

**IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS**

CASE NO. UDF 85/16

BETWEEN:

**Anthony Bulumanu
(COMPLAINANT)**

AND:

**Silent World Shipping & Logistic Ltd
(RESPONDENT)**

Panel: 1. Willy Vaiyu (Deputy Chairman)
2. Brain Ulufia (Employer representative)
3. Eunice Kiko (Employee representative)

Appearance: Primo Afeau for complainants

Respondent barred

Date of hearing: 05/06/2019

Date of award: 10/02/2020

FINDING

1. By complaint lodged to the Panel (TDP Form 1) on 09/11/2016, the Complainant claimed he was unfairly dismissed by the Respondent on 26/10/2016. The grounds for his complaint were stated as follows:

1. *Unfair Dismissal*
2. *No notice of termination; and*
2. *No holiday pay and no holiday.*

Relevant Facts

2. The Respondent was served with notice of appearance (TDP Form 2) in a letter dated 22/05/2017, at the laps of 21 days TDP Form 2 was filed with the TDP Secretary on the 21/06/2017.

3. The Secretary to the Panel wrote to both parties to appear before the Panel on the 23/08/2017 however the pre-hearing was on the 30/08/2017 the Complainant appeared but the Respondent did not appear.
4. A notice of hearing was sent again on the 29/05/2018 for both parties to appear for a hearing on the 20/06/2018 the Complainant and his legal representative appeared but the Respondent again did not appear.
The Complainant made an application to the Panel for the Respondent to be barred from actively taking part in the matter's full hearing pursuant to *Rule 7(2) of the Trade Disputes Panel (Unfair Dismissal and Redundancy) Procedure Rules* and the application was granted by the Panel.
The Respondent was informed of this Panel's ruling on the 27/06/2018.
5. During the full hearing on the 05/06/2019 on which the Respondent was barred the Panel heard that the Complainant started working for the Respondent on the 20/09/2015 and was terminated on the 26/10/2016.
He has worked for the Respondent for 1 year and 1 month.
6. The Complainant works as a second engineer on the Respondents vessel, LC Torres Star before his termination the Panel heard in his evidence.
7. The Complainant opt to relay on his sworn statement dated 31/08/2018 and filed with the Panel on the 03/09/2018.
8. The evidence of the Complainant was that he graduated from Solomon Islands National University in 2015 with a Class 4 Certificate in Marine Engineering and immediately was employed by the Respondent.
The Complainant was paid a monthly salary of \$3,600.00.
9. The Complainant stated that on the 26/10/2016 he was called by the Human Resource Manager who handed him his termination letter marked in his sworn statement as Exhibit "AB2".
The grounds for the Complainant's termination were;
 - i. Drinking alcohol resulting in delay of vessel to sail on her schedule,
 - ii. Violation of marine law and,
 - iii. Breach of employment contract.The Complainant stated that he was not given any opportunity to defend or say his side story nor was he informed of the allegations prior to the letter of his termination.
10. The Complainant went and made a complaint with the Commissioner of Labour who wrote to the Respondent on the 07/11/2016 (Exhibit "AB3") informing the Respondent to pay the complainant the following as they were of the view that the Complainant was unfairly terminated;
 - i. Payment in lieu of notice (one month salary),

- ii. Holiday based on pro-rata.

The Respondent made no response to the letter from the Commissioner of Labour nor made any payment to the Complainant. The Panel noted that there was notice given to the Complainant however natural justice was not afforded to the Complainant.

Natural Justice

11. 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).
12. 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/her case. This also means an opportunity and adequate time to be informed of the allegations and to reply to the allegations.
13. The Panel have noted that there was no opportunity given to the Complainant to be heard, that opportunity was denied.
The Principles of Natural justice is a must process for any two conflicting parties to follow and must be observed despite whatever employment Policy or Rules of a company or employer may say about employees conduct when performing or not performing their duties.
14. In the case of *Simata v Goldie College Secondary School Board of Management* [1998] SBHC 46; HC-CC 089 of 1997 (2 November 1998) the High Court in discussing Natural Justice cited the following;

*“Although the question of denial of hearing, a denial of natural justice, in this case arises from a decision taken by a non public statutory entity, the approach in it to determine whether there has been denial of natural justice is the same as in cases in which the decider is a public statutory body. **In the English Common Law, the duty of a decider not to take decision without offering opportunity to someone whose interest is affected to be heard, is implied. The duty is implied even when it is abundantly clear that the duty has been omitted in the empowering legislation.** In *Cooper -v Wandsworth Board of Works* [1863] 14 CB (N.S) 180, the applicant commenced building his house without giving notice to the Board as required by statute. He built up to the second floor. One evening the Board demolished the building without asking him to explain his omission to give notice. The Board had statutory power to demolish if notice had not been given. **The Court at first instance upheld the submission of the applicant that although the Board had power under the statute, that power was qualified by the requirement of natural justice that a person whose proprietary interest is affected is to be afforded opportunity to be heard.** **Appeal Court confirmed.** After *Coopers' case*, English courts seemed to have decided inconsistently, the approach to determining requirement of opportunity to be heard, but since 1964 in the case, of *Ridge -v- Baldwin* [1964] AC 40, confirming *Coopers' case*, the rule requiring implying the duty to afford opportunity to be heard has been*

firmly restored.” (*Italic, Bold & Unlined Panel emphases*)

15. This cited passage above from a High Court ruling is a case where a Statute gives power to the Board to demolish a building because the builder did not follow a requirement of Statute, the Board went ahead and demolished the building as required by the Statute.

The Court ruled that the Rule of Natural Justice was not followed by the Board as there was no opportunity given to the builder to explain his omission to give notice to the Board.

In like manner an opportunity should have been given to the Complainant to explain his side story of the allegations made against him despite whatever his contract of employment says.

16. Given those evidence the Panel finds that Rule of Natural Justice was never followed or observed by the Respondent.

LAW

17. 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.”

18. The right to hire and fire is vested on the employer however, the Complainant reserves the right not have his job taken away from him unfairly, this is what the Law has to say about this,

Unfair Dismissal Act [Cap. 77] 1983 Section 2 (1) states;

“Subject to the following provisions, every employee has the right not to be unfairly dismissed by his employer.”

19. 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?
- ii. Did the employer act reasonably in treating that reason as sufficient in terminating the complainant?

20. The Panel answers both questions in the negative and that the reasons for the termination were not substantial justifying a termination of an employee holding the

Complainant's position. The Respondent did not act reasonably in treating the reasons as sufficient in terminating the Complainant and therefore the Panel found the termination to be unfair in these circumstances.

AWARD

21. Pursuant to Section 7 (1) & (2) of the *Unfair Dismissal Act* [Cap. 77] 1983 the Panel is empowered to make award of compensation.

In awarding compensation, the Panel notes that the Complainant had worked for the Respondent for a period of one year and one month. The Complainant has not secured any employment since his termination at the time of the hearing.

The Panel therefore awards;

- i. Four months' salary as compensation to the Complainant for loss of employment,
- ii. Payment in lieu of notice,
- iii. Holiday based on pro-rata,
- iv. Repatriation costs.

These awards are calculated as follows;

(a) **Four months' salary;**

Weekly rate $\$3,600 \div 4$ - \$900.00

16 weeks x \$900 - **\$14,400.00**

(b) **Payment in lieu of notice;**

$\$900 \times 4$ - \$3,600.00

(c) **Holiday based on pro-rata;**

$\$900 \div 5$ working days per week - \$180.00

30 days x \$180 - **\$5,400.00**

(d) **Repatriation Cost;** - **\$1,000.00**

Total pecuniary awarded - **\$24,400.00**

22. The Panel therefore considers the sum of **\$24,400.00** as fair and reasonable in all the circumstances, taking account the conduct of the employer and the Complainant both before and after the date of termination.

ORDERS

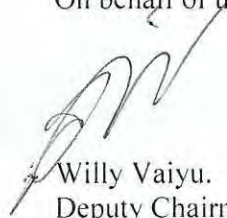
23. The Panel makes the following Orders;

- i. The Respondent to pay the sum of **\$24,400.00** as compensation to the Complainant for unfair dismissal within 14 days of this Order.
- ii. The Respondent to pay Panel expenses in the sum of **\$1,000.00** to the Ministry of Commerce, Industry Labour & Immigration pursuant to *Section 11(2)* of the *Unfair Dismissal Act* [Cap 77].

APPEAL

24. Pursuant to *Section 7 (3)* of the *Unfair Dismissal Act* [Cap 77] a party aggrieved by the amount of compensation awarded by the Trade Dispute Panel may within 30 days from the date of the award appeal to the High Court.

On behalf of the Panel,


Willy Vaiyu.
Deputy Chairman
Trade Dispute Panel

