

IN THE TRADE DISPUTES PANEL  
SOLOMON ISLANDS

Case No. UDF 18/12

BETWEEN: Philip Tauto'o (Complainant)

AND: Island Enterprises Ltd (Respondent)

Panel: 1. Francis Cecil Luza - Chairman  
2. Walter H. Rhein - Employer representative  
3. Elizah Gui - Employee representative

Appearance: Selson Fafale of the Labour office for the complainant.

Phil Bradford for the respondent.

Date of hearing: 3/10/12

Finding delivered: 14/12/12

**FINDING**

By complaint (TDP Form 1) lodged to the Panel on 16/3/12, the complainant claimed that he was unfairly dismissed by the respondent on 13/1/12.

The complainant commenced his employment with the respondent company on 18/12/08. At the time of his termination on 13/1/12, he held the position of Admin and Accounts clerk with a monthly salary of \$1,702.00.

The respondent's case however was that the complainant was terminated under clause 12 of the reviewed standard employment contract. The relevant paragraphs of the clause are as follows:

"12.1 in the event of either party wishing to terminate the employment after satisfactory completion of the probationary period, two weeks' notice in writing or payment of (2) two weeks salary in lieu shall be given.

**12.2 The employer reserves the right not to give any reasons for termination."**

Mr. Phil Bradford stated in his sworn evidence that the complainant's employment was on a 12 months' fixed term contract. He stated that under clause 12 (1) and (2) of the employment contract, the company reserves the right to terminate any employee as long as it serves the employee with a two weeks' notice. He further stated that the company need not have reasons for such termination.

In his sworn evidence, however, the complainant told the Panel that at the commencement of his employment with the company he signed a contract with the company. The contract (exhibit 2) did not even state that his employment was for a fixed period, although clause 2 of that contract required him to serve as probationer for a period of 4 months, which he did.

The complainant further told the Panel that the standard contract was only reviewed a few months before his termination. A copy of the reviewed standard contract was placed on a wall in the office at the work place but he was not given a copy to sign. He told the Panel that if he was given a copy, he wouldn't have signed it either because clause 12 (1) and (2) would not guarantee him a job security. His letter of termination (exhibit 3) was handed to him by the managing director, Mr. Welshman Casoah at his office. He did not say a word when he gave him the letter.

In unfair dismissal cases, the onus is clearly on the employer to prove that the complainant's dismissal was not unfair (s. 6 (6) of the **Unfair Dismissal Act, Cap 77**).

Section 4 of the Unfair Dismissal Act, Cap 77 further states:

**"(1) 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."**

**(2) An employee who is dismissed is not unfairly dismissed if he is dismissed because of redundancy."**

This provision clearly requires an employer to must have a reason for dismissing an employee. Such reason must be substantial and of a kind such as to justify the dismissal of a person holding the position of the employee.

Thus, if the service of an employee is no longer required because the position had been abolished, then the right thing to do is to terminate the employee by making him/her redundant. The reason for such dismissal therefore is redundancy.

In the case of the complainant, according to the sworn evidence of Mr. Phil Bradford, the company had simply invoked clause 12 (1) and (2) of the standard employment contract which he said to have allowed the company to terminate any employee at any time as long as the due notice is served upon that employee. He stated that by virtue of clause 12 (2) of that standard contract, the respondent company need not have reasons to terminate the complainant. Such argument, in the Panel's view, however, cannot be accepted as it conflicts with section 4 (1) of the Unfair Dismissal Act, Cap 77. That provision clearly implies that for any dismissal, the employer must give reason, "a substantial reason", that would justify dismissing someone in the position of the employee. In the complainant's case, however, the Panel finds no reason for his dismissal.

On the other hand, if the company invokes the reasons given in the termination letter (exhibit 3) as reasons for the complainant's termination (that he was incompetent to perform his duties), the Panel finds no evidence on that and would still hold that it finds no reason for the complainant's dismissal.

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 had not long after his dismissal secured a new employment. Upon termination, the complainant was paid two weeks' pay in lieu of notice.

In all the circumstances, the Panel considers a six months' salary as reasonable compensation for the complainant for his wrongful dismissal, which is calculated as follows:

$$6 \times \$1,702.00 = \$10,212.00$$

The total compensation award thus is \$10,212.00


ORDER

1. The respondent is to pay a total of \$10,212.00 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

