

IN THE TRADE DISPUTES PANEL)

OF SOLOMON ISLANDS)

Case No: UDF 57, 58, 59, 64 of 2011

IN THE MATTER of the Unfair Dismissal Act 1982

AND IN THE MATTER of a complaint of Unfair Dismissal

BETWEEN: ISAAC KALI & Others

Complainant

AND: SMART SOLOMON BAKERY LIMITED

Respondent

Hearing: 21st August, 2012, Honiara.

Decision: 8th April 2013.

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

Appearances: Selson Fafale, of Commissioner of Labour Office representing the Complainant.

Respondent barred.

FINDING

The four Complainants in this matter were terminated by way of redundancy. This was due to financial instability experienced by the Respondent in 2010. They filed their Complaint with the Panel Secretary pursuant to section 8(1) of the Unfair Dismissal Act [cap 77]. They came to the Panel seeking determination as to the amount of redundancy payment they are entitled to be paid.

At the prehearing assessment on the 29/11/11, the Panel granted an application to bar the Respondent from taking further part in the proceedings of this matter, after it failed on two given occasions to make an appearance; first by a letter from the Panel Secretary dated 18/08/11, with enclosures of TDP 2 Forms and instructions to complete and return the forms, and second, by a reminder letter dated 24/10/11. A further order was made to consolidate the four complaints after being satisfied that the facts of each complaint are similar, and that they all seek the same relief.

At the full hearing, all four complaints were heard together. All the Complainants, except Isaac Kali, were present at the hearing. Reginald Weisanau who worked as a flour mixer gave his evidence under oath. He told the Panel that he had worked for the Respondent for a total of 9 years at the time of his dismissal. He was terminated by way of redundancy on the 30th of July 2010. Mr Weisanau also told the Panel that he and his three colleagues worked for a further four months. They were not paid any wage for the four months worked, even though the Managing Director, Mr. Jonathan Zama promised to pay them.

The other Complainants, though commenced employment at different times were terminated by way of redundancy on the 30th July 2010.

It is clear from evidence before the Panel that the Complainants were dismissed due to redundancy. The Respondent is therefore required under section 2 of the Employment Act [Cap72], to pay the Complainants a sum calculated in accordance with section 7 of the Employment Act. Section 2 states; that "where an employee is dismissed by his employer, and the dismissal is because of redundancy, and the employee has been continuously employed for a period of twenty-six weeks or more ending with the date of his dismissal, then, subject to the following provisions, the employer shall be liable to pay him a sum calculated in accordance with section 7 (in this Part referred to as a "redundancy payment")." But There are however excluded cases as stated under section 3 (1) of the Employment Act. It is clearly stated under section 3.(1) that, "an employee who is dismissed because of redundancy is not entitled to a redundancy payment if-on the date of his dismissal he has attained the age of fifty years..." The immediate question therefore is whether the Complainants are less than fifty years. According to evidence before the Panel, David Maelasi, Billy Hoita and Isaac Kali were fifty or more at the time of their dismissals. Reginald Weisananu was 38 years old when he was dismissed. Clearly the Panel cannot assist David Maelasi, Billy Hoita and Isaac Kali

any further. They all fall squarely under the excluded age, and are not entitled to be paid any redundancy. As for Reginald Weisanau, his redundancy pay is calculated as follows;

$PE \times 1/26 \times BW = \text{Redundancy}$

$416 \times 1/26 \times \$260.00 = \$4,160.00$

Award

The Respondent had dismissed the Complainant due to redundancy and is ordered to pay \$4,160.00 to Reginald Weisanau, being payable immediately and is recoverable as a debt under section 10 of the Unfair Dismissal Act 1982.

Appeal

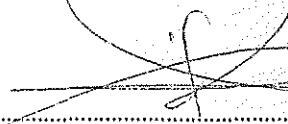
There is a right of appeal to the High Court within 14 days on points of law only, and any party aggrieved by the amount of redundancy awarded may within one month of the date of the award appeal to the High Court as provided for under the Unfair Dismissal Act 1982, S. 7 (3).

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 8th of April 2013

On behalf of the Panel



Wickly Faga

DEPUTY CHAIRMAN/TDP

