

**IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS**

Case No. UDF 48/06

BETWEEN: JESSICA TAHUNIPUE (Complainant)

AND: BULK SHOP (Respondent)

FINDING

By complaint lodged to the Panel on 18/6/04, the complainant claimed that she was unfairly dismissed by the respondent on 10/5/04.

On 29/6/04, the Panel secretary issued notices of appearance (TDP2 forms) to the respondent to be completed and returned within 21 days. The respondent however failed to return the forms as required.

By letter dated 19/6/06, the panel secretary reminded the respondent of its failure to return the TDP2 forms and was advised to apply for an extension of time to file the forms if it wished to take part in the proceeding. The matter was then listed for a pre-hearing on 20/7/06 at 2.00pm.

On 20/7/06, however, the respondent failed to make any appearance. On that basis, as well as for failing to file the TDP2 forms, the complainant applied to have the matter heard in the absence of the respondent. The panel granted the application and proceeded to hear evidence from the complainant.

In her sworn evidence, the complainant told the panel that she was employed by the respondent as a cashier. She received a monthly salary of \$529.00. She told the panel that she was dismissed for cash falls shown in the cash register on two separate occasions. The first short fall was on the first week of April 2004. At that time there was a short fall of \$64.00. The second short fall of \$841.15 was on 29/4/04. The complainant however denied having stolen both amounts of money. She explained that the cash falls could have been a result of her mistake in the figures she had actually typed onto the cash register. She could have recorded more than what was actually collected. This normally happens when there is a sudden power failure.

As to the allegation that she had left the work place for more than five hours, she said she had to join a long queue at the clinic with her baby. The complainant stated that if she was given the opportunity, she would have explained herself at the material times. She had only become aware of these accusations when she received her termination letter.

In unfair dismissal cases, the burden is upon the employer to prove that the complainant's dismissal was not unfair.

Here the respondent was barred from taking part in the proceeding for failing to make any appearance.

The Panel is therefore only left with the evidence of the complainant herself. Having observed the demeanor of the complainant in the witness box, the Panel finds that her evidence was reliable and truthful. She was not given the opportunity to explain herself before a decision could be made to terminate her. The respondent also took into account two other grounds (cash shortage and five hours absence from work) for dismissing the complainant which were not even brought to the attention of the complainant at the time when those wrongs were alleged to have been committed. If there was any such wrong committed, the complainant should have been asked to give her explanation, and if warranted, written warning should have been issued straight away. Such action apparently amounts to unfair dismissal.

Having said that, and in all the circumstances, the Panel finds the complainant was unfairly dismissed.

AWARD

In considering award in this matter, we take into account as follows. The complainant was not paid one-month pay in lieu of notice. She has not secured any employment since termination. Married with one child. She was not paid repatriation.

The compensation is therefore calculated as follows:

1. One-month pay in lieu of notice	- \$529.00
2. Repatriation: (2 x \$120.) plus \$60.	- \$300.00
3. Loss of employment (3 x \$529.)	- \$1,587.00
Total	- \$2,416.00

The Panel having taken into account the conduct of the employer and the complainant both before and after the date of dismissal considers an award of \$2,416.00 as fair and reasonable in all the circumstances.


ORDER

1. The respondent is to pay \$2,416.00 to the complainant within 14 days.
2. The respondent is also to pay \$500.00 towards panel costs.

APPEAL

Right of appeal to the High Court within 14 days.

On behalf of the Panel:


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CHAIRMAN TRADE DISPUTES PANEL

