

**Case No. UDF 44/06**

**AND: Solomon Islands Electricity Authority (Respondent).**

Appearances: Josiah Manehia, Commissioner of Labour for the Complainant.

**Dates of hearing:** 30 - 31/10 & 3/11/2008.

Finding delivered: 10/2/2008

By complaint (TDP1) lodged to the Panel on 21/12/2006, the complainant claimed that he was unfairly dismissed by the respondent on 22/9/2006.

By notice of appearance (TDP2) filed on 6/2/2007, however, the respondent resisted the claim claiming the complainant was terminated for unlawfully receiving \$200.00 from a client in Auki which he had not even produced it to the cashier for official receipt. The complainant had only refunded the money a few days later after enquiries were made by the client himself.

The complainant was employed by the Respondent Authority for about 13 years. At the time of his termination the complainant was a lines man receiving a monthly salary of \$1,980.00.

The facts leading to the termination of the complainant are as follows. Towards the end of August 2006 a mass disconnection of lights were carried out in Auki by SIEA after due notices were served on their clients. Amongst

residences listed for disconnection was that of a police officer, namely Albert Fangadola (RW2). During the course of carrying out the disconnection exercise on Friday 1<sup>st</sup> September 2006, the complainant and another working colleague, Paul Feande came across Albert Fangadola as they drove down Auki town. He stopped them and gave them \$200.00 as payment towards his bill and to avoid having his light disconnected. He told them he would collect the receipt for the payment later when he called into their office.

However, when Mr. Fangadola had called in at the SIEA office on the following Monday (4/9/2006) to ask for his receipt he found out that the money was never receipted. The cashier, Rose Tate (RW3) did not even know about the payment. Whilst Rose Tate and Albert Fangadola were still talking about the non-receipted payment, the officer in charge, Mr. Gabriel Hikuhanimae (RW1) approached them. He was then informed of what had happened. Mr. Hikuhanimae then said he would see the two officers regarding the matter.

On the following day (5/9/06), the complainant handed back the \$200.00 cash to the cashier, Rose Tate as reimbursement of Albert fangadola's payment. After receipting the money, Rose Tate went straight to her boss, Mr. Hikuhanimae and informed him about it.

Mr. Hikuhanimae then proceeded to the reception area whilst both the complainant and Paul Feande were still there and asked them to write a letter each to explain why the money was to be collected from Albert Fangadola and was not even handed to the cashier for receipt.

However, since the complainant could not write, Mr. Hikuhanimae had to assist him by writing the letter for him. The complainant then signed the letter after the content was again explained to him.

In that letter the complainant explained that he had to borrow the money for an urgent need of his family. The letter was then forwarded to the SIEA Head office management for consideration, a result of which, he was dismissed.

In unfair dismissal cases, there are two questions to consider determining whether or not an employee's dismissal is fair or unfair. Firstly, the Panel must consider whether the reason for dismissing the complainant is

substantial, and of a kind such as to justify the dismissal of an employee holding his position. Secondly, whether in all the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissing the employee, in this case the complainant (see section 4 (1) (a) (b) of the **Unfair Dismissal Act, Cap 77**).

***Was the reason for dismissing the complainant substantial and of a kind justifying a dismissal of an employee holding his position?***

The reason for dismissing the complainant is apparently his action for accepting the payment from a client, namely Albert Fangadola, something that clearly he ought not to have done under the Company policy. The action of the complainant can also be seen as fraudulent when he himself had failed to hand the money to the cashier for receipt or even to seek permission from his boss if he was to borrow the money for any reason rather than to wait until the client himself had to inquire about the payment. Such action clearly amounts to dishonesty and a clear breach of the Company policy that warrants an instant dismissal. Any employee holding the complainant's position would have been dismissed on the similar ground regardless of how long the employee works for the employer.

In answering the question, therefore, the Panel finds that the reason for dismissing the complainant is substantial and of a kind justifying a dismissal of an employee holding the position of the complainant.

***Has the employer acted reasonably, in all the circumstances, in treating that reason as sufficient for dismissing the complainant?***

In answering the question, the Panel finds the following facts proved. After the explanation letters were written by Mr. Feande and the complainant, the letters were sent to the SIEA Head office in Honiara for the management committee to consider appropriate disciplinary actions to be taken against the two officers.

A couple of weeks later, the complainant came to Honiara to give evidence in a High Court trial. After giving evidence in that matter, the complainant went back to Auki to resume his normal duties. However as he arrived in Auki he was approached by a working colleague, Randy Laubasi to inform him that his employment with SIEA was terminated and that he was no

longer required in office. The complainant then approached his boss Mr. Gabriel Hikuhanimae (RW1) for his termination letter but was advised that his termination letter was yet to be received from the SIEA Head office in Honiara. It was one week later that the complainant had received his termination letter handed to him by another working colleague, Patterson Wale. The letter was enclosed in a "used" envelope.

The termination letter ("exhibit 5") clearly advises the complainant as to his right of appeal against the decision for his termination. In exercising that right, however, the respondent failed to consider the appeal. The respondent never responded to that appeal.

In considering the evidence before it, the Panel finds that the manner in which the complainant was dismissed was not proper. In explaining his side of the story, the complainant should have been given the opportunity to write a letter on his own. If he could not write then a neutral person should have assisted him other than his own boss as the way it was done on him. In doing so, the complainant should have been suspended to allow investigations into his case if the procedures in the Company policy and manual were to be followed. As to his termination, the complainant was not even called into his office to be handed his termination letter and to be explained of his rights under the Company policy and manual procedures or under the Collective agreement as referred to in the termination letter. Instead, the termination letter was handed to him on the road in a "used" envelope. The respondent has not even responded to the complainant's appeal until today.

Having considered all these factors, the Panel would answer the question in the negative.

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

### **AWARD**

In considering award in this matter, the Panel notes as follows. The complainant was employed for a period of 13 years at the time of his dismissal. The complainant was not paid one month salary in lieu of notice. He has not secured any formal employment since termination.

The compensation is therefore calculated as follows:

1. One-month pay in lieu of notice	- \$1,980.00
2. Loss of employment (6 months salary)	- \$11,880.00
<b>Total</b>	<b>- \$13,860.00</b>

### **ORDER**

1. The respondent is ordered to pay **\$13,860.00** to the complainant within 7 days.
2. The respondent is also to pay **\$600.00** towards panel costs.

### **APPEAL**

Right of appeal to the High Court is 14 days.

On behalf of the Panel:



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**CHAIRMAN, TRADE DISPUTES PANEL**