

**IN THE TRADE DISPUTES PANEL  
SOLOMON ISLANDS**

Case No. L9/2/15

BETWEEN

**Lecturers Association of Solomon Islands National University (LASINU hereafter)**

Applicant

AND

**Solomon Islands National University (SINU hereafter)**

Respondent

<u>Panel:</u>	1. Willy Vaiyu	Deputy Chairman
	2. Wickly Faga	Employer representative
	3. Philip Ika	Employee representative

Appearances:

Eddie Toifai for the Applicant.  
Andrew Radclyffe for the Respondent.

Date of hearing: 24<sup>th</sup> April 2017.

Date finding delivered: 23<sup>rd</sup> August 2017.

**Finding**

1. By letter dated 11<sup>th</sup> August 2015, Ms. Maelyn Bird of Emerald Lawyers referred a trade dispute to the Panel pursuant to Section 6(1) of the Trade Disputes Act 1981 of a trade dispute between LASINU and SINU involving the following issues:
  - a. When is the effective date on which LASINU members entitlements would commence?
  - b. Is the commencement date also the effective date?
  - c. Duration of staff contracts
  - d. Termination of staff
  - e. The interpretation of the terms (in particular Clause 5) of the MOA dated 13<sup>th</sup> February 2015.

**Relevant facts**

2. As the Solomon Islands College of Higher Education (SICHE) was preparing for its upgrading to SINU level there has been uncertainty amongst the Staff members of SICHE regarding their employment and conditions of work with the new University.

3. In 2012 the National Parliament passed a Bill for the new University called the SINU 2012 Act. Section 1 of SINU 2012 Act states that the Act will commence at a later date appointed by the Minister. On the 1<sup>st</sup> January 2013 was the day appointed by the Minister as the commencement day for the Act. The official opening of SINU was done on the 13<sup>th</sup> of April 2013.
4. The SINU Council met on the 29<sup>th</sup> April 2013 and among other matters approved SINU Salary Structure.  
On the 2<sup>nd</sup> May 2013 a letter (Exhibit "SH1") was issued to all SINU Staff informing them of the approved new Salary Structure for SINU.
5. On the 8<sup>th</sup> May 2013 the Vice-Chancellor wrote a memo (Exhibit "SH2") to all SINU Staff informing them of Salary transfer, backdate of pay and other staff concerns.
6. A Memorandum of Agreement (Exhibit "SH3" between SINU and Staff Associations was signed on the 13<sup>th</sup> February 2015.
7. Staff contract document was not ready until or about 1<sup>st</sup> April 2015 when some staff started signing the contract of employment with SINU. Some staff hesitate to sign the contract till later.
8. Continued dialog between LASINU and SINU on conditions of employment, effective date of contract of employment, payback date etc, reached deadlock and the matter was referred to the Panel as a trade dispute on the 11<sup>th</sup> August 2015.
9. A preliminary hearing before the Panel on the 2<sup>nd</sup> September 2015 counsels for both parties made submissions on a preliminary issue arising that was raised by counsel for the Respondent, whether LASINU is a legal entity recognized by law, capable of suing and being sued and whether it has legal standing to refer this matter or any matter to the Panel as a trade dispute.
10. The Panel made a ruling on this preliminary issue then that LASINU is a legal entity capable of suing and being sued and therefore has the *locus standi* to represent its members and to refer the dispute to the Trade Disputes Panel even if it did not register as a Trade Union by virtue of Section 36(1) of the SINU Act.

### Issues

11. On a further prehearing before the Panel on the 26<sup>th</sup> April 2016 both parties agreed on the following issues as the remaining issues for the Panel to make determinations on;
  1. When SICHE was upgraded to SINU level, were LASINU members' entitlements also upgraded to that level?
  2. If the entitlements were respectively upgraded, what date should the entitlement commence?
  3. What is the effect of signing of current contracts by members as opposed to what is the legitimate entitlement of the members as issues 1 & 2?

## Relevant Laws

12. Section 1 of the *SINU Act 2012*, states;

*This Act may be cited as the Solomon Islands National University Act 2012, and commences on the date appointed by the Minister, by notice in the Gazette. (Italic Panel emphasis)*
13. There was no copy of the commencement Gazette notice provided for the Panel, however both counsels agreed and confirmed that the commencement of the Act as appointed by the Minister was 1<sup>st</sup> January 2013 and official grand opening of SINU was 13<sup>th</sup> April 2013.
14. Section 50 of the *SINU Act 2012* Staff rights and entitlements, states;

*(1) On the commencement date, staff, where tenured, permanent or contracted, of the College of Higher Education shall be deemed to be employed by the University on such terms and conditions as the University shall determine.*

*(2) All rights, including leave entitlements, accrued or accruing to the person as a staff member of the College of Higher Education to the commencement date, shall be maintained by the staff after the commencement date. (Italic Panel emphasis)*
15. The Applicant in this case called 3 witnesses who gave evidences in support of their claim.  
The Respondent choose not to call any witness.
16. Counsel for the Applicant submits before the Panel that LASINU members' entitlements legally commenced on the 1<sup>st</sup> January 2013 the day appointed by the Minister as the commencement day of *SINU Act 2012*, and that the effective date of signing of employment contracts should also be 1<sup>st</sup> January 2013, therefore the complainant should be awarded entitlement for back payment to 1<sup>st</sup> January 2013.
17. On the other hand counsel for the Respondent argued and submits that Section 50(1) of the *SINU Act 2012* is clear that,

*"On the commencement date, staff, where tenured, permanent or contracted, of the College of Higher Education shall be deemed to be employed by the University on such terms and conditions as the University shall determine." (Underline, italic & bold Panel emphasis)*
18. The Respondents counsel submits that, therefore it is the University that determine the pay and conditions of employment of the University staff and that it has determined that the new salaries would not be backdated to 1<sup>st</sup> January 2013 but 1<sup>st</sup> of April 2015 the day that staff of the SINU contracts took effect.
19. Counsel for the Applicant tendered five (5) exhibits through the complainants' number one witness Mr. Samson Tahuniara and the first exhibit marked as "SH1" was

a copy of a letter, as an example of a letter from SINU Human Resource office to all SINU staff including LASINU members dated 2<sup>nd</sup> May 2013.

The subject of this letter was "SALARY ADJUSTMENT FROM SICHE TO SINU" and paragraph 1 states,

*"You are hereby informed through this memo that Solomon Islands National University Council has approved the new Solomon Islands National University Salary Structure at its meeting held on the 29<sup>th</sup> April 2013."* (Italic Panel emphasis)

20. At the conclusion of the last paragraph of this same letter (SH1) it states,

*"The SINU Salary is effective from the 1<sup>st</sup> January 2013 however any backdate payment will be processed at a time later depending on availability of funds."* (Italic Panel emphasis)

21. Exhibits 2 marked as "SH2" is a copy of a memo from the office of the Vice-Chancellor signed by the then Vice-Chancellor Dr. Galo to all SINU Staff Members dated 08<sup>th</sup> May 2013 the subject of this memo was "SALARY TRANSFER" and at paragraph 1 and 2 states,

*"1. SINU will continue with Salary transfer and allow the HRM/FINANCE office to make this happen.*

*2. This will involve transferring of staff salary and backdating their salary to 1<sup>st</sup> January 2013. This is currently taking place. All staff should by now receive adjustment in their basic salary this fortnight. Back pay will be processed through pending funds being available and will take time."* (Italic Panel emphasis)

22. It is evident from witnesses that there has been a payback backdated to the 1<sup>st</sup> April 2015 and not 1<sup>st</sup> January 2013.

23. The Panel is of the view that LASINU entitlements are effective on the day the SINU Act 2012 came into force that is the day appointed by the Minister being the 1<sup>st</sup> January 2013, the day SICHE was upgraded to SINU level.

24. The Panel is also of the view that LASINU entitlement commences on the day SICHE was upgraded to SINU level that is, 1<sup>st</sup> January 2013.

25. Again the Panel is of the view that contract signed by LASINU members commencing on the 1<sup>st</sup> April 2015 is a new contract with the SINU and has effect only on Staff entitlements after the 1<sup>st</sup> April 2015 but does not affect any Staff entitlements before the 1<sup>st</sup> April 2015.

26. And that the Salary Adjustment referred to in exhibits "SH1" and "SH2" must be backdated to the 1<sup>st</sup> January 2013.