

IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS

Case No. UDF 49/11

BETWEEN: John Savusi (Complainant)

AND: World Vision Solomon Islands (Respondent)

Panel: 1. Francis Cecil Luza - Chairman
2. John Adifaka - Employer representative
3. Saneth Talo - Employee representative

Appearance: Selson Fafale, Labour Officer for the complainant.

Respondent barred.

Date of hearing: 13/6/12

Finding delivered: 8/10/12

FINDING

By complaint (TDP Form 1) lodged to the Panel on 19/5/11, the complainant claimed that he was unfairly dismissed by the respondent on 18/4/11.

On 3/6/11, the Panel secretary issued three copies of notices of appearance (TDP Form 2) 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 forms were never returned to the Panel secretary as required of the respondent.

On 15/8/11, the Panel secretary wrote to the respondent reminding it of its failure to file the TDP 2 forms. In the same correspondence, the respondent was advised to attend a hearing on 21/9/11 at 09.00am and to apply for an extension of time to file the TDP 2 Forms if it wished to take part in the proceeding.

At the hearing on 21/9/11, however, the respondent failed to make any appearance. Consequently, the complainant applied for an order to bar the respondent from taking part in the proceeding. The Panel granted the application and adjourned the matter for hearing at a later date.

The matter was not heard until 13/6/12 when the Panel heard evidence only from the complainant. In his sworn evidence, the complainant told the Panel that he began his employment with the respondent on 10/2/2003. He was employed as a driver. He signed a contract of employment which was renewed a couple of times before his termination on 18/4/11.

The complainant told the Panel that according to his termination letter, he was dismissed for misusing the respondent's vehicle on 18/4/11, which he denied. The termination letter that was dated 18/4/11 was handed to him by another officer, namely Judith Kaki at about 5 pm on 19/4/11. The complainant told the Panel he wanted to explain his case on the allegation that he had misused the vehicle but he was not given the opportunity to do so. He told the Panel that on the day he was said to be misusing the vehicle he was transporting members of the HIV team from their office to a couple of places in Honiara to carry out their work. In the afternoon of the same day he transported some members of the team to White River where he spent the whole afternoon with them. He denied transporting firewood to his home at Titige that afternoon as stated in his termination letter.

In unfair dismissal cases, the onus is on the employer (the respondent in this case) to prove that the complainant was not unfairly dismissed. In this case, the respondent had lost its opportunity to discharge such burden as a result of its own failure to file its defense (TDP Form 2s) that had resulted to an order by the Panel to disallow the respondent taking part in the proceeding.

The complainant on cross-examination admitted having a warning previously after he had ditched the respondent vehicle at the road side at Henderson by accident. It was not clear however whether that warning was the "final warning" that was referred to in the complainant's termination letter. Whatever the case was, or even if the respondent is said to have substantial reasons to terminate the complainant, the manner in which he was terminated was not proper. Firstly, he was not given the opportunity to explain his side of the story on the allegation that he had misused the respondent vehicle on 18/4/11. Secondly, the letter of termination was handed to the complainant after hours, which the Panel sees as bad management practice.

Having said that, and in all the circumstances, the Panel finds that the complainant was unfairly dismissed.

Award

In considering award in this matter, the Panel notes as follows. The complainant has still not secured any employment since termination. Upon termination, the complainant was not paid one month salary in lieu of notice, although he was paid his long service benefit.

Compensation is therefore calculated as follows.

1. One-month pay in lieu of notice	- \$2,538.00
2. Loss of employment: (4 months' salary: 4 x \$2,538.00)	- \$10,152.00
Total	- \$12,690.00

ORDER

1. The respondent is to pay a total of \$12,690.00 as compensation to the complainant within 14 days.
2. The respondent is also to pay \$1,000.00 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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CHAIRMAN/TRADE DISPUTES PANEL

