

**IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS CASE NO. UDF: 77/2022**

BETWEEN:

**Eddie MAMAE*
(COMPLAINANT)**

AND:

**Sol Tuna Co. Ltd
(RESPONDENT)**

Panel: 1. Willy Vaiyu (Chairman)
2. Ian Rakafia (Employer representative)
3. John Rofeta (Employee representative)
Appearance: 4. Maito'o Haurae for the Complainants
5. Gregory Muaki for the Respondent

Date of hearing: 16/07/2024

Date of Ruling: 29/01/2025

FINDING

1. Eddie Mamae, herein referred to as the Complainant, lodged with the Panel (TDP Form 1) on 06/12/2022, claiming he was unfairly dismissed by Sol Tuna Co. Ltd, herein referred to as the Respondent, on 14/10/2022. The grounds for his complaint was stated as follows:

1. *Unfair dismissal*
2. *Wrongly accused of insubordination*

Relevant Facts

2. The Complainant was employed by the Respondent as a Mechanic Supervisor. His employment began on the 25/02/2015 and was terminated on the 14/10/2022, he has been employed by the Respondent for 7 years and 7 months at the time of his termination.
3. Pursuant to the *Trade Disputes Panel (Unfair Dismissal and Redundancy) Procedures Rules, Rule 10 (1) & (2)* the Panel on the application of the Respondent made an opinion on a pre-hearing assessment on the 31/10/2023 that the Complainant has no reasonable prospect and is unlikely to succeed in this proceeding and that if the Complainant shall not withdraw his contention and persist up to the hearing the Panel shall make an order for costs against him at that hearing if the ruling at the hearing goes against him.
4. The Complainant at the pre-hearing assessment ruling persisted to pursue the matter for a full hearing despite the Panels opinion on the possibilities of unlikeliness of

succeeding and it was then list for a full hearing by the Panel Secretary on the 16/07/2024.

5. During the hearing the Respondent called one witness.
On the other hand the Complainant had no other witness in support of his claim.
 - At the full hearing both parties were reminded of costs that will be made against the Complainant should Panel rule in favour of the Respondent.
6. The Respondent stated that the reasons for the Complainants dismissal were;
 - i. Insubordination,
 - ii. Served with several warning letters,
 - iii. Breach of Company Policy Section 5(b).
 - iv. Breach of 1 year good behaviour bond after a final warning letter for the same unwanted behaviour.
7. The Panel was also informed and noted the following;
 - i. The Complainant was served with a first warning letter dated 12/10/2015 by the Respondent for absenteeism and **failure to follow procedure.**
 - ii. The Complainant was again served with a second warning letter dated 01/09/2016, for **unsatisfactory work performance, failure to follow procedure, rudeness and carelessness.**
 - iii. A final warning letter was served on the Complainant dated 26/11/2021 for **poor performance, uncalled for behaviours and attitude** towards work colleagues & his manager with a reminder to abide by company regulations and Policies to avoid being terminated from employment.
 - iv. The Complainant was served with a termination letter dated 14/10/2022 for violating company policy, insubordination, **rude, disrespectful, no care attitude.**
 - v. Breach of 1 year good behaviour bond after a final warning letter for the same unwanted behaviour.

Case laws

8. The Panel is grateful with the Complainant's Counsel in assisting the Panel and citing few High Court cases and few Panels own rulings. The Panel was aware that the Complainants' main contention was the application of the rule of "Natural justice" regarding his final termination, that previous warning letters were out dated and should not be taken as evidence against the Complainant, and the application and the meaning of the word "substantial" in *Section 4 (1)(a) of the Unfair Dismissal Act, Cap 77.*
9. The High Court cases cited were, *Solomon Telekom v Trade Disputes Panel, CC:97/1998* and *Simata v Goldie College Secondary school Board, CC:89/1997.* The TDP cases cited were UDF: 80/2010, *S K. Dalipada v Ministry of Development & Aid Coordination* and UDF:29/2010, *R. Koti v SIEA.*
10. The cases, *Simata* and the two TDP cases dealt with the application of Natural justice. The Panel will dwell mainly in its discussion on the High Court case *Solomon Telekom*

v TDP because in this case the Court dealt with most of the issues the Complainant was raising in his verbal and written submission for the full hearing.

Solomon Telekom v TDP was an appeal from a TDP ruling where the Court quashed the Panel's ruling against the Appellant.

11. The Respondent in this appeal, *Solomon Telekom v TDP* was terminated from employment after he was involved in a vehicle accident belonging to the Appellant. Before the vehicle accident which led to his termination he had received numerous memorandum letters and verbal reminders of his work attitude and noncompliance with request made of him by his supervisor.

The Court has to say this in relation to this at page 6 of its judgement;

"The reference to the memorandum dated 18 November 1991 was in my view, very relevant because it is evidence of negative work attitude and the beginning of signs of incompetence. This memorandum of 18 November 1991 was later referred to in a memorandum by the General Manager dated 9 January 1992 in which the Respondent was told to comply with the requests made of him by Mr. McCarthy, his immediate superior."

And again at page 7 the Court continued and stated;

"This series of correspondence did form the record of the Respondent's work record as known by his superiors. The memorandum dated 18 January 1991 is significant in one respect. It was the culmination of previous numerous verbal requests that the Respondent had ignored and failed to obey. The matters of concern were set out in that memorandum addressed to the Respondent about which he did nothing which obviously necessitated further reminders and finally disciplinary action. It is therefore naïve to say that the memorandum dated 18 January 1991 is out of date and irrelevant piece of evidence against the Respondent". (Italic fond, Panel emphasis)

12. On that same note the Panel agrees with the Court that it is naïve to say the past warning letter given to the Complainant is out dated and irrelevant because they were evidence of negative work attitude, it was a series of discipline letters to the Complainant forming records his work records known to his supervisors let alone warnings of different natures of work or attitude of the same person.

13. The Court in *Telekom v TDP* also discussed the meaning of the word "*substantial*" in its ruling and stated on page 9;

"This was in my view a substantial reason within the meaning of section 2(1)(a) of the Unfair Dismissal Act cited above. The word "substantial" is defined by the Oxford Advanced Learner's Dictionary, 4th Edition by A.P. Cowie as "large in amount; considerable; solidly or strongly built or made; concerning the most important part of something; essential; having physical existence, not merely seen, heard or imagined; real." (Italic fond, Panel emphasis)

14. The Panel is in agreement with this definition and is of the view that in all the warning letters to final and the termination letter carry the same similar warnings of the same nature and therefore substantial attitudes and in all were "*large in amount*;

considerable; essential, strong” and is considered by his employer as is important part of his job. (*Italic fond, Panel emphasis*)

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).

This rule 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 any allegations.

16. The Complainant at paragraph 5 of his termination letter dated 14/10/2022 stated;

“Should you decide to lodge an appeal against this decision you have the right to do so by writing an appeal letter to the General Manager within seven (7) days of receiving this letter” (*Italic fond, Panel emphasis*)

17. At the hearing the Panel asked the Complainant to confirm if it is his signature that he saw on the an appeal letter dated 17/10/2022, to that he confirmed that it is his signature but argued that he was not the author of the appeal letter. When asked why he signed the appeal letter his answers was he trusted the person writing on his behalf, in other words he gave authority for the letter to be written on his behalf. There was no further evidence given by the Complainant before the Panel to substantiate his argument. His appeal was not successful carried in a letter dated 24/10/2022 from the Respondent.

18. The Panel again is of the view that, the fact that opportunity was given for the Complainant to appeal with 7 days was adequate in the circumstances of this case. The fact that he signed and agreed to sign his letter of appeal confirms his right to be heard therefore the rule of natural justice was being afforded to him.

Law

19. The right to hire and fire is vested on the employer however, the Complainant reserves the right not to 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.”

20. 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."

21. The Panel in determining whether the termination was fair or unfair these two questions must be asked and provide an answer;

- 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 acted reasonably in treating that reason as *sufficient* in terminating the complainant?

22. The Panel answers both questions in paragraph 21 above in the affirmative form and that it is the Panels respective view that there are evidence before the Panel that substantially justify the termination of the Complainant. The Respondent acted reasonably in giving reasons as to justify and they were sufficient in terminating the Complainant and therefore the Panel finds the termination to be fair in those circumstances.

Order for Costs

23. The Panel after verifying of incidental costs incurred by the Respondents including professional costs make the following costs against the Complainant pursuant to *Trade Disputes Panel (Unfair Dismissal and Redundancy) Procedures Rules, Rule 10 (1) & (2)*;

Item	Date	Type of cost	Amount
1	15/08/2024	Professional Costs	\$32,675.00
2	19/06/2024	Return airfare Munda/Gizo Gizo/Honiara Honiara/Munda	\$3,666.00
3	19/06/2024 to 22/06/2024	Food & Accommodation	\$3,435.00
4	19/06/2024	Allowances – Mezach Zesapa	\$450.00
5	12/07/2024	Accommodation	\$2,130.00
6	11/07/2024	Return airfare Munda/Honiara Honiara/Munda	\$3,716.00
7	15/07/2024		\$750.00
Total cost incurred by the Respondent			\$46,822.00

24. The Panel therefore considers the sum of \$46,822.00 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

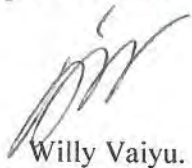
25. The Panel makes the following Orders;

- i. That the termination of the Complainant was fair and lawful by virtue of the *Unfair Dismissal Act [Cap 77] Section 4(1) (a) (b)*.
- ii. The Complainant to pay the sum of \$46,822.00 to the Respondent being payable immediately and is recoverable as a debt under *Section 9(a)(b) of the Unfair Dismissal Act [Cap 77] 1982*.
- iii. Pursuant to *Section 11 of the Trade Disputes Act [Cap 75] 1981* as read with *Section 11(2) of the Unfair Dismissal Act [Cap 77] 1983* the Panel orders the **Respondent** to pay Panel expenses in the sum of one thousand dollars (**\$1,000.00**) to the Ministry of Commerce, Industry Labour & Immigration.

APPEAL

26. There is a right of appeal within 30 days from the publication of this ruling by any aggrieved party to the High Court on question of law only, pursuant to *Section 13 of the Trade Disputes Act [Cap 75] 1981* as read with *Section 11(1) of the Unfair Dismissal Act [Cap 77] 1983*.

On behalf of the Panel,



Willy Vaiyu.
Chairman
Trade Dispute Panel

