

IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS

Case No. UDF 27/11

BETWEEN: Joseph Dykes Daiwo (Complainant)

AND: LST Security Services Ltd (Respondent)

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

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

Respondent barred.

Date of hearing: 8/2/12

Finding delivered: 29/2/12

FINDING

By complaint (TDP Form 1) lodged to the Panel on 25/3/11, the complainant claimed that he was unfairly dismissed by the respondent on 15/2/11.

On 12/4/11, the Panel secretary issued three copies of notices of appearance (TDP Form 2) to the respondent to be completed and returned to the Panel within 21 days from the date it received the forms.

At the lapse of the 21 days, however, the forms were never received from the respondent.

On 28/6/11, the Panel secretary issued another letter to inform the respondent of its failure to file the TDP 2 Forms. In the same correspondence, the respondent was advised to attend a hearing on 13/7/11 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 13/7/11, however, both the respondent and the complainant did not attend. The matter was then adjourned to a later date.

On 15/8/11, the Panel secretary wrote to the parties to inform them of the next hearing date which was 7/9/11 at 09.00 am.

On 7/9/11, however, the respondent again failed to attend the hearing. Subsequently, the complainant applied for an order to bar the respondent from taking part in the proceeding which was granted by the Panel.

The matter was not heard until 8/2/12 when the Panel heard evidence only from the complainant. In his sworn evidence, the complainant told the Panel that he was employed by the respondent security firm as a Security supervisor since 6/2/10. He applied for the job when it was advertised by the respondent, LST Security Services Ltd. The security firm operates from a building owned by Solfish Ltd near the Westpac bank at Point Cruz. The security firm provides security services for both Solfish Ltd and Lee kwok Kuen & Company.

The complainant told the Panel that like other security guards working for the respondent security firm, his duties mainly involved proving security and looking after assets and properties owned by Solfish Ltd and Lee kwok Kuen & company Ltd both in Honiara and onboard the ships MV Solfish 001 and MV Solfish 002. Most of the time he would start work at 06.00 am and finishes at 6.00 pm. At times he would be required to work 24 hours, especially when he boarded the ships to ensure the safe delivery of cargoes to certain ports in the country.

As to his termination, the complainant told the Panel that he was surprised to receive the termination letter because he had never received a verbal or written warning before. The grounds for his termination according to the termination letter were said to be of abusing his position as security officer and consuming alcohol whilst on board MV. Solfish 002 on a trip to Bouganville in November 2010. These were all denied by the complainant as not true.

The complainant further told the Panel that he was also surprised that the letter of termination came from Lee Kwok Kuen & Company instead of his employer, the LST Security Services Ltd. The managing Director of Lee Kwok Kuen & Company Ltd, Mr. Anthony Lee signed the termination letter.

Having observed the demeanour of the complainant in the witness box, the Panel finds that the evidence adduced by the complainant was truthful and reliable. The Panel finds that whilst the respondent may have genuine reasons for terminating the complainant, the manner in which he was terminated was not proper. The complainant was apparently an employee of the respondent, LST Security Services Ltd, and yet, the termination letter was issued by another company, the Lee Kwok Kuen & Company Ltd.

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. A month pay in lieu of notice was paid to the complainant by the respondent at the time of his termination.

Compensation is therefore calculated as follows.

1. Holiday pay calculated on pro-rata basis (1.25 x 12 x 8.75)	- 131.25
2. Loss of employment: (five months salary: 5 x \$1,400.00)	- 7,000.00
Total	- \$7,131.25

ORDER

1. The respondent is to pay a total of \$7,131.25 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

