

IN THE TRADE DISPUTES PANEL )

OF SOLOMON ISLANDS

)Case No: UDF 12 of 2010

IN THE MATTER of the Unfair  
Dismissal Act 1982

AND IN THE MATTER of a  
complaint of Unfair Dismissal

BETWEEN: SAUL SAEFAFIA

Complainant

AND: MALAITA PROVINCE

Respondent

Hearing: 14 February, 2012, Honiara.

Decision: 25<sup>th</sup> April, 2012.

Panel: Wickly Faga Deputy Chairman  
- Employee Member  
Sika Manuopangai Employer Member

Appearances: Selson Fafale, representing the Complainant  
No appearance for the Respondent.

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FINDING

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The Complainant claims unfair dismissal on the grounds that he was not served with any notice, and that he was terminated on medical grounds whilst being admitted at the Kilu'ufi Hospital. Under r7(1) of the Trade Disputes (Unfair Dismissal and Redundancy) Procedure Rules, (cap75), (the rules), the Respondent must enter appearance by filing with the Panel Secretary a

notice of appearance within 21 days of receiving a copy of the complaint. The Respondent was advised through letters from the Panel Secretary dated 26/04/10 and 26/07/10 to respond to the complaint but had failed to do so.

The Respondent also failed to make any representation during the first pre-hearing on the 12/08/10. During a further pre-hearing on the 31/05/11, the Respondent again failed to appear through its representative or legal counsel. The Panel then granted an application by the Complainant's representative made pursuant to rule 7(2) of the Rules. Under rule 7(2) the Panel may restrict the Respondent from taking any part in the proceedings of the matter if it fails to comply with r7 (1) of the rules.

At the full hearing on the 14/02/12, only the Complainant gave evidence. In his sworn evidence, the Complainant, who now lives at Kobito One (1) in Honiara, stated that he was employed by Malaita Province from 1990 until January 2010 when he was dismissed from employment. He was head of the Malaita Province's Department of Infrastructure at the time of his dismissal. As head of the Department of Infrastructure, he was responsible for looking after areas dealing with mechanics, electrics, plumbing and carpentry. His job also includes making monthly reports on the work of his Department.

Before his dismissal, the Complainant was diagnosed with diabetes and admitted to Kilufi'i hospital in October 2009. He was amputated on part of his right foot. He was kept in hospital for monitoring until December 2009 when he was discharged. In February 2009, the Complainant attended to his place of work to resume duties, but was advised against performing his duties until the current circumstances of his employment had been looked into. It was whilst he was waiting for an outcome of the status of his employment, that he received a letter from the Personal Officer, one Mr. Augustine Faliomea acting on instructions of the Malaita Provincial Secretary, Mr. Harold Leka, advising the Complainant that he had been retired from his employment on medical grounds. There was however, no medical report from any Doctor to confirm that he was no longer fit to work. The Complainant was not even asked to explain himself to the Respondent before it actually made the decision to dismiss the Complainant's employment. According to the Complainant, his Doctor actually wrote a letter to the Respondent confirming that

he was well and ready to resume duties. After several unsuccessful attempts to get an explanation from the Respondent as to why he was retired on medical grounds without any confirmation of his inability from a doctor, the Complainant went and sought assistance from the Labour Office in Auki. The Labour office issued two letters seeking explanation from the Respondent on the circumstances surrounding the Complainant's dismissal. The respondent however, failed to make any response, so the Complainant filed his complaint with the Panel for unfair dismissal.

It is unfortunate that this matter has to proceed uncontested. The Panel is however satisfied that the Respondent had been given ample opportunity to respond to the Complainant's allegation, but it had failed to do so.

After having considered all available evidence in support of the Complaint, and being mindful of the uncontested evidence, the Panel is of the view that the decision to retire the complainant on medical grounds without a medical report is not proper and amounts to unreasonable action on the part of the Respondent. As an employer, it should have sought a medical report to verify that the Complainant is no longer able and fit to carry out his duties. According to evidence before the Panel, the Respondent had failed to consult the Complainant on the condition of his health after he was discharged from Kilu'ufi Hospital.

A further consideration is had on the Respondent's failure to acknowledge the Complainant's queries on why he was retired on medical grounds without any medical report. The Complainant has the right to know why an action had been taken to retire him on medical grounds without a medical report proving that he can no longer perform his duties as works officer after the amputation of part of his right foot.

The Panel had after taking into consideration all the circumstances of this complaint and having regard to the uncontested evidence, is satisfied that the Respondent had not acted reasonably in treating the reason as sufficient for dismissing the Complainant's employment. The Respondent is therefore found to have unfairly dismissed the Complainant from his employment.

Award

The Complainant seeks compensation. In awarding Compensation, the Panel takes into consideration the conduct of the Respondent before and after the date of dismissal. The Panel also takes into consideration the number of years that the Complainant had served the Respondent. A reasonable and fair compensation is calculated as follows;

$BW \times (52Wks - 20Wks=32Wks) = \$390-00 \times 32Wks = \$12,480-00$

The respondent unfairly dismissed the complainant and is to pay \$12,480-00 to **Saul Saefafia** being payable immediately and is recoverable as a debt under section 10 of the Unfair Dismissal Act 1982.

#### Appeal

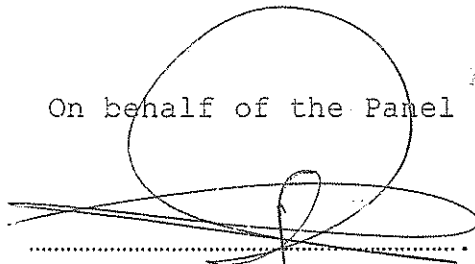
There is a right of appeal to the High Court within 14 days on points of law only, and any party aggrieved by the amount of compensation awarded may within one month of the date of the award appeal to the High Court as provided for under the Unfair Dismissal Act 1982, S. 7 (3).

#### Panel Expenses

The Panel fixes a contribution of \$500-00 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 25<sup>th</sup> of April 2012

On behalf of the Panel

A handwritten signature in black ink, consisting of a large circle at the top, a horizontal line, and a vertical line extending downwards from the center of the circle.

Wickly Faga

DEPUTY CHAIRMAN/TDP