

THE UNFAIR DISMISSAL BILL

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Covering letter from Minister to Clerk to Parliament

FROM: *20/1/82* Parliamentary Draftsman, Attorney General's Chambers

TO: *21.1.82* Minister of Employment, Youth and Social Development
(for signing of Objects and Reasons, Notice of
Presentation and covering letter to Clerk)

TO: *9/2/82* Clerk to National Parliament
(for certificate by Speaker)

TO: Parliamentary Draftsman
(for printing)

TO: Clerk to National Parliament
(for reference during 1st, 2nd and 3rd Readings)
Date passed: 27/7/82 Act. No. 8

TO: Parliamentary Draftsman
(for checking before Assent) *17/8/82 JOB*

TO: Governor-General *B. Senesi*
(for Assent) *Governor-General 17/8/82*

TO: Clerk to National Parliament
(for distribution: 2 copies Attorney General's Chambers
(1 copy to Government Printer when
title page has been reset)
1 Copy to Ministry (EY & SD)
1 Copy to Parliament Office

SOLOMON ISLANDS



UNFAIR DISMISSAL ACT 1982

NO 8 OF 1982

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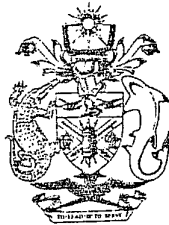
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UNFAIR DISMISSAL ACT 1982

NO 8 OF 1982

Passed by the National Parliament this twenty-seventh day of July 1982.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.

A handwritten signature in dark ink, appearing to read 'F. Fa'amaea'.

*Festus Fa'amaea
Clerk to the National Parliament*

Assented to in Her Majesty's name and on Her Majesty's behalf this 17th day of August 1982.

A handwritten signature in dark ink, appearing to read 'B. Devesi'.

*B Devesi
Governor-General*

Date of commencement: see section 1

AN ACT to provide a remedy for employees who are unfairly dismissed; for questions about redundancy payments to be referred to the Trade Disputes Panel; for the enforcement of money awards of the panel; to extend the power to make rules about the panel and for connected purposes.

ENACTED by the National Parliament of Solomon Islands.

Introductory

Short title
and
commence-
ment.

1. (1) This Act may be cited as the Unfair Dismissal Act 1982.
- (2) This Act is to come into force on such day as the Minister may by notice in the Gazette appoint; and different days may be appointed for different provisions and for different purposes.
- (3) Section 56 of the Interpretation and General Provisions Act 1978 (parliamentary procedure) does not apply to a notice under this section.

Unfair Dismissal

Right not to
be unfairly
dismissed.

2. (1) Subject to the following provisions, every employee has the right not to be unfairly dismissed by his employer.
- (2) The remedy for an employee dismissed in breach of that right is that provided by section 6.

Meaning of
"dismiss".

3. For the purposes of this Act, an employee is dismissed by his employer if and only if -
 - (a) the contract under which he is employed is terminated by the employer (by notice or otherwise);
 - (b) the contract under which he is employed is a fixed term contract and the term expires without being renewed under the same contract; or
 - (c) the employee terminates the contract under which he is employed (with or without notice) in circumstances in which, by reason of the employer's conduct, the employee is entitled to terminate it without notice.

"Fair" and
"unfair"
dismissal.

4. (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; and
 - (b) in all the circumstances, the employer acted reasonably in treating that reason as sufficient for dismissing the employee.
- (2) An employee who is dismissed is not unfairly dismissed if he is dismissed because of redundancy.
- (3) An employee who is dismissed is not unfairly dismissed if the reason for his dismissal is that he could not continue to work in the position which he held without contravention (either on his part or on that of his employer) of a duty or restriction imposed by or under written law.

(4) In deciding whether the dismissal of an employee was fair or unfair, there may be taken into consideration the period of time for which he has worked in the employer's undertaking; but an employee who is dismissed is not unfairly dismissed if -

- (a) he is dismissed within the period of 26 weeks beginning when his employment in the employer's undertaking began; and
- (b) before his dismissal he has agreed in writing to exclude any claim for unfair dismissal arising within that period.

5. (1) Section 2 does not confer a right on any person employed under a contract of employment for a fixed term (whether or not the term might be renewed) unless he is a citizen of Solomon Islands.

Excluded cases.

(2) That section does not confer a right on any person if, under his contract of employment, he ordinarily works outside Solomon Islands.

(3) But a person who, under his contract of employment, is employed to work on board a ship registered in Solomon Islands under Part I of the Merchant Shipping Act 1894 is to be treated as a person who, under that contract, ordinarily works in Solomon Islands.

6. (1) An employee ("the complainant") may present a complaint to the Trade Disputes Panel against his employer that he has been unfairly dismissed by the employer.

Complaint of unfair dismissal.

(2) In the case of an employee dismissed in connection with a trade dispute that is referred to the panel, no complaint by the employee under this section may be considered by the panel while the dispute stands referred to them.

(3) A complaint under this section may not be made after the end of the period of three months beginning with the date of dismissal.

(4) If the panel -

- (a) finds that the complaint is well-founded; and
- (b) considers that it would be both practicable and fair for the complainant to be re-engaged by the employer,

the panel must make a recommendation to that effect, stating the terms on which they consider that it would be reasonable for the complainant to be re-engaged.

(5) If the panel finds that the complaint is well-founded but either -

- (a) does not make a recommendation under subsection (4); or

(b) having made such a recommendation, it is not complied with,
the panel must make an award of compensation to be paid by the employer to the complainant in respect of the dismissal, unless the complainant has been re-engaged by the employer on terms which the panel consider reasonable.

(6) If, on a complaint under this section, it is shown that the complainant was dismissed, it is for the employer to show what was the reason for the dismissal.

(7) In this section, "trade dispute" has the same meaning as in the Trade Disputes Act 1981; and "re-engaged" includes "re-instated".

Amount of
compensation.

7. (1) The amount of compensation that may be awarded by the Trade Disputes Panel under section 6 is such amount as the panel consider fair and reasonable in all the circumstances, taking account (among other things) of the conduct of the employer and the complainant both before and after the date of dismissal.

(2) But that amount may not exceed the amount which, in the complainant's case, represents 52 x BW, where "BW" is the basic weekly wage of the complainant on the date of his dismissal.

(3) Where any party is aggrieved by the amount of compensation awarded by the Trade Dispute Panel under section 6 he may within one month of the date of the award appeal to a Court.

Redundancy payments

Complaints
about
redundancy
payments.

8. (1) Any question arising under Part II of the Employment Act 1981 as to the right of any person to a redundancy payment, or as to the amount of the payment, shall be referred to the Trade Disputes Panel by a complaint under this section and determined by the panel.

(2) Accordingly, that Act is amended as follows -

(a) in section 4(2), for "Commissioner of Labour" substitute "Trade Disputes Panel";

(b) in section 9(1)(c), for "Commissioner of Labour" substitute "Trade Disputes Panel"; and

(c) omit sections 10 and 11;

but sections 10 and 11 of that Act continue to have effect for

the purposes of Part III of that Act (long service benefit) and in respect of any question referred to the Commissioner of Labour under section 10 of that Act before the commencement of this section.

(3) The hearing of a complaint under this section may be combined with the hearing of a complaint under section 6 above; and, in such a case, section 4(2) of the Employment Act 1981 (presumption of redundancy) does not apply.

9. In section 9(1) of the Employment Act 1981 (claim for redundancy payment must be made within two years of certain events), at the end add -

“; or

(d) the employee has presented a complaint to the Trade Disputes Panel under section 6 of the Unfair Dismissal Act 1982 that, on the relevant date, he was unfairly dismissed.”:

Claim of unfair dismissal preserves right to redundancy payment.

General

10. Where -

(a) the Trade Disputes Panel has determined that an employer is liable to make a redundancy payment of a specified amount to an employee or is to pay compensation under section 6(5) above; and

(b) the payment has not been made,

the payment may be recovered as a debt and, accordingly, any magistrate's court (irrespective of the financial limits on its jurisdiction) may on a complaint by or on behalf of the employee order the payment of that sum.

Enforcement of money awards of Trade Disputes Panel.

11. (1) In this Act -

“contract of employment”;

“employee”;

“employer”;

“redundancy payment”; and

“renewal”;

have the same meaning as in Part II of the Employment Act 1981.

(2) Sections 4 (meaning of dismissal “because of redundancy”), 5(3) (date of dismissal), 23(1) (Government employment), 24 (regulations) and 25(1) (supplementary provisions) of the Employment Act 1981 apply for the purposes of this Act as they apply for the purposes of Part II of that Act.

Application of provisions of Employment Act 1981.

(3) But section 25(1) of that Act applies subject to section 4(4) above.

Application
and
extension of
provisions of
Trade
Disputes Act
1981.

12. (1) Sections 3(3) (rules for Trade Disputes Panel), 7(1) (award to show reasons), 8(1) (panel may give majority award) and 13 (appeals) of the Trade Disputes Act 1981 apply in relation to any award or other decision of the Trade Disputes Panel under this Act as they apply in relation to awards or decisions under the Trade Disputes Act 1981.

(2) In section 3(3) of the Trade Disputes Act 1981 (matters that may be included in rules), after subparagraph (d) insert -

- “ (da) for the award of costs;
(db) for imposing fees for the performance by the panel or a conciliator of any of their functions;
(dc) for a person who, without reasonable excuse, fails to comply with any requirement imposed by virtue of paragraph (a) or (b) above (including any restriction on the disclosure of information) to be guilty of an offence and liable on conviction to a fine not exceeding \$200, or imprisonment for three months, or both;”.

(3) The panel has the same power to order parties to a complaint under this Act to contribute towards the expenses of the panel as it has under section 11 of the Trade Disputes Act 1981 to order parties to a trade dispute to do so.

Consequential
amendments
of Labour
Act.

13. (1) Sections 65 and 73 of the Labour Act (dismissal without notice) are repealed.

(2) Section 10(2) of the Labour Act (deductions from wages) is amended, after subparagraph 2(b) insert -

- “(c) make deductions from the wages of a worker of any amount which forms, or is a part of, any collective Agreement or an award within the meaning of the Trade Disputes Act 1981 provided that the employee gives his written consent to the employer.”

This section has effect in relation to collective agreements and awards made on or after 1st July 1981 as it has in effect in relation to collective agreements and awards made on or after the date on which this section comes into effect.

