

IN THE TRADE DISPUTES PANEL  
SOLOMON ISLANDS

Case No. UDF 50/11

BETWEEN: James Totoe (Complainant)  
AND: S.I. Copra Exporters Ltd (Respondent)

Panel: 1. Francis Cecil Luza -Chairman  
2. John Adifaka - Employer representative  
3. Nevalyn Laesango - Employee representative

Appearance: Selson Fafale, Labour Officer for the complainant.

Respondent barred.

Date of hearing: 30/11/11

Finding delivered: 13/3/12

### FINDING

By complaint (TDP Form 1) lodged to the Panel on 20/5/11, the complainant claimed that he was unfairly dismissed by the respondent on 29/3/11.

On 3/6/11, the Panel secretary issued three copies of notices of appearance (TDP Form 2) to the respondent to be completed and returned to the Panel within 21 days from the date it received the forms.

At the lapse of the 21 days, however, the forms were never received from the respondent.

On 15/8/11, the Panel secretary issued another letter to inform the respondent of its failure to file the TDP 2 Forms. In the same correspondence, the respondent was advised to attend a hearing on 7/9/11 at 09.00am and to apply for an extension of time to file the TDP 2 Forms if it wished to take part in the proceeding.

At the hearing on 7/9/11, however, the respondent failed to make any appearance. Consequently, the complainant applied for an order to bar the respondent from taking part in the proceeding on the grounds of the respondent's non-appearance on that day as well as for its failure to file the TDP2 forms. The Panel granted the application and adjourned the matter for hearing at a later date.

The matter was not heard until 30/11/11 when the Panel heard evidence only from the complainant. In his sworn evidence, the complainant told the Panel that he began his employment with the respondent company on December 2006. At the time of his dismissal he was employed as a sales man. His duties mainly involved selling empty copra sacks to customers. He told the Panel that the ground for his termination did not warrant a dismissal as such. He said he did not even receive any form of warning during his four years of employment with the respondent. The reason for his termination was for a minor disturbance he had caused at the work place when he came to take up his morning shift at about 2.00 am. He told the Panel that when he came to the gate he called the securities to open the gate. He did that by banging the gate using the palms of his hands. The next day at about 2.00 pm the complainant was handed a termination letter which he refused to accept it. The boss said he would see the complainant about it later, which he never did.

In unfair dismissal cases, the onus is on the employer (the respondent in this case) to prove that the complainant was not unfairly dismissed. In this case, the respondent had lost its opportunity to discharge such burden as a result of its own failure to file its defense (TDP Form2s) that had resulted to an order by the Panel to disallow the respondent taking part in the proceeding.

Having observed the demeanor of the complainant in the witness box, however, the Panel finds that the complainant's evidence was reliable, thus, accepted by the Panel as truthful. The Panel finds that the ground invoked by the respondent to terminate the complainant was not substantial taking into account the period of employment (four years) the complainant had served with the company.

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 has still not secured any employment since termination. Upon termination, the complainant was not paid one month salary in lieu of notice.

Compensation is therefore calculated as follows.

1. One-month pay in lieu of notice	- 1,600.00
2. Loss of employment: ( 5 months' salary: 5 x \$1,600)	- 8,000.00
Total	- 9,600.00

#### ORDER

1. The respondent is to pay a total of \$9,600.00 as compensation to the complainant within 14 days.
2. The respondent is also to pay \$1,000.00 towards panel expenses within 14 days.

APPEAL

Right of appeal to the High Court within 14 days.

On behalf of the Panel:

