

IN THE TRADE DISPUTES PANEL )

OF SOLOMON ISLANDS )

Case No: UDF 55 & 59 of 2009

IN THE MATTER of the Unfair  
Dismissal Act 1982

AND IN THE MATTER of a complaint  
of Unfair Dismissal

BETWEEN: JOHN FINAU AND RONALD VOLIA

Complainant

AND: SOLOMON ISLANDS POSTAL CORPORATION

Respondent

Hearing: 9 November, 2010, Honiara.

Decision: 6 April, 2010.

Panel: Wickly Faga Deputy Chairman  
Eric Maefelo Employee Member  
Walter H. Rhein Employer Member

Appearances: Joseph Iroga, counsel for the Complainant  
No appearance (barred), for the Respondent

---

FINDING

---

The Complainants were dismissed by the Respondent on the 26<sup>th</sup> June 2009 due to redundancy. They lodged their notice of complainats with the Panel Secretary on the 13/11/09. The Respondent, however, failed to file its notice of appearance within 21 days of receipt of completed notice of complaints, as required by rule 7(1) of the Trade Disputes Panel (Unfair Dismissal and Redundancy) Procedure Rules, 1983 (the rules). On the 24<sup>th</sup>/11/09, the Respondent applied for an extension of time under rule 13(1) of the rules to enable it file its notice of appearance. The Panel gave 7 days for the Respondent to file its notice of appearance. The Respondent however failed to file

its notice of appearance within the 7 days granted by the Panel. When the matter was again listed for further prehearing on the 16<sup>th</sup>/03/10, the Respondent failed to appear either by itself or its legal representative without informing the Panel of reasons for its non-appearance. The Panel therefore granted an application to bar the respondent from taking part in the further proceedings of the matter under rule 7(2) of the rules.

During a full hearing of this matter, only the Complainants gave evidence in support of their case. Mr. John Zozoro Finau was first to give evidence. He told the Panel that he is currently 53 years old and resides at Baranamba, Honiara. He is a member of the Christian Fellowship Church. He commenced employment with the Respondent in June 1997 as Finance Master, and then later held the position of Deputy Post Master General (Corporate Services) until his termination on the 26 June 2009.

Mr. Finau further told the Panel that towards the end of February 2009, he received a letter dated 18<sup>th</sup>/02/09 [JZF1]. In that letter he was advised that, due to a restructuring, his post would be converted from line position to contract position. He was then given notice of an impending retirement and dismissal because of redundancy. He was also advised that the new positions will be advertised locally and he was welcomed to apply. Mr. Finau and his colleague, Mr. Ronald Volia made a joint response in a letter dated 24/03/09, and addressed to Post Master General [JZF2]. They submitted that the positions they were performing duties under were never abolished, so redundancy would not be applicable to them, and that a retirement policy is not in place to effect such retirement. They then sought priority consideration in their favor when the posts were to be converted to contracted positions. Mr. Finau further told the Panel that the Deputy Chairman of the Respondent's Board (the board) informed him by letter dated 26/05/09 that his application for the position of DPMG(CS) and interview performance was unsuccessful. However, in a minute from the board Secretary dated 26/05/09, Mr. Finau was advised that his employment was extended for 3 months, until 19/08/09 commencing on the 20//05/09[JZF3]. But in early June 2009, the chairman of the board advised Mr. Finau that the board gave only two weeks for him to remain in his job. He was finally dismissed on the 26<sup>th</sup> June 2009. He was receiving \$3,391.56 at the time of his dismissal.

In his other evidence, Mr. Finau told the Panel that the reason for his dismissal was redundancy. However, Mr. Finau stated under oath

that the post of Deputy Post Master General (Corporate Services) has not been abolished or changed to date. He also told the Panel that normal retirement age is 50 years, but may be retained until 55 years which is a compulsory retirement age. Mr. Finau had worked for the Respondent for 12 years and was 52 years at the time of his dismissal.

Mr. Ronald Volia also gave evidence before the Panel. He told the Panel that he was dismissed in a similar fashion as his colleague, Mr. Finau, except that he was holding the position of Deputy Post Master General (Postal/Philatelic Services or Operations). He was receiving \$3,336.07 at the time of his dismissal. He had worked for the Respondent for 41 years and was 59 years old when he was dismissed. His post was not abolished.

The Complainants claimed unfair dismissal on the grounds that the reasons for their dismissal were improper. The starting point for consideration is whether their dismissals were for substantial reasons of some kind such as to justify the dismissal of employees holding their positions at that time, and that in all the circumstance, the employer had acted reasonably.

Section 4(2) of the Unfair Dismissal Act [cap77] (the Act) states that "An employee who is dismissed is not unfairly dismissed if he is dismissed because of redundancy." The question then is whether the Complainants were made redundant. Section 4(1) of the Employment Act[cap72] stipulates that "...when an employee is dismissed, his dismissal is to be taken to be because of redundancy if its is attributable wholly or mainly to-

(a) the fact that his employer had ceased, or intends to cease-

(i) to carry on the business for the purposes of which the employee was employed by him; or

(ii) to carry on that business in the place where the employee was so employed; or

(b) the fact that the requirement of that business-

(i) for employees to carry out work of a particular kind; or

(ii) for employees to carry out work of a particular kind in the place where he was so employed,

have ceased or diminished or are expected to cease or diminish."

A genuine redundancy situation is when the employer dismisses an employee because the business or part of it had closed down or about to close down or that the employer decides to reduce its workforce that performs a particular job. According to evidence before the Panel, the Complainants were informed by letter, that their positions would be restructured from line positions to contract positions. They were also informed in the same letter that the board decided to effect a standard three months notice of their impending retirement and dismissal due to redundancy.

Mr. Finau told the Panel that he was informed towards the end of May 2009, that his application and interview performance was unsuccessful. He was then given three months extension to his employment, commencing on the 20/05/09. In early June 2006, the board chairman advised him that the board gave only two weeks for him to remain in his job. He then remained in his job until his dismissal on the 26<sup>th</sup> June 2009. Mr. Volia agreed and told the Panel that he was dismissed in a similar fashion as his colleague, Mr. Finau.

It is doubtful that the Respondent had dismissed the Complainants due to redundancy. The Panel is however without the benefit of any appearance by the Respondent to show that by dismissing the Complainants, it had in fact responded accordingly to one or more of redundancy situations mentioned under section 4(1) of the Employment Act, cap72. The Respondent had foregone its right to do so, and the Complainants must have the benefit of the doubt. The Panel is satisfied on the balance of probabilities that there was no redundancy situation to justify effecting redundancy in favor of Mr. Finau and Mr. Volia.

Having established that there was no redundancy situation to respond to, the Panel is of the view that, the reason of redundancy, which the Respondent had advanced as reason for dismissing the Complainants, is improper. That alone is sufficient enough to render the dismissal of the Complainants unfair. The Panel finds accordingly, that the Complainants' dismissal because of redundancy was unfair.

In awarding compensation, the Panel takes into consideration, the conduct of the Respondent in dismissing the Complainants. It was also noted that Mr. Finau and Mr. Volia have served the Respondent for 12 and 41 years respectively. The Panel also takes into account the fact that the Complainants have reached retirement age. In all the

circumstances the Panel awards a fair and reasonable compensation to each Complainant as follows.

Award

(i) Mr. John Finau

Compensation \$12,500-00

(ii) Mr. Ronald Volia

Compensation \$12,500-00

The Respondent unfairly dismissed the Complainants and is to pay compensation to Mr. John Zozoro Finau, and Mr. Ronald Volia in the sum of \$12,500-00 each, being payable immediately and are recoverable as debts under section 10 of the Unfair Dismissal Act 1982 [cap 77].

COSTS

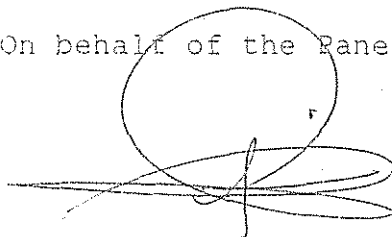
The respondent is ordered to pay \$500-00 towards Panel expenses within 14 days from receipt of this finding.

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).

Dated the 6<sup>th</sup> day of April 2011

On behalf of the Panel



Wickly Faga

DEPUTY CHAIRMAN/TDP