

IN THE TRADE DISPUTES PANEL  
SOLOMON ISLANDS

CASE NO. UDF 70/11

BETWEEN: John Ramoga (COMPLAINANT)  
AND: Solomon Island Tobacco Company (RESPONDENT)

Panel: 1. Francis Cecil Luza -Chairman  
2. Rogers Benzie - Employer representative  
3. John Zoti - Employee representative

Appearances: Kathleen Kohata for the complainant  
Silverio Lepe for the respondent.

Date of hearing: 3/6/14 & 26/8/14.

Date finding delivered: 27/10/14.

**FINDING**

By complaint lodged to the Panel on 29/9/11, the complainant claimed he was unfairly dismissed by the respondent on 1/7/11. The grounds for his complaint were stated as follows:

1. No notice of termination given; and
2. Not given an opportunity to be heard before termination.

By amended notice of appearance filed on 28/2/12, however, the respondent denied the claim stating the complainant was in fact dismissed on the following grounds:

- "A. Neglect of duty exposing the respondent's stock at risk of being stolen and incurred additional costs for the delay caused by the complainant's unauthorised trip to his village on personal grounds contrary to his contract of service.

B. Unlawful use of respondent's vehicle contrary to the respondent's Motor Vehicle Policy.

### **RELEVANT FACTS**

The complainant was employed by the respondent as a security officer. His employment began on 5/11/08. As a security officer, his job also involved providing security on board ships that were chartered by the respondent to deliver stocks to its clients in the provinces. At the time of his termination, the complainant was temporarily posted in Auki where his duty was to provide security for company premises there. He was transferred to Auki on 1/7/11. He received a fortnight salary of \$883.30.

On 2/6/11, MV Santo Star was chartered by the respondent to deliver its stocks at Auki. Accompanying the stocks were Nelson Maki (sales representative), Peter Mama, Tony Kabasi (sales representative) and Peter Ihomae (security officer). The ship arrived at Auki at about 11 o'clock in the night. On arrival, the complainant advised the team accompanying the stocks to delay unloading until morning, which they did. Only the cruiser vehicle was offloaded from the ship which was driven away by Nelson Maki and Tony Kabasi. In the morning as the respondent vehicle was not available the complainant had to use a client's vehicle to do unloading of the stocks into the respondent warehouse.

After unloading the ship, the complainant and his friends who assisted him with the unloading decided to have some beers as refreshment. Whilst they were still drinking, the complainant received a phone call from Christina Palusi from the Honiara main office, which she advised the complainant to retrieve the vehicle from Nelson Maki and advised him to immediately board the ship to return to Honiara. As he went to look for Nelson Maki, the complainant received information that a relative had passed away at Buma village some kilometres away from Auki. He then went to the bank to get some money to be sent to relatives at home to assist them with the funeral expenses. On his way to the bank, he met Nelson Maki and Tony Kabasi as they stopped and

asked him where he was going. Nelson Maki was the one driving the vehicle. The complainant told them about the passing away of his relative that he was trying to send some money to the relatives at Buma, west Kwaio. Nelson Maki and Tony Kabasi then offered to transport the complainant to Buma. They then left for Buma at around 2.00 pm.

As they reached Buma, Nelso Maki and Tony Kabasi dropped off the complainant and returned to Auki where they boarded MV Santo Star to return to Honira. The complainant did not return to Auki until the next morning.

### Guiding Principle

In unfair dismissal cases, the guiding principles in determining whether a dismissal is fair or not is found in section 4 of the **Unfair Dismissal Act, Cap 77**, which states:

"(1) An employee who is dismissed is not unfairly dismissed if-

(a) he is dismissed for a substantial reason of a kind such as to justify the dismissal of an employee holding his position;

(b) in all the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissing the employee.

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

The respondent's case is that the complainant was dismissed for consuming alcohol during working hours and using company vehicle without authorisation.

During cross-examination the complainant admitted drinking alcohol on the night of 1<sup>st</sup> June 2011 after the arrival of MV



Santo Star at Auki wharf. He was drinking with Nelson Maki and Tony Kabasi. The complainant also told the Panel that after unloading the ship the next day (2/6/11), he had some beers with friends who had assisted him unloading the ship. He admitted consuming eight beers at that time. When he boarded the vehicle to travel to Buma, the complainant said there were beers in the vehicle which he denied consuming any. That however cannot be accepted as true. It is very doubtful that the complainant would not want to join his friends drinking in the circumstances he was in, especially when he had just consumed eight beers before he met Maki and Kabasi. On the evidence, the Panel is satisfied that the complainant was drinking along with Maki and Kabasi in the vehicle on their trip to Buma.

As to the unauthorised use of the vehicle, the complainant seemed to be saying that Nelson Maki was the one who initiated the trip as he wanted to assist the complainant deliver the money to his relatives at Buma. Again that cannot be accepted as true. It is apparent from the evidence that by the time they met, they were all drunk and the reason for them holding on to the vehicle was to facilitate their drinking. The trip to Buma was no doubt an initiative by all three of them so that they that they continued with their drinking.

On the evidence, the Panel is satisfied the the complainant was drinking during working hours and as a result had failed to seek proper permission to use the vehicle to travel to Buma. As a result of being influenced by alcohol, the complainant had also made inconsiderate decision to leave his work place knowing fully well that stock with high value was just deposited in the warehouse at Auki. The decision of the complainant with Maki and Kabasi to travel to Buma had also resulted in the vessel being delayed attracting further costs to the respondent. All these considered together, in the Panel's view, constitutes a reason substantial enough to terminate the complainant. Having said that, and in all the circumstances, the Panel finds that the reason for terminating the complainant is substantial, and is of a kind justifying a dismissal of an employee holding the complainant's position.

**Did the employer act reasonably in treating that reason as reasonable in terminating the complainant?**

The Panel answers this question in the negative. Whilst the complainant was given the opportunity to be heard, the complainant was informed about his suspension by other security officers. When asked whether he was truly suspended, the Security Manager, Eddie Soaki in a telephone conversation with the complainant confirmed to him about his suspension and advised the complainant to meet him at Y-Sato Company at Pt. Cruz to collect his suspension letter. The Panel considers this as an unprofessional way of dealing with the complainant's suspension that followed with his eventual termination. Information regarding suspension of employees, as such, should be treated confidential, and yet in this case, it was the other security officers who first knew about the complainant's suspension before the complainant himself.

Having said that, and in all the circumstances, the Panel finds that the complainant's dismissal was unfair.

#### **AWARD**

In awarding compensation, the panel notes that the complainant had worked for the respondent for a period of two years eight months. The complainant has not secured any employment since termination.

The Panel therefore awards **six months' salary** as compensation to the complainant for loss of employment, which is calculated as follows:

$$6 \times 1,666.60 = \$9,999.60$$

The panel therefore considers the sum of **\$9,999.60** as fair and reasonable in all the circumstances, taking account of the conduct of the employer and the complainant both before and after the date of dismissal.

**ORDER**

1. The respondent is to pay the sum of **\$9,999.60** as compensation to the complainant for his wrongful dismissal within 14 days.
2. The respondent is to pay **\$1,000.00** towards panel costs within 14 days.

**Appeal**

Right of appeal to the High Court within 14 days.

BY THE PANEL

  
CHAIRMAN/TRADE DISPUTES PANEL

