

TRADE DISPUTES PANEL, SOLOMON ISLANDS
Under the Unfair Dismissal Act 1982

UD/58/89

Between:

GEOFFREY MAETIA MAGELO

Applicant

and:

APIRA CONSUMERS CO-OPERATIVE SOCIETY

Respondent

Hearing at Honiara on 18 October 1990.

H Macleman Chairman

O Pokana Member

H Creighton Member

For the applicant: A Radclyffe, Public Solicitor's Office

For the respondent: E Hulanga, General Manager

F I N D I N G S

Apiira Consumers Co-operative Society Limited employed Mr Geoffrey Maetia Magelo as a shop assistant from 1 October 1986, and admitted dismissing him on 14 February 1989. By sections 4 and 6(6) of the Unfair Dismissal Act 1982, it was for the Society to show both substantial reason for the dismissal and that it acted reasonably in treating that reason as sufficient.

Mr Hulanga produced 3 letters to the applicant:-

1. Dated 1.8.87, a "last and final warning" in respect of "your days absence from duties".
2. Dated 12.11.88, a "last and final warning" re "credit, shop-lifting and drinking during business hours".
3. Dated 14.2.88, termination letter referring to refusal to attend duties on 29 and 30 January 1989, being drunk on duty on 12 February 1989, and being "caught helping yourself with 4 cans of foster on the date forementioned".

The grounds for resisting the claim specified in the notice of appearance were in similar terms.

Mr Hulanga was the only witness for the respondent company. He had written the letter of 1.8.87, having been told by "reliable sources" that the applicant had spent the day drinking when he claimed to be off sick. He had not made any direct investigation, nor interviewed Maetia on the matter. As to the incidents in 1988 and 1989, the respondent relied simply on the statements in the letters, the General Manager having been on a course in U.K. over that period.

In cross-examination the witness stated that no written information about disciplinary procedures was available to staff, as management relied on oral explanation at Staff meetings (a procedure which is contrary to section 18 of the Employment Act 1981).

Maetia's evidence comprised a somewhat unconvincing denial of the incident for which he was warned in 1987, and a complete rejection of the allegations in the second two letters.

We are aware that the respondent Society may have faced some difficulty preparing for hearing in Honiara in respect of incidents so long ago in Kira Kira. Making every allowance, however, there is simply no adequate evidence of either substantial reasons for dismissal or that the Society acted reasonably e.g. by conducting investigations and giving Maetia the chance to state his side of the case.

It follows that the dismissal must be held to have been unfair, and we assess compensation at the equivalent of the redundancy payment to which the applicant would have been entitled, two months net pay, and interest to date.

Applying the formula under s. 7 of the Employment Act 1981:-

$$\begin{array}{rcl}
 1.10.86 & - & 14.2.89 & = & 123 \text{ weeks} \\
 123 & \times & \frac{1}{26} & \times & (280 \times 12 + 52) & = & \$ 305.68 \\
 2 & \times & 200 & & & = & 400.00 \\
 & & & & & & \hline
 & & & & & & \$ 705.68 \\
 & & & & & & \hline
 & & & & & & =====
 \end{array}$$

AWARD

The respondent unfairly dismissed the applicant and is to pay him compensation of \$705.68 with interest at 15% per annum from 14 February 1989 until payment, payable immediately and recoverable as a debt under s. 10 of the Unfair Dismissal Act 1982.

EXPENSES

The Panel fixes a contribution of \$200 towards its expenses to be paid by the respondent to the Ministry of Commerce and Primary Industries within 14 days

of this date.

APPEAL

- (1) There is a right of appeal to the High Court within 14 days on a question of law only: Unfair Dismissal Act 1982, s. 12; Trade Disputes Act 1981, s. 13; Trade Disputes Panel Rules 1981, r. 11; High Court (Civil Procedure) Rules 1964, O. 30 r. 3.
- (2) Any party aggrieved by the amount of compensation awarded may within one month of the date of the award appeal to the High Court: Unfair Dismissal Act 1982, s. 7(3).

This decision is issued by post as agreed by the parties.

On behalf of the Panel.



(Hugh Macleman)

CHAIRMAN/TRADE DISPUTES PANEL

22 October 1990.