

IN THE HIGH COURT OF SOLOMON ISLANDS.
(Faukona, DCJ).

Civil Case No. 415 of 2020.

BETWEEN: SOLOMON ISLANDS NATIONAL UNIVERSITY	Appellant
AND: LECTURERS ASSOCIATION OF SOLOMON ISLANDS NATIONAL UNIVERSITY	First Respondent
AND: SOLOMON ISLANDS NATIONAL UNIVERSITY GENERAL STAFF ASSOCIATION	Second Respondent

Date of Hearing: 27th November 2020.

Date of Decision: 8th February 2021.

Mr. A. Radclyffe for the Appellant.

Mr. M. Pitakaka for the First and Second Respondents.

DECISION ON APPEAL FROM TRADE DISPUTE PANEL.

Faukona, DCJ: This appeal was filed by the Appellant by way of notice of appeal dated 21st August 2020. The appeal was emulated from Trade Dispute Panel decision and orders of which the Appellant is aggrieved.

2. The orders appealed against are four fold. The first is order 3 of the ruling on 4th August 2020, and orders (1), (3) and (4) of the ruling on 19th August 2020.

Jurisdictional issue.

3. The issue of subjective jurisdiction is one that is raised by the Counsel for the Respondents in his submissions. Notably, the issue is not so much part and partial of this appeal. However, I could able to glean the motive is an attempt to draw the act of suspension as part of the referral.

4. In any event, a fair commentary is; once the Trade Dispute Panel (TDP) accepted a referral, equivalently the content is thereby subjective to its jurisdiction.
5. The question whether the referral was valid or not is not a concern of this appeal, but the counsel has labored himself to venture, as if the issue is relevant, and one which is to be considered in the light of appeal grounds (1) or (2).
6. The submissions apparently are far more drifting and diverted from the core issues of the appeal. I noted the Vice Chancellor was alleged to have suspended seven employees after the dispute had been referred to the TDP on 6th July 2020. He may have exercised his powers under S. 29(2) of the Solomon Islands National University (SINU) Act 2012, however, subjective to guidance by the Council.
7. Undoubtedly, though evidence was not available before the panel, it supposes set the path to achieve jurisdictional purposes. Whether the act by the Vice Chancellor in suspending, or termination, is one which bordered within the definition of Trade dispute under the glossary in section 1 of the schedule, in my opinion makes no difference even in the interpretation of S.10 (2) (c) of the Trade Dispute Act.
8. In an expository approach the act of suspension is not part and partial of the grounds that confer original jurisdiction upon the TDP which was accepted, so to say is a grave error to presume. The remedy for breach of S10 (2) is different; they are outline in sub-sections 3 to 6.
9. Quite apart, but significant, is the effect of such which prompted the Respondents to give strike notice on 10th August 2020. That was a clear incident of breach resumed to, after the first ruling was made on 4th August 2020. Prospectively the action taken by the Respondents was also in breach of S.10 (2) of Trade Dispute (TD) Act. On that material date the TDP had yet to make the final determination which it did on 19th August 2020.
10. Conceivably, there were breaches committed by both parties with no exception. And determination cannot be fairly made on any particular party.

11. In fact the major issues filed before the Panel were allegations against the Vice Chancellor which formed the original trade dispute, which were referred. The question whether the act of suspension can be read into the meaning of trade dispute as define in the schedule; in a generic sense I would say yes, but unfortunately is not part of this appeal. However, the reality is that the suspension was done after the referral was already filed with the Trade Dispute Panel. There are avenues provided under subsections 3 to 6 of S. 10 to deal with such action. Therefore any breaches under S.10 (2) cannot attract TDP jurisdiction.

Has LASINU and SINGUSA locus standi.

12. The first appeal point concerns order 3 of the Trade Dispute Panel ruling on 4th August 2020. The issue is one of law and preliminary in nature. Objectively it questions whether the two Associations (Respondent 1 and 2) have locus standi, or have acquired legal standing, as a pre-requisite requirement under law, before they can refer and represent their members in the Trade Dispute Panel proceedings, or alternatively the Courts. The Respondents undoubtedly could be legal bodies established under s.36 of the SINU Act of 2012.
13. For academic and learning purposes let's define what is locus standi? In a limited focus, locus standi is an employed doctrine to establish a right of a person to seek a particular remedy before the courts, and the person's right to advance particular arguments in seeking remedy. The Blacks Law Dictionary¹ advances a more broad application which mean – "locus standi is the right to bring an action or to be heard in a given forum". That forum can also include Trade Dispute Panel.
14. The principle has adorned its history from the English common law and equity. Subsequently gain footing and application by virtue of Schedule 3 of the National Constitution which facilitate its application to the circumstances of Solomon Islands. Locus standi is a doctrine that applies in many various circumstances.
15. To appreciate this finding I refer to the case of Peter Kenilorea V Attorney General². In that case the late Sir Peter Kenilorea instituted a civil suit

¹ 8th Edition

² (1983) SILR 61

seeking declaration that the Governor General acted outside of his powers conferred by the Constitution, in releasing two convicted prisoners, upon advice by the Prerogative of Mercy Committee. The initial issue discussed was whether the late Sir Peter had locus standi or sufficient interest to institute the case. The court ruled yes, not in his personal name, but in his capacity as a leader of official opposition, at that time, on the ground of public policy.

16. In another case of Lavukal House of Chiefs (Registered Trustees Inc) & 2 Others V Oliver Salopuka & 7 Others³. In that case the preliminary issue discussed was locus standi or a valid retainer. The question is whether Chief Samuel Kubu of the first Claimant was an agent of the 2nd and 3rd Claimants, and whether attempt ratification by Chief Kubu have the full backing of all the paramount chiefs that constituted the first Claimant.

17. Ultimately the Court found that instructions given to the Counsel to file a claim on behalf of two other Claimants, who were entities as well, was done solely by Chief Kubu himself. There was no evidence he was mandated to do so, neither has the authority by virtue of any position he held in the three Claimants as entities. He himself does not constitute the three entities. The proceeding was dismissed with Chief Kubu had no legal standing to give instructions on behalf of the other Claimants.

18. The facts of the cases may not carry the same ramification or similarities but the principle remains the same. To represent others in a tribunal or court you have to obtain their consent. Similarly where law requires a body or organization to be registered before acting on behalf of others, fulfil that requirement as a prerequisite, otherwise any instruction, representation or action taken lacks standing or is unlawful in the eyes of law.

19. The Appellant advances argument that the Panel was wrong in holding that the Respondents have locus standi or legal standing to represent their members in the TDP proceeding whilst they were not registered trade unions.

³ (2017) HCSI No. 344 of 2017.

20. On the opposite the Counsel for the Respondents submits otherwise and state by alluding to S.36 of the SINU Act and the definition of the words Trade Union in schedule of the "*Trade Union Act*".
21. He further submits that the Respondents had been established and registered under S.16 of the College of Higher Education Act, Cap. 68. For time being they have applied to be registered under the SINU Act 2012, but were yet be given certificate of incorporation/registration by the Registrar of Companies.
22. By acknowledging the incomplete registration of both Respondents, it cannot be over optimistic that both were legal bodies established and registered by the Trade Union Act. There is no evidence to show that both Respondents were registered; proof of that are certificates of incorporation. What both Respondents have is evidence from the bar table that that their applications were pending processing. Apparently that exhibits uncertainty about the legal standing which continue to be dwindling, even at this point in time.
23. Having satisfied, upon conformity, that both Respondents are yet to be formally registered under the Trade Union Act, has therefore render their service of representation unlawful and null and void ab initio.
24. S.21 of the Trade Union Act has clearly and precisely pronounces that an unregistered trade union shall not enjoy any of the rights, immunities or privileges of a registered Trade Union. One fine hypothetical example of an unregistered trade union is that where restraint of trade (strike) was organized, Section 22 of the Trade Unions Act describes it as deemed to be unlawful so as to render any member liable for criminal prosecution for conspiracy.
25. One other, but significant qualification is that the Council of the University must approve the formation of a union, or association of staff. It is clear from the Appellant's submissions that the University did not recognize the Associations. This is important because in the event disputes arise there is recognition and understanding that the Associations and the Appellant ought to work together corporately, or with one accord to achieve discipline, healthy academic and amicable co-existence.

26. To divert reality into illusion, the Counsel for the Respondents submits that both Associations had been established and registered under the SICHE Act. Unfortunately that proponent must be flawed on the specific basis that the Act that established SICHE had been repealed and substituted with an Act alleviative of a new status as SINU Act 2012.
27. Practically, for reasonableness sake, anything established or registered under the requirements of a repealed Act must be repealed as well, unless there is provision specifically prescribe for peaceful transition, equitably to maintain such establishment to continue have standing and function under the new Act. Lack of such expression, as I note, render the Respondent's locus standi at stake to appear as representatives of their members in the Trade Dispute Panel proceedings.
28. Quite amazing, in its reasoning, the TDP stated that both Respondents are legal bodies therefore have locus standi. That conclusion was not substantiated by any investigations into the legal status and establishment of both Respondents. Had the Panel vigilant in its research it would have concluded that both the Respondents were not registered to act on behalf of their members.
29. I must therefore uphold this ground of appeal and revoke the Panels' decision and order.

Ground 2 – Suspension of Seven employees by Vice Chancellor.

30. On the outset it is pertinent to reiterate again for legal clarification that the seven employees suspended was an act taken after the referral was already being filed with the Trade Dispute Panel; similarly, the notice for strike issued by the Respondents on 10th August 2020. Those activities were pursued whilst the referral is pending final determination by the TDP. Therefore both actions were in breached of S.10 (2) of the Trade Dispute Act.
31. Whilst the word suspension is not specifically entrenched in S 10 (2), however, the words trade dispute is defined as dispute between employer and employees. One of the litigated issue define in the glossary is termination or suspension of employee.

32. The glossary defines issues which accumulate disputes between an employer and employee which the parties are entitled to refer to the Trade Dispute Panel for redress as a major litigation issue.
33. There are other remedies provided and available by subsection 3 which provide for criminal punishment and subsection 4 to 6 by invoking the jurisdictional power of the High Court. In Subsection (3) to (6) there is no mention of the Trade Dispute Panel having jurisdiction to deal with any contraventions, only the Courts even to the extent of reinstating a termination or suspended officer. In this case the VC is an isolated person not a party to the TDP proceedings; hence his action can be dealt with by those subsections.
34. It is very precisely specified under the law that TDP deals with complaints and issues refer to it for determination, and the Court deals with the breaches under S. 10 (2) of the Trade Dispute Panel. There is no concurrent jurisdiction. Obviously the Panel is wrong by reinstating the suspended seven staff of which it has no jurisdiction conferred upon by law.
35. On another front, is the figurative on my determination on ground one. My findings that the Respondents lack locus standi or legal standing to represent their members in the TDP proceeding, is a prerequisite requirement in law for want of registration. Any determination or order made in favour of the Respondent (1) and (2) is unlawful and null and void ab initio or void from the beginning. That sums up my conclusion to uphold this ground and revoke the Panel's order(1) of 19th August 2020.

Grounds 3 and 4:

36. These two grounds concern orders (3) and (4) of the Trade Dispute Panel decision delivered on 19th August 2020. For ease of reference I shall deal with both grounds correspondingly.
37. The major argument focused on is the irregularity or non-ordinary of such orders. The Panel does have power conferred by the Trade Dispute Act but does not have power to direct a Counsel representing a client to advise its ruling body (the University Council) to suspend the VC, or to terminate the appointment of a committee appointed to investigate the allegation against the Vice Chancellor of the Appellant.

38. The Appellant is an educational institution established by an Act of Parliament. The objectives and the functions of the Appellant are profoundly specified within the Act. The University Counsel is the ruling body which appointed the Vice Chancellor as the Chief Executive Officer who ensures the general administration of the Institution is in order.
39. For the Panel to direct the Legal Counsel representing the Appellant (the Institution) to suspend the Vice Chancellor of the Institution, following the allegation against the Vice Chancellor, are not ordinary orders expected of a tribunal as the TDP. The question is why should the TDP not making such orders itself if it has powers?
40. There may be extra-ordinary powers conferred to exercise in the circumstances as may be required by law, but to direct a Lawyer to advise the ruling body of the Appellant to suspend the Vice Chancellor and terminate the appointment of the Committee is an absolute foreign input to behold.
41. The TDP which perform a quasi-judicial function must ensure justice is done in each case depending on circumstances and should exhibit, with confidence, wisdom in decisions making without fear or favour.
42. What the TDP should have done was to make direct orders as remedy to resolve the dispute. The Counsel for the Appellant is not a party to this case; he is merely legal representative and has no power under the heavens or law to do as being ordered by the TDP. In doing what it did, the Panel is committing a massive legal error which any tribunal could not have done.
43. Despite the anomaly the Counsel for the Respondents submits that the TDP's decision and orders were substantiated by evidence. That with respect is a misconception of the circumstantial reality. The orders were totally unpopular and were not substantiated by evidence.
44. After the second ruling on 19th August 2020, the University Council informed the parties that the investigations had been done and the allegations against the Vice Chancellor had not been substantiated, therefore there were no grounds for the University Council to suspend him.

45. Such result would immediately have no prospect of implementing order 3. Where an order of a tribunal cannot possibly be implemented then the order becomes redundant, should return to isolation unenforceable.
46. In relation to order 4, the legal Counsel also has no power to instruct University Counsel to terminate the appointment of Committee members and new appointments made.
47. The crucial fuss of that order is there is no evidence showing the Vice Chancellor was involved in the appointment of the Committee. The Counsel for the Respondents points out that there is evidence by way of documentation. Proof of evidence, as a code of practice must be by way of a sworn statement or oral sworn statement, and if there is a document or instrument proving the Vice Chancellor directly or indirectly involved in appointing the Committee members, that should be attached to the sworn statement. In this case there is nothing at all; there is no evidence before the Panel to consider.
48. In conclusion all the appeal points are upheld. The reasons for this decision are as pointed out above, therefore merit this Court to revoke all the orders of the TDP delivered on 4th August 2020 and 19th August 2020.

Orders:

1. That orders (3) by the Trade Dispute Panel on 4th August 2020, and orders (1), (3) and (4) of the same Panel delivered on 19th August 2020 are hereby revoked.
2. That costs of this appeal be paid by both Respondents to the Appellant.

The Court.

