window at the office's corridor when Mr. Katea came by. She then told him why she did not ask before going to Rove. Mr. Katea then told the complainant to go home while he thought about the matter. She was subsequently terminated in the letter dated 19<sup>th</sup> December 2007. She told the Panel that she was not given any written or oral warning before termination. In cross-examination, complainant maintained she had been warned only once. She also said that because Mother's Union is within Church she thought it was right to attend Mother's Union meetings during working hours. And she also felt that Work of Mother's Union should be encouraged.

In closing, Mr. Kuper submitted, that the terms and conditions must be followed. The actions of employees must be governed by this document. There was negligence of duty to follow the requirements set down in the terms and conditions as it relates to discipline. He also submitted that the manner of termination was totally unfair, and the way the letter was given to the complainant was not proper. He asks the Panel to consider the complainant's evidence as what she saw.

The question that the Panel needs to consider is whether the reason for dismissal was of a substantial reason of a kind justifying the actions of the respondent, and that whether the respondent had acted reasonably in treating the reason as such. The respondent sought to resist the complainant's claim on the ground that she had shown disinterest in working for the Diocese by her frequent and unauthorized absences during official hours to attend All Saints Mothers' Union meetings.

The complainant gave evidence that she only attends to such meetings during working hours if her boss, Mr. Katea, allows. The event that transpired on the 17<sup>th</sup> December 2007, and the complainant's general view towards the work of Mothers' Union, supports the claim by the respondent that the complainant has an interest in Mother's Union activities. However interest alone is not a substantial reason to terminate an employee. There must be a substantial reason to dismiss an employee. It is shown in the complainant's evidence that in the morning of 17<sup>th</sup> December 2007, Father Jack, arrived to pick up the All Saints Mothers' Union to go to Rove. She made attempts to inform Mr. Katea that she would be accompanying the group to visit inmates at Rove. Katea was not in his office at the time the group was ready to leave so she wrote a note informing of her absence and left it in Mr. Katea's pigeon hole. Prior to going to Rove, the complainant attended to her normal duties as a cleaner. She returned at about 1.30pm and continued working. She told the Panel that she went on such visit only once, and that was on the 17<sup>th</sup> December 2007. She is a member of the All Saints Mothers' Union, and attends to their meetings when they are called. The Panel is satisfied on evidence that the complainant went on a visit to

Rove with her Mothers' Union group during working hours and without permission to be excused from work. The Panel however finds no evidence in support of the respondent's claim that the complainant has disinterest in working for the DoCM.

As regard absences during working hours, would it be reasonable for the employer to put up with absences during working hours to attend activities not related to ones work? The employer has the right to deal with such incidences according to the set procedures applicable within that organization. Mr. Katea told the Panel that he verbally warned the complainant on five different occasions, but did not record them as required by clause 7 of the terms and conditions of employment. The complainant denied that she was warned five times, and instead told the Panel that she was warned only once, and that was when she was terminated. We are here faced with two conflicting evidences on the number of warnings issued to the complainant. Usually warnings must be communicated to the recipient, and he or she must understand that it is a warning. It does not really matter what form it is communicated. The Panel had after careful consideration of the evidence before it, accepts the evidence of the complainant, that she had been warned only once.

The complainant's absence without permission during working hours to attend to an activity not related to her work is a valid reason for disciplining the complainant. The question then of course is whether the complainant had acted reasonably in treating the reason as sufficient for dismissing the complainant. It is shown in the evidence of Mr. Katea that after he found out that the complainant went with her Mothers' Union group to Rove during working hours and without permission, he told the complainant to go home while he thought about her case. The complainant however returned the next day and continued working. She did so upon advise by the Office of the Commissioner of Labour, that there was no termination letter. Mr. Katea then proceeded to make one. In his evidence, Mr. Katea told the Panel that the offence is serious and warrants summary dismissal. Section 7 of the terms and conditions sets out disciplinary procedures in the event of a misconduct or gross misconduct. As regard misconduct, a verbal warning which must be recorded shall be given, and on the second and third occasions, a written warning, and then a notice of dismissal if committed on the fourth occasion. The Panel is of the view, that the complainant's unauthorized absence for a few hours on the 17<sup>th</sup> of December 2007 is one of misconduct as against gross misconduct. The respondent could have afforded fairness to the complainant had it complied with the procedure relating to discipline of persons accused of misconduct. The Panel had after careful considerations of the evidence before it and the submissions, is satisfied that the respondent had had not acted reasonably in treating the reason as

sufficient for terminating the complainant's employment. Accordingly the Panel finds that the complainant's dismissal was unfair.

In all the circumstances the Panel makes a fair and reasonable compensation.

This is calculated as follows:

1. Loss of earnings: 6 Months x \$874.74 P/M = \$5,248.44

**AWARD**

The respondent unfairly dismissed the complainant and is to pay compensation to Hellen Gamali in the sum of \$5,248.44, being payable immediately and is recoverable as a debt under section 10 of the Unfair Dismissal Act [cap 77].

**COSTS**

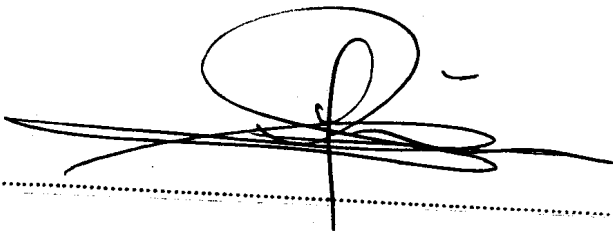
The respondent is ordered to pay \$500-00 towards Panel expenses within 14 days from receipt of this finding.

**APPEAL**

The appeal provisions under the Unfair Dismissal Act 1982, The Trade disputes Act 1981, Trade Disputes Panel (Unfair Dismissal & Redundancy Procedure) Rules 1981, and the Solomon Islands Courts (Civil Procedure) Rules 2008 apply to this finding.

Dated the 31<sup>st</sup> of March 2009

On behalf of the Panel



Deputy Chairman/Trade Disputes Panel