

IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS

Case No. UDFs 24-25/12

BETWEEN: Alice Aife and Lilian Mafane (Complainants)

AND: DA Printers (Respondent)

Panel: 1. Francis Cecil Luza - Chairman
2. Sika Manuopangai - Employer representative
3. Jacqueline R. Turanga - Employee representative

Appearance: Selson Fafale, Labour Officer for the complainant.

Respondent barred.

Date of hearing: 29/8/12

Finding delivered: 10/12/12

FINDING

By complaints lodged to the Panel on 25/4/12, the complainants claimed that they were unfairly dismissed by the respondent on 23/1/12.

On 2/5/12, the Panel secretary issued three copies of notices of appearance (TDP Forms 2) in respect of each of the complaint 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 18/6/12, 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 4/7/12 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 4/7/12, 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 29/8/12 when the Panel heard evidence only from the complainants. In their sworn evidence they told the Panel that they were employed by the respondent company which operates at Tandai Ridge in Honiara. The company's business involves mainly printing. Alice Aife joined the company in March 2009, whilst, Lilian Mafane September 2007. At the time of their termination Alice Aife worked as an accountants clerk, whilst, Lilian Mafane held the position of General Manager. Alice Aife received a monthly salary of \$3,360.00 whilst Lilian Mafane received \$6,860.00 per month.

As to their termination, the complainants told the Panel that they were terminated on similar grounds, that their work attendance was very poor. They came late to work and knocked off early. They were also absent from work many times without permission. These grounds were stated in their termination letters issued to them on 23/1/12.

Upon receiving their termination letters, the complainants tried to contact the Managing Director, Dick Amasia but he would always avoid talking to them. The complainants claimed their dismissals were unfair because they had never received any warnings before and that the reason for their dismissal was not substantial.

In unfair dismissal cases, the onus is on the employer to prove that the complainant was not unfairly dismissed (s. 6 (6) of the **Unfair Dismissal Act, Cap 77**). In this case, the respondent had chosen not to file its defense (TDP Forms 2) as well as not attending a hearing that had resulted to an order of the Panel disallowing it to take part in the proceeding. Consequently, it had lost its opportunity to discharge such onus.

Section 4 (1) of the Unfair Dismissal Act 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; and

(b) in all the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissing the employee."

Were the reasons for the complainants' dismissal substantial?

The Panel answers the question in the negative. According to their termination letters, the complainants were dismissed for poor work performance and absenteeism. That was the reason for their dismissals. The Panel however finds no evidence to substantiate those grounds. Even the complainants' termination letters did not refer to any specific dates and times that they were late to work or were absent from work without permission as claimed. If the complainants' work performance had deteriorated, their boss should have called them to discuss their weaknesses and even warn them if necessary rather than wait until give them termination letters as it did. In other words, even if the respondent is said to have substantial reasons to terminate the complainants (which the Panel does not accept), the manner in which they were terminated was not proper. What the respondent should have done was to give them at least two warnings before terminating them.

Having said that, and in all the circumstances, the Panel finds that both complainants were unfairly dismissed.

Award

In considering award in this matter, the Panel notes as follows. Both complainants have still not secured any employment since termination. Upon termination, the complainants were not paid one month salary in lieu of notice.

Compensation is therefore calculated as follows.

Alice Aife

1. One-month pay in lieu of notice	- \$3,360.00
2. Loss of employment: (2 x \$3,360.00)	- \$6,720.00
Total	\$10,080.00

Lilian Mafane

1. One month pay in lieu of notice	- \$6,860.00
2. Loss of employment (3 x \$6,860.00)	- \$20,580.00
Total	- \$27,440.00

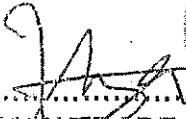
ORDER

1. The respondent is to pay \$10,080.00 as compensation to Alice Aife for her wrongful dismissal within 14 days.
2. The respondent is to pay \$27,440.00 to Lilian Mafane as compensation for her wrongful dismissal within 14 days.
3. 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

