

IN THE TRADE DISPUTES PANEL  
SOLOMON ISLANDS

Case No. 13/10

BETWEEN: Festus Sage (Complainant)

AND: Church of Melanesia, Marine Division (Respondent)

Panel: 1. Francis Cecil Luza - Chairman  
2. Sika Maruopangai - Employer representative  
3. Eric Maefelo - Employee representative.

Appearances: Selson Fafale of Labour Office representing the complainant.

Respondent barred.

Date of hearing: 10/8/11

Finding delivered: 4/10/11

### Finding

By complaint (TDP1) lodged to the Panel on 13/4/10, the complainant claimed that he was unfairly dismissed by the respondent on 17/12/10.

On 26/4/2010, the Panel secretary issued three copies of notices of appearance (TDP2s) to the respondent to be completed and returned to the Panel secretary within 21 days from the date it received the forms.

At the lapse of the 21 days, however, the respondent did not return the forms as required.

On 26/7/10, the Panel secretary wrote to the respondent reminding it of its failure to file the TDP2 forms. In the same letter, the complainant advised the respondent to file an application for an extension of time under rule 13 (1) of the Trade Disputes Panel (Unfair Dismissal and Redundancy Procedure Rules, Cap 75 if it wished to take part in the proceeding.

The respondent filed the application on 11/11/10 which was however refused by the Panel. Consequently, the respondent was barred from taking part in the proceeding.

The matter was not heard until 10/8/11 during which the Panel heard evidence only from the complainant.

In his sworn evidence, the complainant told the Panel that he worked for the Church at the Marine Division at Taroniara for a period of one year when he was terminated. His employment contract

was on permanent basis and that his terms and conditions of employment were stated in the General Guidelines of Service.

As to his termination, the complainant told the Panel that he applied for a three weeks unpaid leave in December 2009 which was granted. He was due back to work in January 2010 but due to transport difficulties he could not get back to work until 17/2/10. As he called in at the Honiara main office, he was told by the Deputy General Secretary then Rt. Rev. David Vunagi that his employment with the Church was terminated, the reason being that he architecture a petition letter (exhibit 1) against the Manager Taroniara Shipping Yard, Fred Evans which was signed by all workers there including the complainant. After being told of his termination, the complainant went to Taroniara to collect his belongings. When he arrived there Mr. Evans asked him to reconcile but the complainant told him he was already terminated and that he would bring the matter up with the relevant authorities to see if his dismissal was proper. The complainant then wrote a letter to the General Secretary of the Church of Melanesia which he did not get any response.

The complainant further told the Panel that the petition made against the manager, Mr. Evans was a collective initiative from the workers, that it would be wrong to use that as a basis for his termination. All workers including the complainant signed the petition.

The onus is on the employer to prove that the complainant's dismissal was not unfair. Here the respondent did not have the opportunity to do that as a consequence of its own failure to file the TDP2 forms.

Having considered the sworn evidence of the complainant, however, the Panel is satisfied that the dismissal of the complainant was unfair. The Panel finds no reason for the termination of the complainant. If the reason was for the written petition that he signed along with other employees, then, the Church was wrong to use that as the basis for terminating the complainant. Even if that was a genuine ground to terminate the complainant, he was not even given a chance to explain his case. That is a breach of the rule of natural justice. No termination letter was also issued to the complainant. All these only showed how irresponsible and unprofessional the respondent was in handling the complainant's case when considering whether or not the complainant's employment with the Church should be terminated.

Having said that, and in all the circumstances, the Panel finds that the complainant's dismissal was unfair.

#### AWARD

In considering award in this matter, the Panel notes as follows. The complainant was employed for only one year at the time of his dismissal. The complainant was not paid one month salary in lieu of notice. He has not secured any formal employment since termination.

The compensation is therefore calculated as follows:

1. One-month pay in lieu of notice	- \$775.00
2. Loss of employment (6 months salary)	- \$4,650.00
<b>Total</b>	<b>- \$5,425.00</b>

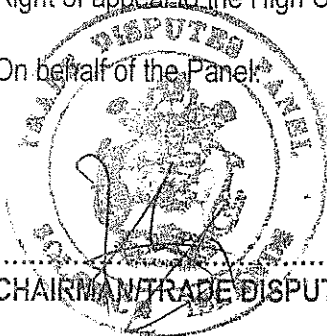
**ORDER**

1. The respondent is ordered to pay \$5,425.00 to the complainant as compensation for his wrongful dismissal within 14 days.
2. The respondent is also to pay \$1000.00 towards panel costs.

**APPEAL**

Right of appeal to the High Court is 14 days.

On behalf of the Panel:



CHAIRMAN TRADE DISPUTES PANEL