

IN THE SOLOMON ISLANDS COURT OF APPEAL

Case name:	Lecturers Association of Solomon Islands National University v Solomon Islands National University
Citation:	
Decision date:	12 October 2018
Nature of Jurisdiction	Appeal from Judgment of The High Court Of Solomon Islands(Keniapisia J)
Court File Number(s):	CA 9010 of 2018
Parties:	Lecturers Association of Solomon Islands National University v Solomon Islands National University
Hearing date(s):	5 October 2018
Place of delivery:	High Court of Solomon Islands- Court Room Six (6)
Judge(s):	Goldsbrough President Ward JA Lunabek JA
Representation:	
Catchwords:	
Words and phrases:	
Legislation cited:	Solomon Islands National University Act 2012, Trade Disputes Act
Cases cited:	
ExTempore/Reserved:	Reserved
Allowed/Dismissed:	Appeal is dismissed
Pages:	

JUDGMENT OF THE COURT

1. For many years further education in Solomon Islands was provided by the Solomon Islands College of Further Education (SICHE). It became apparent that there was need for a national university and a decision was made to elevate SICHE to that status. In order to achieve this, Parliament enacted the Solomon Islands National University Act 2012 (SINU Act). The commencement date was set for 1 January 2013 on which date the many functions of the new University were established including provisions for university governance, university membership, formal establishment of the university bodies and provisions for university finances. All commenced on 1 January 2013.
2. On the academic front there was a general upgrading of course titles, course materials and corresponding job descriptions for the academic staff. In line with these changes was a salary restructuring and/or upgrade and this gave rise to dispute. Eventually the appellants referred the dispute to the Trade Dispute Panel (TDP) in August 2015 and the Panel made an award in their favour.
3. SINU appealed to the High Court on the grounds principally that the TDP had no jurisdiction to intervene and was therefore in breach of section 7(4) of the Trade Disputes Act. The appeal was successful and, on 16 March 2017, the Court ordered:

“Appeal is upheld. No back dating of upgraded salaries to 1st January 2013. No order for costs.”

4. The Lecturers’ Association now appeals against the High Court decision on the grounds that the learned judge erred in law:
 - (1) in having decided that the back dating of salaries failed to enter into final document the Fixed Term Employment Contract (FTE) of 1st April 2015;

- (2) when he stated that the FTE Contract is silent on back dating or upgraded salaries to 1st January 2013;
- (3) in holding that SINU shall determine the terms and conditions of employment under SINU Act which was made complete in the FTE Contracts signed on or around 1st April 2015;
- (4) in having held that the Trades Dispute Panel made an award inconsistent with Section 50(1) and (2) of the SINU Act; therefore in breach of Section 7(4) of the TDP Act;
- (5) in failing to consider the issue of contract between the respondent and the appellant on evidence of correspondence, negotiations and Council decisions prior to signing of FTE Contract of 1st April 2017 (sic).

5. The brief background facts of the case were taken from the judgment in the court below:

“With salary upgrade and job description upgrade, there was talk of effective date and back date payment of upgraded salaries to 1st January 2013. However back date payment of upgraded salaries will only be made when funding permits. These discussions were taking place in May 2013 and, when they were taking place, the new salary structure and new pay scales were not yet approved and implemented. It took time for SINU to approve and finalise the upgraded salary structures for implementation. The work to upgrade begun in May 2013 ended on or around 1 April 2015 when the upgrading work ended and academic staff were asked to execute their FTE contracts. The FTE contracts contained the approved, finalised and upgraded salary structures.”

6. The learned judge distilled the issue before him in these terms:

“Whether upgraded salaries under the FTE Contracts of 1 April 2015, should be paid back dated to 1 January 2013 or should upgraded salaries be paid commencing on or around 1 April 2015 the date(s) the said contracts were executed.”

That remains the essence of the appeal.

7. The judge summarised the position:

“The FTE contract of 1st April 2015 was the end product of many months of negotiations, upgrade and reform work that began from on or around May 2013. Note that SINU came into existence on 1st January 2013. And as the evidence has shown, negotiations, discussions and decisions relayed have pointed to talks and decisions about back dating of upgraded salaries to 1st January 2013. Unfortunately for the academic staff, back dating of upgraded salaries failed to enter into the final document that matters the most - the FTE contract of 1st April 2015.

Courts will not interfere into a contract or will not write the terms and conditions for a contract for parties except on strict grounds of misrepresentation, mistake, illegality, duress, undue influence and unconscionability, ambiguity and fraud etc. Nothing of such has been raised in this case, to justify intervention.

Here the FTE contract of 1st April 2015 did not say upgraded salaries will be paid backdated to 1 January 2013. It only says the contract commences on 1 April 2015 and will expire on 31st March 2018. In other words, the contract is silent on backdating of upgraded salaries to 1 January 2013, the commencement date for the SINU Act. Appellant says there is no backdating. Respondent says there should be backdating.”

8. It is clear that the judge was correct to deal with the terms of the FTE contract under the normal rules of contract law. Before us, counsel for the appellant accepted that proposition but pointed out that, whilst the FTE

contracts were dated to commence on 1 April 2015, a Memorandum of Understanding (MOU) had been made between the appellant and the University management prior to that in February 2015. That, he submitted, was not taken into consideration by the judge. Counsel described it as a promise to back pay upgraded salaries and the university staff, being employees, relied on the promise. That promise to back date the upgraded salaries should be to the effective date of entitlement which was 1 January 2013.

9. Unfortunately, whilst the MOU can be read as a promise to back date, it is not legally binding as it would be if incorporated into the FTE contract.
10. Counsel's submissions reflect the frustration of the academic staff. He describes the promise in the MOU as "clear and unequivocal" and submits:

"The MOU between the respondent and the appellant binds them to undertake back dating of upgraded salaries from 1 January 2013 to 1 April 2013 when the FTE contracts commenced. Back dating of upgraded salaries was not a term in the FTE contract, but it was a promise made before the FTE contracts were made complete on 1 April 2015. The staff most of whom are members of the appellant continue to be employed by the university during the transition from SICHE to SINU."

11. The learned judge appears to appreciate that frustration but correctly confined his decision to the terms of the contract and its legal effect. He was correct to do so and we have no reason to interfere on grounds one, two, three and five.
12. Ground four additionally suggested that the judge's decision that the TDP award was made in breach of the powers under section 7(4) of the TDP Act was an error. It was not pressed by counsel for the appellants in the hearing before us. It can be dealt with briefly.
13. Section 7(4) provides:

“Where any trade dispute referred to the panel involves questions as to terms and conditions of or affecting employment which are regulated by any written law (other than this Act), the panel shall not make any award which is inconsistent with the provisions of that law.”

14. There can be no doubt that the Panel’s award is inconsistent with the terms of section 50(1) of the SINU Act a written law other than the TPD Act.:

- (1) on the commencement date, staff, where tenured, permanent or contracted, of the College of Higher Education shall be deemed to be employed by the University in such terms and conditions as the University shall determine.”

15. As the learned judge stated, the transitional changes taking place at SINU are fundamental and long lasting and what is happening between SINU and the SINU academic staff is an issue of that transition. That the new University should be successful is also fundamental and any success will depend to a very substantial degree on the commitment, expertise and loyalty of the academic staff. The judge in the court below drew attention to the powers, given to the University Council by section 7(a) of the SINU Act, to determine terms and conditions of service. We suggest that every effort is made to ensure the availability of funds to resolve this issue.

16. The appeal is dismissed and the judgment of the High Court is confirmed.

17. Like the judge below, we do not feel it is appropriate to apply the usual rule of costs following the event. We order there will be no order for costs.

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Goldsbrough P
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Ward JA

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Lunabek JA