

IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS

Case No. UDF 47/11

BETWEEN: Janet Iroi (Complainant)

AND: HKL Global Services (SI) Ltd (Respondent)

Panel: 1. Francis Cecil Luza - Chairman
2. Sika Manuopangai - Employer representative
3. Nevalyn Laesango - Employee representative

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

Catherine Nolan and Rick Swan for the respondent.

Date of hearing: ~~3/10/12~~ 14/09/11

Finding delivered: 14/12/12

FINDING

By complaint (TDP Form 1) lodged to the Panel on 13/5/11, the complainant claimed that she was unfairly dismissed by the respondent on 14/4/11.

The grounds of her complaint was that she was not given a verbal or written warning prior to her dismissal and that she was also not given a chance to explain her case before the decision was made to terminate her.

In its notice of appearance (TDP form 2), however, the respondent company stated that the complainant was dismissed for returning to work one week late after she had taken her leave.

The complainant commenced employment with the company on 25/5/10. She was employed as a catering hand. She was paid at a rate of \$10.00 per hour. She worked 40 hours a week. On 19/3/11, the complainant applied for leave which was granted. She was granted 11 days from 25/3/11 to 6/4/11. The complainant proceeded on leave as granted but did not return until 7/4/11.

The Respondent's case

The respondent's case was that the complainant was dismissed because she came back late for work after taking her leave. She did not give reason for being late. Catherine Nolan for the respondent told the panel that upon taking her leave the complainant was given \$1,280.00 for leave passage and a travelling allowance of \$700.00. The complainant however went and cashed the cheque and never went home. She was seen in Honiara by other working colleagues.

The complainant did not return until 7/4/11, seven days later. When she reported to work on that day, she was asked to see the catering manager Mr. Rick Swan who interviewed her to find out why she was late. Mr. Swann also asked her why she had not contacted the office and informed them of her problem but she did not give proper explanation. Mr. Swann also stated that because they had not heard anything about the complainant's whereabouts, they had to put someone in her roster.

The complainant's case

In her sworn evidence, the complainant told the panel that she did spend her holidays at home as she requested. She had to cash the cheque for her leave passage with Solfish Limited because their boat had cancelled its trip to Auki on that Friday.

The complainant further told the panel that the reason for returning back to work late was transport difficulties. Towards the end of her leave she could not find a ship to come to Honiara. To travel to Auki to get a boat is also very difficult because of the poor road condition from Noth Malaita to Auki. At that time, a B Mobile service was not yet established there so she could not contact her office in Honiara to inform them of her transport difficulty.

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

Was the complainant fairly dismissed?

The guideline is section 4 (1) of the Unfair Dismissal Act (cap 77), which states:

“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.”**

In light of this provision, the panel first asks itself whether the complainant was dismissed for a reason of a kind such as to justify the dismissal of an employee holding her position (the complainant's position).

On the evidence, the complainant had worked only for 11 months when she had asked for leave, which was granted. After the leave, she had not returned to work until seven days later. Such leave overdue, in the circumstances of the complainant, the panel considers that as a “substantial reason” justifying a dismissal of an employee holding the position of the complainant.

The next question therefore is whether in all the circumstances, the employer (the respondent in this case) had acted reasonably in treating that reason (seven days leave overdue) as sufficient for dismissing the complainant.

The panel answers this question in the negative. It is the panel's view that when realizing that the complainant was due back to work but she had not yet assumed duties as expected, the respondent should have sent her a radio message informing her of her leave overdue and to warn her if she did not turn up for work by a due date her employment would be terminated. This is a standard practice of most employers in Solomon Islands. The respondent instead went ahead and recruited another person to replace the complainant. The recruitment was made even before the complainant was asked to explain why she had not returned to work on the date she was supposed to.

Having said that, and in all the circumstances, the panel finds that the respondent had not acted reasonably in treating the reason (seven days leave overdue) as sufficient for the dismissal of the complainant.

Accordingly, 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 secured any employment since termination. The complainant was not paid one month in lieu of notice.

The award is therefore calculated as follows:

1. One month pay in lieu of notice	-	1,600.00
2. Loss of employment (2x \$1,600.00)	-	3,200.00
Total		- \$4,800.00

In all the circumstances, the panel considers the sum of \$4,800.00 as reasonable compensation for the complainant for her wrongful dismissal.


ORDER

1. The respondent is to pay a total of \$4,800.00 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

