

IN THE TRADE DISPUTES PANEL  
OF SOLOMON ISLANDS

Case No: UDF 61 of 2010

IN THE MATTER of the Unfair  
Dismissal Act 1982

AND IN THE MATTER of a  
complaint of Unfair Dismissal

BETWEEN: MOLLY RAENITCALA

Complainant

AND: SOLOMON TROPICAL PRODUCTS

Respondent

Hearing: 9<sup>th</sup> October, 2012, Honiara;

Decision: 10<sup>th</sup> April 2013

Panel: Wickly Faga Deputy Chairman

Walter Tesuatai Employee Member

- Employer Member

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

Respondent barred.

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FINDING

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The Complainant alleged unfair dismissal against the Respondent on the grounds that her termination was made without any notice. The Respondent failed to file its response to the claim within 21 days after receiving the TDP 1 Form in accordance with rule 7(1) of the Trade Disputes Panel (Unfair Dismissal & Redundancy) Procedure Rules (the rules). There was neither an application made to abridge time under rule 13(1) of the rules. During a prehearing on the 20/09/2010, the Respondent failed to attend either by a representative or legal counsel without any reason.

The Panel therefore, had in its discretion, granted an application made under rule 7(2) of the rules, to bar the Respondent from taking further part in the proceedings of the matter. The matter therefore proceeded uncontested.

The Complainant gave evidence in support of her case. She stated in her sworn evidence that she was employed by the Respondent as Tailor in 2007. In May 2010, she sought advice from a Doctor at Mataniko about her pregnancy. The Doctor advised her to take maternity leave. According to the Complainant, she took a letter from the Doctor and gave it to Mrs. Betty Vollrath. Mrs Vollrath then approved the Complainant's maternity leave commencing on the 28<sup>th</sup> May 2010. She was to resume duties on the 16<sup>th</sup> August 2010.

On the 16<sup>th</sup> August 2010, the Complainant turned up at the Respondents premises at China Town, to resume duties. She met Mrs. Vollrath who told her that there was no space for her. She was told to return the next day. When she returned the next day, Mrs. Vollrath told her that she could not locate her file. The Complainant then insisted that she be given a letter of dismissal stating reasons why she can no longer be considered an employee of the Respondent. Despite her insistence, she was never given any letter of termination.

It is unfortunate that the Respondent was not able to file its response to the Complaint, and admit or not that the Complainant was dismissed. However, it is evident from the Complainant's sworn evidence that she is no longer working for the Respondent after she was told that there was no longer space for her at the factory. The Panel is therefore satisfied that the Complainant was dismissed on the 16<sup>th</sup> August 2010. There was however no reason given for her dismissal although she was told that there was no space available. It is an interesting scenario where a continuing employee who is resuming duties was told that there is no space for her. The complainant had denied receiving any notice that she is no longer employed, or at least a payment in lieu of notice.

In view of all the available evidence before the Panel, and being mindful of the uncontested evidence, the Panel is satisfied on the balance of probabilities that the Complainant was dismissed for no justifiable reason, and in all the circumstances of this case, finds that the Complainant's dismissal was unfair.

The Panel therefore makes a reasonable award of compensation in favor of the Complainant. In making this award, the Panel takes into consideration the conduct of the Respondent both before and after dismissal, and also takes into account the period of employment of the Complainant.

**Award**

1. BW x 52	=	Compensation
\$150.00 x (52-12 = 40) = \$150.00 x 40	=	\$4,000.00
2. One month payment in lieu of notice	=	<u>\$800.00</u>
	<b>Total</b>	<b>\$4,800.00</b>

The respondent unfairly dismissed the complainant and is to pay \$4,800.00 to Molly Raenitala being payable immediately and is recoverable as a debt under section 10 of the Unfair Dismissal Act 1982.

**Appeal**

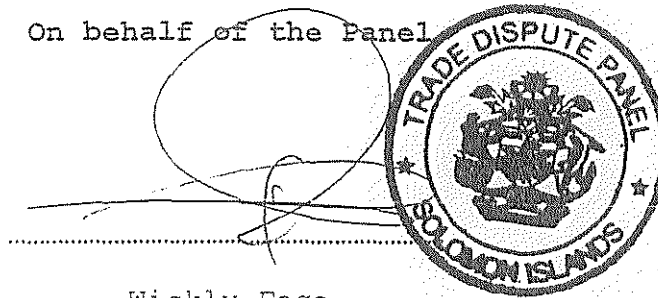
There is a right of appeal to the High Court within 14 days on points of law only, and any party aggrieved by the amount of compensation awarded may within one month of the date of the award appeal to the High Court as provided for under the Unfair Dismissal Act 1982, S. 7 (3).

**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 this 10<sup>th</sup> day of April 2013

On behalf of the Panel



Wickly Faga

DEPUTY CHAIRMAN OF TDP