

**IN THE TRADE DISPUTES PANEL  
SOLOMON ISLANDS CASE NO. UDF 21/15**

**BETWEEN:**

**Christopher Bodau  
(COMPLAINANT)**

**AND:**

**Heritage Park Hotel  
(RESPONDENT)**

Panel: 1. Willy Vaiyu – Deputy Chairman  
2. Bryan Ulufia - Employer Representative  
3. Philip Ika - Employee Representative

Appearances: Barry Kepulu for the Complainant  
Andrew Radclyffe for the Respondent

Date of Hearing: 31/05/2017

Date Finding Delivered: 06/03/2018

**FINDING**

1. By complaint lodged to the Panel (TDP Form 1) on 02/04/2015, the Complainant claimed he was unfairly dismissed by the Respondent on 17/02/2015. The grounds for his complaint were stated as follows:
  1. No natural justice; and
  2. Unfair termination.
2. The Respondent filed notice of appearance on 20/04/2015 on which denied the claims stating the Complainant was in fact dismissed for '*insubordination, action that seriously damage the Employers reputation*'.

**Relevant facts**

3. The Complainant was employed by the Respondent as a Security Officer. His employment began on 20/09/2009 (Exhibit 1). Before the Complainant was terminated he was issued with three warning letters from the Respondent for being late for work.
4. The warning letters were dated 04/09/2012 (Exhibit 2), 10/09/2012 (Exhibit 3) and 15/09/2012 (Exhibit 4) respectively, these letters were written by the Respondent one after the other within a span time of less than 2 weeks. For some reasons unknown the Complainant was not terminated on the third warning letter.

5. The evidence of the Complainant was that he was handed the warning letters on the same day but was unable to remember the actual date.  
A final warning letter was issued to the Complainant also for being late on the 13/01/2015 (Exhibit 5) and he was finally handed termination letter on the 17/02/2015 (Exhibit 9) more than 2 years from the 3 warning letters.  
The reasons given by the Respondent for the termination was false allegations against the General Manager citing clause 13.2(f) of the Contract of Employment (Exhibit 1) which states;

*(f) actions which seriously damage the employer's reputation.*

6. The Complainant was paid \$9,954.95 and the Respondent calculated the payment as follows;

- 2 days wages for 15 <sup>th</sup> and 16 <sup>th</sup> February 2015	: \$216.01
- 2 weeks' severance pay	: \$1663.94
- 15 days annual leave	: \$1783.00
- Sea fare	: \$5292.00
- Out of pocket expenses	: \$1000.00

7. During the hearing the Respondent General Manager gave oral evidence and tendered documents supporting their case.

The Complainant on the other called 3 witnesses in support of his case.

The Respondent submitted to the Panel that the Complainant was not terminated for being a member of Workers Union but because of insubordination as set out in the termination letter dated 17/02/2015 (Exhibit 9).

### **Guiding Principle**

8. In unfair dismissal cases, the guiding principles in determining whether a dismissal is fair or not is found in Section 4 of the *Unfair Dismissal Act*, Cap 77, which states:

*"(1) 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.*

9. The Panel in determining whether the termination was fair or not these two questions must be asked;

- i. **Was the reason for dismissing the Complainant substantial and of a kind justifying a dismissal of an employee holding the Complainant's position?**

10. In answering this question the Panel heard on the evidence and was satisfied the Complainant was making allegations against the Respondent General Manager

without substantiating the allegations which mount to insubordination.  
All the evidences considered together, in the Panel's view, insubordination constitutes a reason substantial enough to terminate the Complainant.

11. Having said that, and in all the circumstances, the Panel finds that the reason for terminating the Complaint was substantial, and is of a kind justifying a dismissal of an employee holding the Complainant's position.
2. **Did the employer act reasonably in treating that reason as sufficient in terminating the complainant?**
12. The Panel answers this question in the negative.  
The Panel noted from documents tendered that there was an investigation done on the allegation (Exhibit 6) made against the Respondent General Manager which was done by another employee. The information gather from that investigation, from a survey, were provide to Mr. Lewis G. Nielsen, again the Director and Company Secretary.
13. The Panel is of the view that there is no impartiality in the investigation that led the dismissal of the Complainant.
14. Whilst the Complainant was given the opportunity to be heard (Exhibit 6) he requested that another person to accompany him at the meeting he was told there is no case to arbitrate (Exhibit 8) and therefore the request was denied.

#### **Natural Justice**

15. The principles of natural justice comprise of the following two limbs:
  - i. the rule against bias (*nemo iudex in causa sua* – no one should be a judge in his own cause);
  - ii. The right to a fair hearing (*audi alteram partem* – hear the other side).
16. This calls for fairness and therefore in all circumstances the Respondent must act fairly, in good faith and without bias afford the Complainant the opportunity to adequately state his case. This also means an opportunity and adequate time to be informed of the allegations and to reply to the allegations.
17. The Panel have noted that whilst the opportunity to be heard was provided, the Complainant requested for a company of someone at the meeting but was denied. The Panel also noted that the Complainant requested for an independent investigator, that request was also denied.
18. Given those evidence and in all the circumstances, the Panel finds that the Complainant's dismissal was unfair in these circumstances.

#### **Award**

19. In awarding compensation, the panel notes that the Complainant had worked for the Respondent for a period of more than 5 years. The Complainant has not secured any employment since termination on the 17/02/2015.

The Panel therefore awards;

- i. six months' salary as compensation to the Complainant for loss of employment,
- ii. 1 month in lieu notice.

The award is calculated as follows;

Six months' salary;

Hours worked per fortnight - 90hrs  
Hourly rate - \$12.19  
2 pay days in a month  
90 x 12.19 x 2 x 6 months - \$13,165.20

1 month notice pay;

90 x 12.19 x 2 - \$2,194.20

Total pecuniary awarded - **\$15,359.40**

20. The Panel therefore considers the sum of **\$15,359.40** as fair and reasonable in all the circumstances, taking account of the conduct of the employer and the Complainant both before and after the date of dismissal.

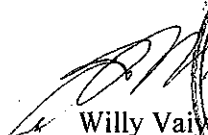
### Order

1. The Respondent is to pay the sum of **\$15,359.40** as compensation to the Complainant for unfair dismissal within 14 days.
2. Pursuant to Section 11 of the Trade Disputes Act 1981 the Panel orders the Respondent pay Panel expenses in the sum of \$1,000.00 to the Ministry of Commerce, Industry Labour & Immigration within fourteen days of receipt of this Award.

### Appeal

21. There is a right of appeal by any aggrieved party to the High Court on question of law only pursuant to Section 13 of the Trade Disputes Act 1981.

On behalf of the Panel

  
Willy Vaiyui  
Deputy Chairman  
Trade Dispute Panel

