

IN THE TRADE DISPUTES PANEL  
SOLOMON ISLANDS

Case No. UDFs 19-26/11

**BETWEEN:** Rere H. Beniamina, Mary Kutesi, Mary Suava,  
Esther Kiau, Maelyn Amo, Aerina Brandon Rejati, Mere Tarakabu  
And Tateisi Tarakabu (Complainants)

**AND:** Soltai Fishing & Processing Ltd (Respondent)

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

Appearances: Selson Fafale of Labour Office representing the complainants.  
Gabriel Suri for the respondent.

Date of hearing: 26/9/11

Finding delivered: 7/5/12

### Finding

By complaints (TDP Form 1s) lodged to the Panel on 17/3/11, the complainants claimed that they were unfairly dismissed by the respondent on 17/12/10.

The grounds for their complaints were: (1) no notice of termination and (2) No warnings received during the period of their employment with the respondent company.

In unfair dismissal cases, it is for the employer to show that the reason for the dismissal of the complainant (complainants in this case) was substantial and of a kind such as to justify the dismissal of an employee holding his position; and whether it had acted reasonably in treating that reason as sufficient for dismissing the employee or employees.

### **Background Facts**

Soltai Fishing and Processing Ltd is a company based in Noro in the Western Province which is engaged in the processing and canning of fish. The company has a total of about 1,000 workers altogether. Since cannery has to meet Food Quality Control standards, there is a need for break at the end of each annual year to allow for cleaning and maintenance for the next production year. For that reason, the company adopts a seasonal contract system in which the workers are employed under a one year fixed-term contract, although no written contracts were signed by the

employees. The period of such contract is January to December each year. At the end of the year workers are assessed and if pass, their contracts are renewed the following year. The system has been in place since 2001.

### **Assessment of workers**

Workers are assessed by appraisal forms (exhibit 1) which are first filled in by their immediate supervisor, and then passed onto the Divisional manager. The Divisional manager then calls the supervisor to discuss the reports and then have them finalized before forwarding them to the Human Resource Manager. Based on the assessment reports, the HRM then writes to those who fail the assessment to inform them that their contracts will no longer be renewed.

With the appraisal form, the workers are graded on each of the following: **skill work performance, daily attendance, behavior and attitude**. The last column was for their **overall grading**. Once a worker gets "E" for the overall grading, he or she is not recommended for further renewal of his/her contract.

Supervisors are given guidelines as to how they should assess the workers (exhibit 3). For example, for "**skill work performances**" the worker is graded "A" if he/she performs to the company expectation (professionally and efficiently). A "B" grade if the worker works professionally but too slow. A "C" grade if the worker works unprofessionally but very fast. A "D" grade if the worker has not performed to either A, B, or C.

### **Were the complainants aware of the seasonal contract system?**

The complainants claimed they were not aware that their employment was only on a one year fixed term contract. The Panel cannot accept that as true. There is overwhelming evidence that through induction, upon recruitment of the workers (including the complainants) they were instructed of the nature of their contracts and the type of job they would be performing.

### **Were the complainants fairly dismissed?**

Apparently, the complainants, like others in the cannery division were employed under a one year fixed term contract. Their contracts are renewable depending on their work performance throughout the year. The complainants when assessed at the end of the year were all given E grades for their overall assessment; hence their contracts could not be renewed in 2011.

Basically, the complainants were said to have not performed which they disagreed. The respondent witnesses all confirmed how the assessment reports were done. However none of the witnesses explained in what ways each of the complainant were said to have not performed. There was not even a documentary evidence (eg, a letter written to any of the complainants warning her or reminding her of her low standard performance) until they were assessed at the end of the year. The complainants, in particular, Mary Kutesi were transferred to different sections within a short time but that alone cannot be taken as a proof for their non performance. A good practice as the Panel would expect of the respondent or any employer in the position of the respondent is to keep

a record of each of the employees. If a worker fails to attend at a particular day or had caused embarrassment or disturbance to any working colleague, or had breached any company rules, that has to be noted down in his personal record. Where a worker has performed below the standard due to his laziness or carelessness, the supervisor must at least call him/her to discuss the matter with him or her. Such discussion must also be noted down in the workers' record or file. When it comes to making assessment at the end of the year, the supervisor simply refers back to the individual worker's record. On the evidence, that did not happen in the case of the complainants.

Even if the respondent is said to have substantial grounds for the complainants' dismissals, the manner in which the complainants were dismissed were not proper. Except for Mary Kutesi, none of the complainants were issued with notice for their termination. As a matter of good management practice, the employee must be given notice of his/her termination, even if the employee was employed under a fixed-term contract.

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

### Award

In considering award in this matter, the Panel notes as follows. The complainants have not secured any employment since termination. Except for Mary Kutesi, the complainants were not given one month notice for their termination.

Compensation is therefore calculated as follows.

#### (1) Rere H. Beniamina

(a) One pay in lieu of notice	- 564.48
(b) Loss of employment (3 x 564.48)	- 1,693.44
<b>Total</b>	<b>- \$2,257.92</b>

#### (2) Mary Kutesi

(a) One pay in lieu of notice	- Not applicable
(b) Loss of employment (3 x 514.00)	- 1,542.00
<b>Total</b>	<b>- \$1,542.00</b>

(3) Mary Suava

(a) One month pay in lieu of notice	- 564.48
(b) Loss of employment (3 x 564.48)	- 1,693.44
<b>Total</b>	<b>- \$2,257.92</b>

(4) Esther Kiau

(a) One month pay in lieu of notice	- 564.48
(b) Loss of employment (3 x 564.48)	- 1,693.44
<b>Total</b>	<b>- \$2,257.92</b>

(5) Maelyn Amo

(a) One month pay in lieu of notice	- 564.48
(b) Loss of employment (3 x 564.48)	- 1,693.44
<b>Total</b>	<b>- \$2,257.92</b>

(6) Aerina Brandon Reiati

(a) One month pay in lieu of notice	- 564.48
(b) Loss of employment (3 x 564.48)	- 1,693.44
<b>Total</b>	<b>- \$2,257.92</b>

(7) Mere Tarakabu

(a) One month pay in lieu of notice	- 564.48
(b) Loss of employment (3 x 564.48)	- 1,693.44
<b>Total</b>	<b>- \$2,257.92</b>

(8) Tateisi Tarakabu

(a) One month pay in lieu of notice	- 564.48
(b) Loss of employment (3 x 564.48)	- 1,693.44
<b>Total</b>	<b>- \$2,257.92</b>

ORDER

1. The respondent is to pay compensation to each of the complainants as calculated above within 21 days.
2. The respondent is also to pay \$1,000.00 towards panel expenses within 21 days.

APPEAL

Right of appeal to the High Court within 14 days.

On behalf of the Panel:



.....  
CHAIRMAN/TRADE DISPUTES PANEL