

**IN THE TRADE DISPUTES PANEL
SOLOMON ISLANDS**

Case No. UDF 61/04

BETWEEN: Fox Oramua (Complainant)

AND: S. I. Fisheries Company Ltd (Respondent)

Panel: 1. Francis Cecil Luza - Chairman
2. John R. Houainima - Employee Representative

Appearances: Brian Hiele for the Complainant

No appearance for the Respondent

Date of hearing: 27th March 2007.

Date finding delivered: 13th February 2008.

FINDING

By complaint lodged to the Panel on 3/8/04, the complainant claimed that he was unfairly dismissed by the respondent on 31/5/04.

On 14/9/04, the Panel secretary issued three copies of TDP2 Forms (notice of appearance) to the respondent to be completed and returned within 21 days.

After the lapse of the 21 days, however, the respondent failed to return the forms as required.

On 4/3/05, the Panel secretary wrote to the respondent pointing out its failure to return the forms. The secretary further advised the respondent that if it still wished to take part in the proceeding, it must apply for an extension of time under rule 13 (1) of the **Trade Disputes Panel (Unfair Dismissal and Redundancy) Procedure Rules, Cap 75**. The matter was then listed for a pre-hearing on 26/4/05.

At the hearing on 26/4/05, however, there was no appearance from the respondent and no TDP 2 forms were filed. On that basis, the complainant sought an order from the Panel to bar the respondent from taking any part in the proceeding, which was granted.

The matter did not proceed until 27/3/07 when the Panel decided to proceed with the matter with only two members sitting. In that situation, the Panel was of the view that the respondent had waived its right to object to the then constitution of the Panel for having failed to make any appearance itself.

The Panel heard evidence only from the complainant. In his sworn evidence, the complainant told the Panel that he was employed by the respondent as third bosun onboard one of the Company fishing vessels.

The complainant told the Panel that he was terminated by the company for damaging a cooking pot, which he denied. He stated that in fact the cooking pot was damaged as a result of an accident. After he fried vegetables with the pot he took it to the rear of the ship to have his meal. However, as he was walking towards the back of the ship, a crew was running towards his way that he accidentally hit the pot from his hand (complainant's hand) that it fell to the floor and got damaged. The complainant explained the incident to the captain and he said it was alright. He was only surprised that the management decided to dismiss him. He said he had never received any warnings before. The management did not even ask him to explain his case before a decision could be made to terminate him. Upon termination he was paid \$900.00 but did not know why he was paid that amount. He was only asked to sign for it, which he did. At the time of termination, the complainant worked for the company for just six months. He received a salary of \$700.00 per month.

In unfair dismissal cases, the onus is on the employer to prove that the dismissal is not unfair. In this case, the respondent has lost the opportunity to discharge such onus. The Panel is only left with the evidence of the complainant to determine whether or not he was unfairly dismissed.

Having heard from the sworn evidence from the complainant, the Panel is satisfied that the reason for dismissal (damaging the cooking pot by accident) was not of a kind justifying an instant dismissal of the complainant, especially when he had no past warnings. The Panel is also

satisfied that the complainant was never given a chance to explain his case before a decision could be made to terminate him.

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

AWARD

The complainant at the time of his termination received a monthly salary of \$700.00. He was not paid one-month salary in lieu of notice. No repatriation cost was paid to the complainant. He has not secured any employment since his termination.

The complainant is therefore awarded compensation as follows:

1. One-month in lieu of notice	- \$700.00
2. Loss of employment (3 x \$700.00)	- \$2,100.00
3. Repatriation	- \$300.00
Total	- <u>\$3,100.00</u>

The Panel having taken into account the conduct of the employer and the complainant both before and after the date of dismissal, in this case, considers an award of \$3,100.00 as fair and reasonable in all the circumstances.

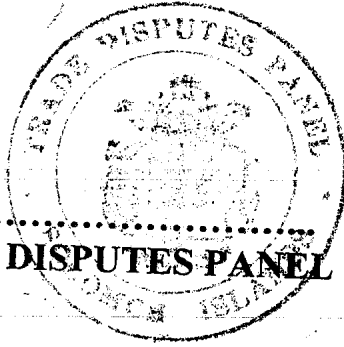
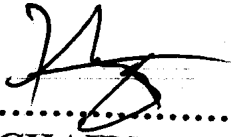
ORDER

1. The respondent is to pay \$3100.00 to the complainant within 14 days.
2. The respondent is also ordered to pay \$600.00 towards panel expenses within 14 days.

APPEAL

Right of appeal to the High Court is 14 days.

On behalf of the Panel:



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CHAIRMAN/TRADE DISPUTES PANEL