

IN THE TRADE DISPUTES PANEL)

OF SOLOMON ISLANDS)

Case No: UDF 88 of 2009

IN THE MATTER of the Unfair
Dismissal Act 1982

AND IN THE MATTER of a
complaint of Unfair Dismissal

BETWEEN: GEORGE MANEBONA

Complainant

AND: SOLOMON ISLANDS PORTS AUTHORITY

Respondent

Hearing: 15th May, 2012, Honiara.

Decision: 26th November 2012.

Panel: Wickly Faga Deputy Chairman
Jacqualine Turanga Employee Member
Yolende Yates Employer Member

Appearances: Preslie Watts, counsel for the Complainant
Christopher Fakarii, counsel for the Respondent

FINDING

This is a complaint of unfair dismissal made pursuant to section 6(1) of the Unfair Dismissal Act [cap77]. The Complainant claim unfair dismissal on the following grounds;

"That he was not given a fair opportunity to answer to allegations of misconduct nor was he given a chance to answer to allegations of misconduct before the disciplinary committee which then led to his unfair dismissal"

In its reply to the claim, the Respondent admitted that it dismissed the Complainant. The reasons for dismissal are;

- * willful damage of company property,
- * drinking and being drunk knowing well that he will report for work later in the evening,
- * breach of terms of employment.

The Respondent sought to defend the claim on the grounds that;

"1. Mr. Manebona was given sufficient opportunity to appear before the Disciplinary Committee to present his case-which he did"

"2. there is zero tolerance of alcohol in the work place, according to the general manager who is adjusting his stance of policy"

"3. Mr. Manebona has two warnings previously for the same offence."

The Complainant was employed by the Respondent as a Launch Mechanic on the 30th July 2001. On 15th May 2009, he was suspended on full pay for damaging front glass window of the kitchen in the Harbour Master Building. He was brought before a disciplinary committee on the 24th June 2009 for a hearing of his case. He was terminated on the 29th September 2009.

It is the Respondent's case that the Complainant was not unfairly dismissed in that he was given the opportunity to be heard at the disciplinary hearing on 24th June 2009. The Respondent relies on evidence from the sworn statement of Glyn Joshua filed on the 3rd March 2010, and George Manebona's sworn statement filed on the 3rd March 2010, cross-examination and re-examination of their respective sworn statements, and other evidences from witnesses at the Trade Disputes Panel full hearing on the 15th May 2012.

The Complainant's case however, was that the composition of the Disciplinary Committee that sat to hear his case was likely to be biased against the Complainant because the committee allowed the Harbour Master, who brought the complaint, to be a member of the Committee. The Complainant relied on sworn statements and annexures filed on the 3rd/3/10 and 23rd/11/10.

It was not disputed that the Complainant had a few beers before he attended to work on the night of 8th May 2009. In the Complainant's words, "I had 6 beers but can still work." It was also not disputed that the Complainant broke the front glass window of the Harbour Master building. He was suspended and subsequently terminated for that reason.

The question therefore is whether the complainant's dismissal was for a substantial reason? If the answer to this question is in the negative then the action succeeds and ends. If it is answered in the affirmative then the next question would be, whether the Respondent acted reasonably in treating the reason as sufficient for dismissing the complainant.

It is not too difficult to assess the evidence that drinking alcohol at work or working in a state of intoxication is not a safe working practice. As a launch mechanic, the Complainant is responsible for fixing engines in Pilot Boats so that they are always in good working order, and must always be on standby to berth and un-berth vessels. Such a responsibility requires a person to be on full alert as mistakes could result in catastrophic consequences.

The Panel is also satisfied that the Complainant broke the front glass window of the Harbour Masters building. The incident though isolated involves damage to company property. As an employee, the Complainant was expected by his employer to look after its properties. Damaging company property is a justifiable reason for disciplinary action. The Panel therefore accepts that the Complainant was dismissed for substantial reasons that justify his dismissal. That leads us to the question, whether the Respondent had acted reasonably in treating the reason as sufficient for dismissing the Complainant.

The Panel heard that the Disciplinary Committee consisted of the Director of Operations (Judah Kulabule), Michael Faitea (Union Representative), Leonard Bava (Acting Operations), and Glyn Joshua (Chairman, Director of Cooperate Services). Judah Kulabule was the Harbour Master. He referred the matter against the Complainant to the Disciplinary Committee. He was also member of the Disciplinary Committee that heard the Complainants case, and also made recommendations to the General Manager. Termination of the Complainant's employment was amongst the recommendations put to the General Manager. The General Manager then exercised his absolute discretion to terminate the

Complainant's employment. He was issued his termination letter on the 29th July 2009.

After having taken time to assess all available evidence, the Panel is of the view that the fact that the Harbour Master, who referred the Complainant's case to the Disciplinary Committee, was allowed to hear the case brings the impartiality of the Committee into question. That in our humble opinion is enough to render any decision reached by the Committee unfair. Therefore, in all the circumstances of this case, the Panel finds that the Complainants dismissal was unfair.

The Panel calculates a fair and reasonable compensation award.

Award

BWx52 = \$350.00 x 52 = \$18,200.00

The respondent unfairly dismissed the complainant and is to pay \$18,200.00 to George Manebona being payable immediately and is recoverable as a debt under section 10 of the Unfair Dismissal Act 1982.

Appeal

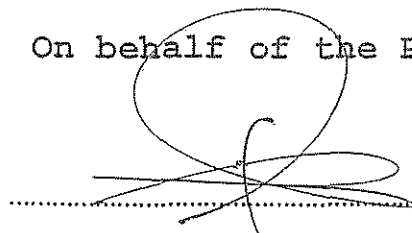
There is a right of appeal to the High Court within 14 days on points of law only, and any party aggrieved by the amount of compensation awarded may within one month of the date of the award appeal to the High Court as provided for under the Unfair Dismissal Act 1982, S. 7 (3).

Panel Expenses

The Panel fixes a contribution of \$700-00 to cover Panel expenses, and this amount is to be paid by the respondent within 14 days from the date of this decision.

Dated the 26th of November 2010

On behalf of the Panel



Wickly Faga

Deputy Chairman/TDP

