

IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS

Case No. UDF 9/10

BETWEEN: Craig Aluta (Complainant)

AND: Solomon Airlines Limited (Respondent)

Panel: 1. Francis Cecil Luza - Chairman
2. Yolande Yates - Employer representative
3. Daddley Hoala - Employee representative.

Appearances: Wilson Rano for the complainant.

Chris Hapa for the Respondent.

Date of hearing: 30/3/11, 17/8/11 & 1/9/11.

Finding delivered: 11/3/13.

Finding

By complaint (TDP1) lodged to the Panel on 12/3/10, the complainant claimed that he was unfairly dismissed by the respondent on 25/1/10.

The grounds for his claim were stated as follows:

"(a) Unfairly dismissed because complainant elected to observe Sabbath on Saturdays...

(b) Despite raising observance of Sabbath complainant was still demanded to work on Saturdays."

By notice of appearance (TDP2) filed on 20/5/10, however, the respondent company stated that the complainant was terminated on the grounds of insubordination and neglect of duty.

Background

The complainant began his employment with the company as an apprentice in 2003. His position was upgraded to Aircraft Maintenance Engineer effective June 30th, 2008 for which he was placed at a basic salary of \$36,288.00. From then he only worked for about two years when he was terminated on 25/1/10.

Respondent's case

The respondent's case was that the complainant was dismissed for insubordination and neglect of duty. Prior to his termination he was suspended 14 days on 11/11/09 for refusing to report for rostered duty on Saturday 07/11/09 despite both verbal and written instructions given to him on Friday 6/11/09 (see exhibit 4). Whilst on suspension, the complainant was given the opportunity to respond to the grounds of his suspension, which he did. In a letter dated 16/11/09 addressed to the Human Resource Specialist (exhibit 5), the complainant explained his case in response to the grounds of his suspension. After considering that letter, the complainant was reinstated on 25/11/09. Mr. Rei Logona (RW1), in his sworn evidence, told the Panel that reinstating the complainant then would give him an opportunity to reform and to perform to the expectation of the company. Instead, the complainant continued to ignore the duty roster by absenting himself from duties on Saturdays 12/12/09 and 9/1/10. As a result, the complainant was investigated in which the complainant was also given an opportunity to explain his case. After considering the complainant's case, the company decided to terminate the complainant, which it did by letter dated 25/1/10 (exhibit 2).

Complainant's case

The complainant's case basically was that the company had dismissed him because he had elected not to work on Saturdays his day of rest being a member of the Seventh Day Adventist.

In his sworn evidence, the complainant told the Panel that though he takes alcohol, working on a Saturday (Sabbath) is something he sees as very offending according to his

religious belief that he would not accept. Hence, he had always made arrangement with a working colleague, Joseph Anea (Jr.) to take his shift on Saturdays. Joseph was a Catholic that whenever he was required to work on a Sunday, he would also arrange with the complainant to take his shift on that day. The practice went well for them until when Trevor Palmer was responsible for drawing up the duty roster -which he could not accept workers making any changes to the roster to suit their own needs. Mr. Palmer expected the complainant to adhere to the duty roster and attend to work whenever he is required, even if the complainant was required to work on a Saturday (Sabbath).

Was the complainant fairly dismissed?

In determining whether or not an employee is fairly or unfairly dismissed, the guiding principle is found in section 4 (2) of the Unfair Dismissal Act, Cap 77. That section provides:

"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,
- (b) In all the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissing the employee."

Was the complainant dismissed for a substantial reason of a kind that would justify a dismissal of an employee holding his position?

To answer the question, the Panel must first consider whether the non-compliance of the duty rosters on different occasions leading up to the dismissal of the complainant on 25/1/10 amounts to "insubordination and neglect of duty".

If the answer is yes, then the grounds for the complainant's dismissal must be said to be substantial.

On the evidence, it was not disputed that the complainant did not turn up for work on Saturday 11/11/09, a result of which, he was suspended. After considering his submission, the complainant was reinstated. By then, the complainant was expected to reform and abide by the duty rosters. The nature of his work clearly requires him to work every day and to adjust the duty roster to suit his need (ie, to avoid working on a Saturday) unfortunately would be an impossible thing to do. In such undertakings, engineers must be prepared to work any day at any time. For sure, the complainant was aware of this right from the beginning before he even took up his carrier with the company. Non-compliance of the duty roster by the complainant, as such, therefore amounts to neglect of duty and insubordination.

Having said that, the Panel finds that the complainant was dismissed for a substantial reason and of a kind that would justify dismissing an employee holding the complainant's position.

Did the respondent act reasonably, in all the circumstances, in treating the reasons as sufficient for dismissing the complainant?


The Panel would also answer the question in the affirmative. When investigating the complaint regarding the non-compliance of the duty roster, the complainant was given the opportunity to explain his case before a decision was made to terminate him. Upon termination the complainant was also paid one month notice and a leave pay both totaling \$12,455.25 (gross).

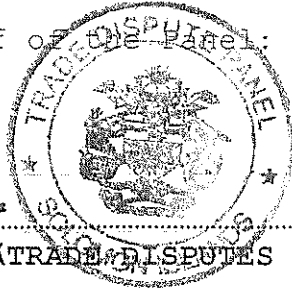
Having said that, and in all the circumstances, the Panel finds that the complainant was not unfairly dismissed.

By way of conclusion, it must be pointed out that the Panel finds no evidence to prove any suggestion that the complainant was dismissed for exercising his right to observe Saturday as his Sabbath (a day of rest) according to his religious belief. Rather, his situation was unfortunate, in that, the nature of his work requires him to work at any day. The complainant was well aware of this

when he chose to take up the career right from the beginning.

On behalf of the Panel:


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CHAIRMAN TRADE DISPUTES PANEL

The seal is circular with the text "TRADE DISPUTES PANEL" around the perimeter. In the center, there is a crest featuring a globe and other symbols. Two small stars are positioned on the left and right sides of the inner circle.