

# REPRINT

## UNFAIR DISMISSAL ACT (CAP. 77)

**As in force at: 1 March 1996**

**STATUS: HISTORICAL**

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**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**

## UNFAIR DISMISSAL ACT (CAP. 77)

### Table of provisions

1	Short title	1
2	Right not to be unfairly dismissed	1
3	Meaning of “dismiss”	1
4	“Fair” and “unfair” dismissal	1
5	Excluded cases	2
6	Complaint of unfair dismissal	2
7	Amount of compensation	3
8	Complaints about redundancy payments	4
9	Enforcement of money awards of Trade Disputes Panel	5
10	Application of provisions of Employment Act	5
11	Application and extension of provisions of Trade Disputes Act	5

# UNFAIR DISMISSAL ACT (Cap. 77)

As in force at: 1 March 1996

## *Introductory*

### **1 Short title**

This Act may be cited as the *Unfair Dismissal Act*.

## *Unfair Dismissal*

### **2 Right not to be unfairly dismissed**

- (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.

### **3 Meaning of “dismiss”**

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.

### **4 “Fair” and “unfair” dismissal**

- (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 Excluded cases**

- (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.
- (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 Complaint of unfair dismissal**

- (1) An employee ("the complainant") may present a complaint to the

2

Trade Disputes Panel against his employer that he has been unfairly dismissed by the employer.

- (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) find that the complaint is well-founded; and
  - (b) consider 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 find that the complaint is well-founded but either:
  - (a) do 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*; and “**re-engaged**” includes “**re-instated**”.

## **7 Amount of compensation**

- (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  $52 \times \text{BW}$ , 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*

### **8 Complaints about redundancy payments**

- (1) Any question arising under Part II of the *Employment Act* 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* (presumption of redundancy) does not apply.

#### *General*

## **9 Enforcement of money awards of Trade Disputes Panel**

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); 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.

## **10 Application of provisions of Employment Act**

- (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*.

- (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* apply for the purposes of this Act as they apply for the purposes of Part II of that Act.
- (3) But section 25(1) of that Act applies subject to section 4(4) of this Act.

## **11 Application and extension of provisions of Trade Disputes Act**

- (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* 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*.

- (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* to order parties to a trade dispute to do so.



## ENDNOTES

1

### KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

### NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 77 of the Revised Edition of the Laws of Solomon Islands.

2

### LIST OF LEGISLATION

#### ***Unfair Dismissal Act (Cap. 77)***

*Constituent legislation:* 8 of 1982 (Commenced 1 January 1983)

3

### LIST OF AMENDMENTS