

IN THE TRADE DISPUTES PANEL**UDF NO. 4/2014****SOLOMON ISLANDS****BETWEEN: MICHAEL KOLMAN SADE (Complainant)****AND: HONIARA CITY COUNCIL (Respondent)**

Panel: 1. Natalie Tadiki Kesaka - Chairman
2. Bryan Ulufia - Employer Representative
3. Unice Kiko - Employee Representative

Appearances: Mr. Eddie Toifai for the complainant

Respondent: Barred

Date of hearing: 17.11.2017

Finding delivered: 30.04.2018

FINDING

1. The complainant was employed by the respondent as a driver from January 2010 to the date of his termination on the 18th of December 2013.
2. He earns a forth night salary of \$ 763.73.
3. He alleges that he was never given any warning before his termination.
4. The complaint during his tenure of employment was warned on two separate occasions.

5. The first warning was issued to the complainant on the 21.12.2010 when the complainant assaulted a person at the Honiara Central Market whilst on duty.
6. The second warning was issued to the complainant on the 01.02.2012 when he destroyed a Station Diary at the Honiara City Council Head Office.
7. The incident leading to his termination was that he destroyed 5 tables and assaulted a person at the Honiara Central Market.
8. In his closing address counsel for the complainant submitted that warnings which were issued more than 2 years on should be ignored for this procedure.
9. He further submitted that complainant was not drunk and was off duty at the time of the incident, therefore his plea should be considered.
10. Counsel submitted that on the first and second occasions the complainant was not under the influence of liquor however the complainant concurred that he was drunk on the third occasion but stressed that he was off duty.
11. He claims on this basis that his termination was unfair.

THE LAW

12. In unfair dismissal cases, the guiding principles in determining whether a dismissal is fair or not if found in section 4 of the Unfair Dismissal Act, Cap 77 states:
 - 4. (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; and**
 - (b) in all the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissing the employee.**
13. Was the reason for dismissing the complainant substantial and of the kind justifying dismissal of an employee holding the complainants position?

RELEVANT FACTS

- 14. The complainant admitted that he was issued with two written warnings on two separate occasions for acting unprofessional at work.
- 15. The complainant alleges that he was not warned before his termination.
- 16. The Panel finds that having being issued with two written warnings by the Respondent is sufficient warning.
- 17. The reason being is that warnings are an important sign post in any work environment to send a message of precaution to employees.
- 18. The complainant failed to take heed of the warnings and continued to act unprofessionally.
- 19. The Panel therefore concludes that being off duty at the time of the incident is not excusable. Such behaviour by an employee is unacceptable and cannot be tolerated at any work environment.
- 20. The Panel finds on this basis that the complainant was not unfairly dismissed. His termination was fair.

PANEL COSTS

Order

- 21. The Respondent is to pay the sum of \$ 1500 towards Panel Expenses within 14 days.

APPEAL

- 22. Right of Appeal to the High Court within 14 days.

By the Panel

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Chairman