

IN THE TRADE DISPUTES PANEL )  
OF SOLOMON ISLANDS. )

Case No. L9/14 of 1993.

IN THE MATTER of the Trade  
Disputes Act 1981

AND IN THE MATTER of a referral  
of a Trade Dispute.

BETWEEN: Solomon Islands National  
Union of Workers  
Applicant (Union)

AND: Solomon Islands National  
Provident Fund  
Respondent (Employer)

Hearing: 21st September 1994, Honiara.

Decision: 4th October 1994.

Panel: A. N. Tongarutu - Chairman  
A. Fatai - Employee Member  
J. Adifaka - Employer Member

Appearances: Gabriel Suri, General Secretary (Ag),  
for the Applicant.  
A. Rose, Legal Advisor, for the Respondent.

AWARD

On the 26th of November 1993 the applicant party( hereinafter referred to as the union) gave notice to the Panel pursuant to section 6(1) of the Trade Disputes Act 1981 of a trade dispute between itself as representative of its members and the Solomon Islands National Provident Fund (hereinafter referred to as the employer). The central issue in dispute was the 1993/1994 wage increase which caused the employees to take strike action on the 26th of November 1993 and were consequently dismissed by their employer but re-engaged a few days later. At the preliminary hearing of the matter on the 1st of December 1993 both parties agreed that the issue on the "consequence of mass termination of the employees" to be included in the referral. The employer's position at this stage was that the initial issue was not a trade dispute because the referral was made after the termination of employment and the Panel had no jurisdiction on the matter. The Panel however found that the referral was a trade dispute and referred the case to a full hearing. The proceedings were then deferred pending an appeal by the employer to the High Court against the Panel's findings. The Court's decision in August 1994 upheld the Panel's findings and further held that the employees were legally terminated by their employer as a consequence of the lightning strike. The matter was then referred back to the Panel.

At the full hearing of this case, Mr. Suri made a preliminary application to the panel to firstly address the issue of fairness or unfairness of the dismissal on the 23rd of November 1993 before dwelling on the initial issues .The Panel disallowed the application

on the grounds that the validity of the dismissal had been decided by the High Court and although the issue of whether the board's decision in terminating the employment of the striking employees was fair or unfair was not dwelt with in the Court's decision and would under the circumstances enable the Panel to jointly address the matter with this referral, the case of unfair dismissal however was not filed with the Panel prior to re-engagement and therefore could not be considered by the Panel jointly with this trade dispute case. In practical terms the substance of the application could not have been considered by the Panel for the reason that the employees had been re-engaged. The Panel however made a ruling that the proceedings at the full hearing would only concentrate on the central issues viz, the 1993/1994 wage increase, the consequence of mass termination as well as the reasonableness of the terms of the re-engagement.

The union's claim on the 1993/1994 wage increase was for a 10% increase across the board on wages, allowances and incentives for the period from 1st July 1993 to the 30th June 1994. In his submission Mr. Suri submitted that this increase was justified firstly on the grounds that the Honiara Price Index for June 1993 was 9.3%; a difference of 0.7% and precedent had been set by the Panel's 8% award in the case of Hastings Deerings (L9/3/94) early this year. This was 1.8% higher than the full retail price index. This precedent however could be distinguished in that the application of the 2/3 R.P.I would be inappropriate to the circumstances of this case for the reason that the wage structure of the employees should firstly be adjusted to the public service unified pay structure. The Solomon Islands Government's public service unified pay structure shows that its employees are highly paid than the NPF staff structure. This means that the purchasing power of NPF employees is weaker than public service employees. The means to alleviate this disparity is the guideline in determining the percentage of the wage increase in the absence of any government wage policy or wages board taking into consideration the qualification, skills and nature of responsibilities of the NPF employees. Secondly the effect of the 8% goods tax calls for a higher wages increase as well as being consistent with the average increase in other companies of 12.2%.

The employer's position was that at the time of the strike the union rejected the board's offer of 8% increase and continued to do so up to the 6th September 1994. The board's position was that the 8% was a reasonable offer because there was no justification for any higher increase of salary beyond that of other statutory authorities. There was also no justification for a salary restructuring comparative to that of public service employees which is a different setup. It has been customary for the board to make comparative assessment on wages with other statutory authorities but not with the public service. The board's assessment of the disparity contended by the union was that the employees were well looked after and better off than public service employees. A comparative wage increase with other banks during the relevant period was an average of 8% and the correct RPI for the relevant period was 6.6% which was assessed on a twelve month period and not annually.

The employees were re-engaged on basically the old terms and conditions of employment save for their entitlement to the long service benefit/gratuity which aggrieved the employees. Mr. Suri submitted that the break in service was so short that although the employees were dismissed from their employment the employer did not terminate the collective agreement between the parties and under the circumstances the employees would still be entitled to their LSB and furthermore they were re-engaged on the terms and conditions of employment as per the union secretary's letter dated 30th November 1993 which he contended was accepted by management for the board's approval. As such the terms and conditions of employment contained in the collective agreement would still be applicable and the terms of re-engagement can only be considered to be reasonable if the terms are substantially similar to those under the collective agreement. The union's letter referred to by Mr. Suri showed that management accepted the terms and conditions of re-engagement prior to the board's approval and the employer submitted that the final offer which was accepted by the employees was contained in the General Manager's letter to the union secretary dated the same date. The letter stated amongst other matters that long service benefit was to be taken from the date of re-engagement. This, coupled with the other terms and conditions of re-engagement were communicated by management to the sacked employees at an open meeting at the multi-purpose hall. It was under this understanding that the employees signed up for re-engagement. The individual letters of employment contained the same substance. The employer's position was that it had clearly stated that the sacked employees were to be re-engaged on the old terms and conditions of employment except for long service benefit which to their reasoning was fair because a person who breaches a contract of employment loses certain benefits and in this case it was LSB because of the break in service. The board was lenient in re-engaging the sacked employees on the same terms and conditions of employment except for LSB. Employees who were entitled to their LSB prior to dismissal received their entitlements.

The Panel in its assessment considered it fair and reasonable to basically apply the 2/3 RPI formula in this case bearing in mind its award in the Hastings Deering case for an 8% (percent) increase on wages. In its view it would be wrong to award any wage increase on a comparative basis with the wage structure of the public service for the reason that the public service sector is not a statutory organisation or monetary institution. Any reasonable comparison should be that with similar institutions such as the banks. The union's submission on the GST could not be entertained since the 8% increase already takes care of any tax implications and allowances and the proper approach would be to look at the overall RPI. The conditions of service of the employees is better than that of public service employees. On the associated issues of the consequence of mass termination and the reasonableness of the terms and conditions of re-engagement the Panel's majority decision was that as a consequence of the lightning strike followed by the termination of employment the employees had broken their service of employment and by implication termination of the collective agreement. Long service benefit relates to continuous service. In this case termination of employment was lack of continuity of service and

that the long service benefit should be taken from the date of re-engagement. Prior to signing up for re-engagement the employees were already aware of the exceptional conditions affecting long service benefit. The board's decision was reasonable and the terms and conditions of re-engagement were fair. The employer also suffered loss during the strike and there was no compensatory remedy from the employee to the employer. The Panel is not in a position to re-instate the long service benefit. The minority decision on this issue was that a reasonable employer would re-engage long serving employees (viz' more than 10 years of service) on similar terms and conditions of employment taking into consideration their long service prior to the date of dismissal. A middle line approach could be taken for these category of officers by reducing the period to five years from the date of re-engagement. Whilst they were legally terminated from their employment their entitlement should be still considered in the light that the same people were re-engaged.

#### Award

The Panel awards an 8% wage increase for the period of 1st July 1993 to 30th June 1994 and that the re-engaged employees forfeited their entitlement to long service benefit consequent upon the break in service.

#### Appeal

There is a right of appeal to the High Court on a question of law only pursuant to the Trade Disputes Act 1981

#### Panel Expenses

Pursuant to Section 11 of the Trade Disputes Act 1981 the Panel orders the employer to pay panel expenses in the sum of \$150 to the Ministry of Trade, Commerce & Employment within fourteen days of receipt of this Award.

On behalf of the Panel

A.N. Tongarutu

**CHAIRMAN/TRADE DISPUTES PANEL**