

IN THE TRADE DISPUTES PANEL)
OF SOLOMON ISLANDS)

Case No: UDF 07 of 2009

IN THE MATTER of the Unfair
Dismissal Act 1982

AND IN THE MATTER of a
complaint of Unfair Dismissal

BETWEEN: ELLIOT HAKUTAI

Complainant

AND: RENBEL SHIPPING COMPANY LIMITED

Respondent

Hearing: 29th September, 2009, Honiara.

Decision: 12th October 2009.

Panel:
Wickly Faga Deputy Chairman
- Employee Member
John Vollrath Employer Member

Appearances: Presley Watts, counsel for the Complainant

No appearance for the Respondent

FINDING

The complainant filed his complaint of unfair dismissal on the 17th March 2009. His grounds of complainant relates to his suspension from duties for two and half months with no pay, and his subsequent implied termination with no reason. He was working as deckhand for the respondent at the time of his dismissal.

The respondent was advised of the complaint in a letter from the Panel Secretary dated 1st April 2009. Three copies of TDP Form 2 (notice of appearance) were also enclosed for completion by the respondent and returned to the Panel Secretary within 21 days

from the date of receipt of those forms. In a letter dated 21st May 2009, the Panel Secretary reminded the respondent that its notice of appearance was yet to be received, and further advised that if it wished to take part in the proceedings of the matter, it must apply for an extension of time under rule 13(1) of the Trade Disputes Panel (Unfair Dismissal and Redundancy) Procedure Rules, cap75.

No appearance was filed and no extension of time was applied for by the respondent. The matter was listed for full hearing on the 29th September 2009. At the full hearing, only the complainant party attended, and the respondent having not provided any reasons for their absence, the hearing was allowed to proceed uncontested. No objection was made on the constitution of the Panel of two Panel members of the usual three.

The Panel only heard evidence from the complainant. In his sworn evidence, the complainant told the Panel that he was asked by one, Mr. Seth Guguna to work as deck hand on board the respondent's marine vessel, Renbel. The said Mr. Guguna was the Managing Director. The complainant commenced work on the 12th November 2005 until his suspension from duties on the 17th January 2009. There was no reason for his suspension. However he was aware that prior to his suspension, he and other colleague crews had beers during a stopover at Tulagi, after rough seas had forced the captain to make a diversion and seek safe anchorage, during a trip from Auki to Honiara. In his evidence, the complainant told the Panel that he drank two beers that were offered by his friend who was a passenger during the said trip. On the next day when the boat arrived at Point Cruz, the complainant and other colleague crews who had beers at Tulagi during the stopover received suspension letters from Mr. Guguna. They were paid the days they had worked. The complainant did not produce a copy of the said letter, blaming on being lost in his bag, but said under oath that he could remember that the contents read something similar to, "**I suspend you without pay, and to resume on the 15th March 2009.**"

When the complainant checked to resume on the 15th March 2009, the respondent's Assistant Manager, Frank Tibua respondent in the negative and assured the complainant that he would tell the boss, being the said Guguna. The complainant checked again two more time to find out about his resumption of duties but with the same response. He was aware that his other colleague crews who were also suspended had returned to work. But no reasons

were given as to why the complainant could not resume duties, or any other information as to the status of his employment. After trying unsuccessfully to find out his employment status with the respondent, he decided to make his complaint of unfair dismissal.

The complainant told the Panel that his hours of work were not fixed, and he worked day and night. He was receiving \$450-00 per fortnight at the time of dismissal. He denied ever receiving any pay slips to show if other statutory deductions were being made.

In his closing, Mr. Watts submitted that the manner of termination was biased and lacks fairness. The diversion to Tulagi was authorized by the boat's captain, and two beers were considered reasonable in keeping with the timing. While it is inexcusable, the complainant was not too drunk and had maintained his recollection of events. It was also submitted that the complainant's suspension creates a false promise, that he would be re-engaged on the 15th March 2009. On those basis the complainant should be paid the relief sought in TDP 1.

The respondent had not made its appearance to show whether the complainant was dismissed from employment. However, it is safe to imply that the respondent's non-positive response to his enquiries about his employment status, and the resumption of duties by his other suspended colleagues on the date stated in their suspension letters is enough to suggest that he had been dismissed from his employment.

The Panel then had to consider whether the reason for the complainant's dismissal was of a substantial reason such as to justify the dismissal of an employee holding his position, and that in all the circumstances the respondent had acted reasonably in treating the reason as sufficient for dismissing the employee. After having had time to consider the evidence, the Panel is satisfied that the complainant was dismissed for no reason. If his suspension and subsequent dismissal was for the incident of drinking during the stopover at Tulagi, then two beers is not considered substantial reason for dismissal. There being no reason for dismissal, the Panel finds that the complainant's termination is grossly unfair.

In awarding compensation, the Panel considered the attitude of the respondent both before and during suspension, and after dismissal. The Panel therefore makes a reasonable compensation award, and is calculated as follows;

Award

- 1. BW x 52wks
\$225-00 x 52 = \$11,700-00
 - 2. 1 months salary in lieu of notice = \$900-00
-
- TOTAL** **\$12,600-00**

The respondent unfairly dismissed the complainant and is to pay \$12,600-00 to Elliot Hakutai being payable immediately and is recoverable as a debt under section 10 of the Unfair Dismissal Act 1982.

Appeal

There is a right of appeal to the High Court within 14 days on points of law only, and any party aggrieved by the amount of compensation awarded may within one month of the date of the award appeal to the High Court as provided for under the Unfair Dismissal Act 1982, S. 7 (3).

Panel Expenses

The Panel fixes a contribution of **\$500-00** to cover Panel expenses, and this amount is to be paid by the respondent within 14 days from the date of this decision.

Dated the 12th of October 2009

On behalf of the Panel



Wickly

Deputy Chairman/Trade Disputes Panel