

IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS

Case No. UDF 2/10

BETWEEN: Leonard Aukona (Complainant)

AND: Solomon Islands Electricity Authority
(Respondent)

Panel: 1. Francis Cecil Luza - Chairman
2. Yolende Yates - Employer representative
3. Daddley Hoala - Employee representative.

Appearances: Selson Fafale, Labour Officer representing
the complainant.

Barnabas Upwe for the Respondent.

Date of hearing: 4th & 8th November 2010.

Finding delivered: 8th June 2011.

Finding

By complaint (TDP1) lodged to the Panel on 8/2/10, the complainant claimed that he was unfairly dismissed by the respondent on 10/12/09.

The grounds for his claim were stated as follows:

- " * Denial of natural Justice;
- No notice served prior to termination;
- Decision was made on irrelevant matters & has been brought to office."

By notice of appearance (TDP2) filed on 18/3/10, however, the respondent stated that the complainant was terminated for valid reasons, that he breached wiring procedures, accounting procedures and work ethics when he installed a cash power meter at the residence of one, Hugh Wheatly.

Procedure for applying for a cash power meter

The procedure for applying for a cash power meter at SIEA as explained by Kenny Radave (RW1) and John Kennedy Taufunu (RW2) is as follows. The customer picks up an application form at SIEA office, fills it in and lodges it with a payment of \$400.00 with the cashier. The customer gets the original copy of the receipt whilst the duplicate copy is attached to the application form. The customer then proceeds to the accounts section with his application form where they will have it approved or disapproved. If approved, the application form is then passed onto Mr. Kenny Radave (RW1) at the consumer services section for issue of a new cash power meter from their stores. Before releasing the cash power meter, a meter change request form (MCR form) is prepared which is countersigned by the person granting approval of the application from the accounts section. Upon installing the meter, a copy of the completed MCR is passed onto the data input officer.

Installation of Hugh Wheatley's cash power meter

The respondent claimed that the installation of Hugh Wheatley's cash power meter at his residence at Panatina by the complainant was unprocedural, a result of which, the complainant was dismissed.

In their sworn evidences, Kenny Radave (RW1) and John Kennedy Taufunu (RW2) both confirmed that they were not aware of the installation of Mr. Hugh Wheatley's cash power meter at his residence until September 2009 when Mr. Wheatley himself went to SIEA office to complain about his electricity power being disconnected and that he had not received a receipt for the \$400 payment they had made for the installation of the cash power meter.

Upon investigating the complaint, the respondent made the following findings as contained in the complainant's letter of termination dated 10th December 2009 (exhibit 9). The complainant installed the cash power meter at Hugh Wheatley's residence after receiving \$700.00 from Mrs. Moi Wheatley. The cash power meter was installed on 8/9/09 with the initial credit of \$10.00. On the same date the sum of \$300.00 was paid for 67.70 units. The last date the customer paid credit was on 7th October 2009. From 7th

October 2009 to 29th October 2009, there was no transaction or form of credit payment taking place. This shows that the customer's meter was adjusted illegally and the customer had been using free electricity. On 3rd November 2009 at about 08.15am the complainant went to Hugh Wheatley's house and made adjustment to the cash power meter purposely to restore the illegal connection or adjustment. On the same date 3/11/09 at 09.15 am a credit of \$200 was paid.

In his evidence, however, the complainant told the Panel that prior to installing the cash power meter, an officer from Island Enterprises Limited (IEL) approached him towards the end of August 2009 to request a refund of their two cash power meters which they had bought for their houses but were yet to be installed. The officer told the complainant that they requested refund of the two cash power meters because their houses were already sold.

In response, the complainant told the officer that the process for getting refund takes time. It takes about three months. He then advised the officer that another alternative is to divert the cash power meters to another customer who needs it. Refund can then be made by that customer direct to IEL. It is easier and quicker that way to get a refund than to go through the normal process. The officer agreed and asked the complainant to find a customer who was interested in purchasing one of the cash power meters so that they could have their \$400.00 refunded whilst the other one was to be retained by IEL.

In early September 2009, the wife of Hugh Wheatley, Moi Wheatley came to see the complainant to inquire about the procedure in applying for a cash power meter as she was complaining about the huge bills she received with the kilowatt meter readings. The complainant then told her about the cash power meter belonging to IEL which they no longer needed and that they would like to have their money refunded. If agreed, she could have the cash power meter for \$400.00 so that IEL's money is refunded and that he (the complainant) can arrange for the cash power meter to be installed at her residence. Mrs. Moi Wheatley agreed and went away.

Later, Mrs. Moi Wheatley returned with a cash of \$700.00 with a note to the complainant stating that the \$400.00 was for the refund of the cash power meter to Island Enterprises Limited and \$300.00 to be kept by the

complainant. The \$300.00 payment was made to the complainant in advance as a token of appreciation for the work he was going to do in installing the cash power meter at Hugh Wheatley's residence.

The complainant then arranged with IT to reprogramme the cash power meter under the name, Hugh and Moi Wheatley. He then completed the MCR form (exhibit 13) which he submitted it to the manager accountant. On the MCR the complainant made a remark that the customer was overcharged 1,182 kwh which required an adjustment. IT however did not activate the changes into the system in time that, as a result, the customers' residence was also included in the disconnection list and was eventually disconnected.

When power was disconnected at their residence, Mr. Wheatley was so furious that he went straight to one of the managers, Duddley Fosala to raise a complaint regarding the \$400.00 payment made to the complainant which they did not get a receipt. The complainant however explained that Mr. and Mrs. Wheatley could not expect the receipt from SIEA because the payment was not made to SIEA but to IEL, the owner of the cash power meter then. Fred soaki of IEL in his letter of 13/11/09 (xhibit 12) confirmed receiving the sum of the \$400.00 from the complainant as refund for one of their cash power meters.

In determining whether or not an employee is fairly or unfairly dismissed, the Panel is guided by section 4(2) of the Unfair Dismissal Act, Cap 77, which provides as follows:

"An employee who is dismissed is not unfairly dismissed, if-

- (a) He is dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding his position,
- (b) In all the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissing the employee."

Was the complainant dismissed for a substantial reason of a kind that would justify a dismissal of an employee holding his position?

Having heard evidence from both the respondent witnesses and the complainant, the Panel finds that the complainant bypassed or illegally connected cash power meter 07059781349 at the residence of Hugh Wheatley. He confirmed this himself in his letter of response (exhibit 7) where he stated at paragraph 4, "to keep up her supply till the meter is programmed". He knew the meter was not yet programmed and yet went ahead to install it. Even if it was already programmed, it is not for the complainant to install the cash power meter as he did. Installation of cash power meter is done by an electrical contractor as required by Regulation 8 (1) of the Electricity Regulations (Cap 128). The SIEA inspector (or the complainant for that matter) only inspects the task after it was done and if there was any fault the inspector issued a fault notice in the appropriate form to the electrical contractor.

Apparently, here the complainant compromised his position in consideration for the payment of \$700 to facilitate the cash power meter at Hugh Wheatley's residence. Receiving money direct from a customer is not only unethical but a breach of clause 8.5 of SIEA Policy and Procedures Manual, which states, "employees of the authority must not solicit or accept cash, gift or presents from members of the public in connection with their work related duties." Here the complainant claimed he had only received \$300 from Mrs. Wheatley as good will payment made to him as he was going to install the cash power meter and \$400 as reimbursement of IEL's cash power meter and yet that money (\$400) was not even handed to SIEA or IEL for an official receipt until the matter was investigated. Again the Panel finds that the complainant compromised his position in consideration for the payment of \$700 to facilitate and install the cash power meter at Hugh Wheatley's residence, an action he himself knew was not proper and a breach of SIEA Policy and Procedures Manual. If this was a practice by other staff at SIEA as indicated in the evidence of the complainant, such practice was a "bad one" that the complainant cannot invoke to justify his action.

The Panel finds therefore that the reasons for dismissing the complainant as stated above were substantial and of a kind justifying a dismissal of an employee holding the position of the complainant.

Did the respondent act reasonably, in all the circumstances, in treating the reasons as sufficient for dismissing the complainant?

The answer is in the affirmative. When Mr. Hugh Wheatley reported the matter to the Manager generation, investigations were carried out in which certain allegations were put to the complainant in a memorandum written to him by the Legal officer, Barnabas Upwe on 4th November 2009. In that memorandum (exhibit 7), the complainant was asked to respond to the allegations, which he did. After receiving the complainant's response (exhibit 16) to the allegations, the Management committee met on 9th December 2009 during which they deliberated on the complainant's case in which they made a decision to terminate his employment based on reasons as stated in the termination letter (exhibit 9). In that termination letter the complainant was advised of his right to appeal to the General Manager if he was not happy with the decision of his termination by the management committee. The complainant did appeal to the General Manager but was unsuccessful.

The Panel finds that the respondent had acted reasonably in treating the reasons as sufficient for dismissing the complainant. The complainant was given all the opportunity to state his case, which he did before a decision was made to terminate him. On the evidence, the Panel finds no other reasons ("irrelevant matters as claimed by the complainant") as the basis for the complainant's dismissal except those that were stated in the complainant's termination letter. The reasons for his terminations were such that would warrant an instant dismissal.

Accordingly, and in all the circumstances, the Panel finds that the complainant was not unfairly dismissed.

On behalf of the Panel:



CHAIRMAN/TRADE DISPUTES PANEL