

**IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS**

Case No. L9/4/06

Between: Solomon Islands National Union of Workers (Applicant)

And: Success Company Ltd (Respondent)

Panel :

1. Francis Cecil Luza	- Chairman
2. Mark Corcoran	- Employer representative
3. Elijah Gui	- Employee representative

Appearances:

Tony Kagovai for the applicant.

No appearance for the respondent.

Date of hearing: 25th March 2008.

Date finding delivered: 27th August 2009.

FINDING

In this trade dispute case, the Solomon Islands National Union of Workers (the union) is basically seeking answers from the Panel whether some of its members, namely John Gitovudi, Fredrick Sade, Chris Koti and John Leta were entitled to certain claims arising from an unpaid leave exercise carried out by the respondent company.

Despite notices sent to the parties, the respondent had never attended any of the hearings until the Panel decided to dispense of with the respondent's attendance on 25/3/08 and proceed to hear the matter in its absence.

The union's case was that at the end of January 2006, the respondent carried out an unpaid leave exercise in which a total of 19 employees were sent home on unpaid leave. The reason for that unpaid leave exercise was not known.

At some stage later, however, the majority of employees were recalled to work except the union members, John Gitovudi, Fredrick Sade, Chris Koti and John Leta. The union wrote to the company on 18th May 2006 for the reinstatement of these employees but there was no response.

The union claims that the nature of dismissal was such that its members were entitled to claim the following:

1. One month notice;
2. Redundancy pay;
3. Unpaid leave;
4. Compensation for severance of employment; and
5. Repatriation cost (equivalent).

In support of its case, the union referred to a Panel decision in the case of **Solomon Islands National Union of Workers -v- Malaita Province (1986)** in which the majority of Malaita Province employees were sent out on unpaid leave and were later made redundant on different occasions.

In that case, which we agree, an employee cannot be laid off without pay for an indefinite period unless the employee himself agrees. It is the intention of the Parliament as demonstrated by the provisions of section 5 (2) of the Employment Act (cap 75), that an employee should not, without his agreement, be laid off without pay for more than four weeks period.

Where an employee is laid off without pay, the employee must return to work, at least, at the end of four weeks. The employee must at least present himself at the work place (or give notice to that intention) to see if he was going to be offered work by his employer. If he is not offered work, then he should give notice to terminate his contract and sue for constructive dismissal.

In the present case, apparently, the complainants, John Gitovudi, Fredrick Sade, Chris Koti and John Leta did not know what to do. Instead, they had waited and waited to hear from their employer (the respondent) but nothing was coming from them until the complainants had to take the matter to this Panel with the assistance of the union.

Clearly, the respondent's action amounts to constructive dismissal. The complainants were constructively dismissed and therefore entitled to relief under the Unfair Dismissal Act (cap 77), except John Gitovudi who had only worked for three months. Section 4 (4) (a) states that an employee who is dismissed is not unfairly dismissed if he is dismissed within a period of 26 weeks (ie, six months).

The Panel notes that John Leta had worked for a period of two years whilst Fredrick Sade and Chris Koti both eight months. The three of them are entitled to claim compensation under the Unfair Dismissal Act, (cap 77).

The Panel therefore awards them compensation as follows:

John Leta

(1) one-month pay in lieu of notice	- 560.00
(2) Loss of employment (3 x 560)	- 1,680.00
Total	- <u>\$2,240.00</u>

Fredrick Sade

(1) one-month pay in lieu of notice	- 960.00
(2) Loss of employment (2 x 960)	- 1,920.00
Total	- <u>\$2,880.00</u>

Chris Koti

(1) one-month pay in lieu of notice	- 560.00
(2) Loss of employment (2 x 560)	- 1,120.00
Total	- <u>\$1,680.00</u>

All payments are to be paid to the respective complainants (as above) within 14 days.

PANEL EXPENSES

The respondent is to pay \$500.00 towards panel expenses within 14 days.

APPEAL

Right of appeal to the High Court within 14 days.

On behalf of the Panel:



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THE TRADE DISPUTES PANEL