

IN THE HIGH COURT OF SOLOMON ISLANDS

CIVIL JURISDICTION

Civil Case Number 396 of 2017

BETWEEN: SOLOMON ISLANDS NATIONAL UNIVERSITY - Appellant

**AND: LECTURERS ASSOCIATION OF
SOLOMON ISLANDS NATIONAL UNIVERSITY - Respondent**

Date of Hearing: 16th January 2018 (Closing Oral Submissions).

Date of Judgment: 16th March 2018.

Mr. A. Radclyffe for the Appellant.

Mr. E. Toifai for the Respondent.

KENIAPISIA; PJ:

JUDGMENT ON AN APPEAL FROM TRADE DISPUTES PANEL

Introduction

1. Formerly Solomon Islands College of Higher Education (“SICHE”) operating under College of Higher Education Act (Cap 68) – repealed Act. In a move to elevate SICHE to a national University status, Parliament enacted the Solomon Islands National University Act 2012 (No.9 of 2012) - (“SINU Act”). The SINU Act came into effect or the commencement date for SINU Act was the 1st of January 2013¹.
2. The effective or commencement date could mean different things to different users/consumers. But generally understood in the ordinary implications of the word, it simply means, that is the date when SINU Act came into existence. Put another way, it is the date when SICHE as a higher learning institution was formally elevated by law to a national University Status. Prior to that, there was no nationally owned University. On that date, we saw the birth of a nationally owned University, replacing SICHE.

¹ Parties agreed before the Panel that 1st January 2013 was commencement date for the SINU Act under Section 1.

This is the clear conclusion one gathers reading Sections 1 and 3 (1) of SINU Act together. With change of status, the real and challenging task to transition SICHE into a national University begun on the 1st January 2013.

3. Under Part 2 of the SINU Act, we saw the establishment and functions of Solomon Islands National University (“SINU”) came into force on 1st January 2013. Part 3 saw the University Governance came into force on 1st January 2013. Part 4, Membership of the University came into force on 1st January 2013. Part 5, Bodies of the University were formally established on 1st January 2013. Part 6 University Finances were established on 1st January 2013. Part 7 is on Miscellaneous and came into force on 1st January 2013.
4. These fundamental institutional progressions were unseen, but were actually taking place and made possible by operation of law – SINU Act. These transitions were taking place in all aspects of SINU operations and existence. On the infrastructure front²; we saw the construction of buildings and fences etc. The infrastructure upgrade or development was necessary for SINU to attain national University status.
5. On the academic front, we saw the upgrade of Course Titles, Course Materials and the corresponding Job Descriptions for academic staff. In line with these changes was salary restructuring or upgrade. This is where this dispute came about.

Evidence of Academic Staff Salary Upgrade

6. In Exhibits SH1³ and SH2⁴ we saw salary adjustment from SICHE to SINU. There was a total change from SICHE Salary Structure to the SINU new Salary Structure. A picture of this salary upgrade is on page 24 of Appeal Book as repeated herein:-

	Under SICHE Structure old Level & Salary	Under SINU Structure New Band/Grade & Salary (Annual and Basic)

² Court take judicial notice and is public knowledge.

³ Appeal Book – Page 24.

⁴ Appeal Book – Pages 26.

Level/Band	L 11.3	B 3.4 Parairato
Annual Salary	\$81,046.42	\$87,000.00
Basic Forth nightly Salary	\$3,117.17	\$3,346.15

7. It is also understood from the discussions in Exhibit SH1 and SH2 that with salary migration or upgrade are new Job Descriptions. Simply put, it means Job descriptions for academic staff will be upgraded along with salary upgrade.
8. 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. It appeared from documentary evidence that these were University Council Decisions, been relayed to staff members individually and collectively.

Appellant's Case

9. In May 2013, when these discussions and decisions were going on, 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 and ended on or around 1st April 2015. The 1st April 2015, was when the upgrading work ended and academic staff were asked to execute their Fixed Term Employment (FTE) contracts. The FTE contracts contained the approved, finalised and upgraded salary structures.
10. The correspondences on salary upgrade and back dating to 1st January 2013 were mere administrative decisions not Council decisions. And therefore these decisions communicated did not have legal binding effect on SINU.
11. Appellant's main submission is that; it is SINU that determines terms and conditions of employment. SINU made that determination when contracts of employment were ready for execution on or around 1st April 2015. This was after the salary upgrade structure and other necessary matters were finalised as per the SINU FTE contracts.

The said contracts were ready for execution by SINU Staff on or around 1st April 2015. Appellant submitted that the Panel should not interfere with a case where contracts had been voluntarily entered into by parties. To do so would contravene Section 7 (4) of the Trade Disputes Act (Cap 75) as read with Section 50 (1) of the SINU Act.

12. Appellant also says that the Panel erred in its interpretation of Section 50 (1) of the SINU Act. And that the Panel did not address Appellant's submission on the said provision, in concluding that upgraded salaries should be paid backdated to 1st January 2013. Appellant says there should be no back dating of upgraded salaries to 1st January 2013. Upgraded salaries payment should commence on date of executing the FTE contracts – 1st April 2015.

Respondent's Case

13. Respondent is not disputing the determination that SINU made on the terms and conditions of employment contained in the FTE contracts SINU academic staff signed on or around 1st April 2015. Respondent's case is to do with the effective date for the 1st April 2015 FTE contracts. Respondent say the effective date should be 1st January 2013, being the effective date which the SINU Act came into force. Respondent say that upgraded salaries should be paid back dated to the effective date - 1st January 2013. This was the only issue before the Trade Disputes Panel ("TDP"). And TDP has rightly concluded that the effective date for the 1st April 2015 FTE contracts was 1st January 2013, consistent with the provisions of Section 50 (1) of the SINU Act. And that upgraded salaries should be paid back dated to 1st January 2013; as per the TDP decision.

Issue

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

The Law

15. The FTE contracts of 1st April 2015 was the end product of many months of negotiations, upgrade and reform work that begun 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 matter the most - the FTE contract of 1st April 2015.

16. Courts will not interfere into a contract or will not write the terms and conditions of 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.
17. Here the FTE contract of 1st April 2015 did not say upgraded salaries will be paid back dated to 1st January 2013. It only says the contract commences on 1st April 2015 and will expire on 31st March 2018. In other words, the contract is silent on backdating of upgraded salaries to 1st January 2013, the commencement date for the SINU Act. Appellant says there is no backdating. Respondent says there should be backdating.

Section 50 (1) of SINU Act – Did it say anything on back dating of upgraded salaries to the effective or commencement date for SINU Act, being 1st January 2013?

18. Section 50 (1) and (2) provides:

“(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 on such terms and conditions as the University shall determine.”

“(2). All rights, including leave entitlements, accrued or accruing to the person as a staff member of the College of Higher Education to the commencement date, shall be maintained by the staff after the commencement date.”

19. My reading of these two provisions does not extend to cover details such as back dating of upgraded salaries after the University has determined terms and conditions of employment. These are transitional or bridging provisions to say that all SICHE staff members’ rights and entitlements under their SICHE contracts, will continue even

though SICHE will cease and elevate into a University on the commencement date under SINU Act. By this, one can understand that staff lost nothing when SICHE ceased and SINU came into existence on 1st January 2013. For those concerned staff, SINU shall determine their terms and conditions of employment under SINU. That determination was made complete in the FTE contracts academic staff signed on or around 1st April 2015.

Parol Evidence Rule

20. The confusion and Respondent's case is actually premised on prior correspondences and negotiations or Council decisions⁵ that have not entered into the final FTE contract signed on or around 1st April 2015. According to the parole evidence rule; a completely signed and integrated contract will not be interrupted with antecedent negotiations; that will have the effect of modifying or supplementing the contract at issue⁶. This is consistent with the contract law principles discussed in paragraph 16 above; not to interfere with the contract.

Inconsistency with Section 7 (4) of the Trade Disputes Act (Cap 75)

21. Court concur with submissions by Counsel Radclyffe that the Panel breached Section 7 (4) of the Trade Disputes Panel Act (Cap 75); because Section 50 (1) of the SINU Act says that it is SINU that shall determine terms and conditions of employment for its academic staff. The said Trade Disputes Panel Act (Cap 75) section 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”.

22. The dispute before the Panel involved questions as to terms and conditions of or affecting employment, especially affecting payment of upgraded salaries and whether to back date payment of upgraded salaries to 1st January 2013 or upgraded salaries to be paid commencing on 1st April 2015? Section 50 (1) of SINU Act says that it is SINU to determine terms and conditions of employment for academic staff. Determining terms and conditions of employment will apparently involve, questions affecting whether or

⁵ See SH 1 and SH 2 referred above.

⁶ https://www.law.cornell.edu/wex/parole_evidence_rule

not to back date payment of upgraded salaries, because it will need budget to implement such a decision. Only SINU can determine budget. And to back date upgraded salaries to 1st January 2013, needs a budget that has direct bearing on the terms and conditions, which only SINU has the authority to make/determine. And so the Panel in awarding a back date payment of upgraded salaries has interfered into a domain, under SINU Act reserved for SINU Council. A breach or interference that the Panel is prohibited from under Section 7 (4) of the Trade Disputes Act (Cap 75).

All hopes are not vanished

23. Considering clause 2 of the FTE contract, together with Section 7 (a) of the SINU Act, all hopes are not lost for the academic staff in relation to issue of back date payment of upgraded salaries. For it seems from these two instruments that “terms and conditions of service” and “terms and conditions of employment” are two different animals. Clause 2 recognised that University Staff Terms and Conditions of Service are to be determined by SINU “from time to time”, except for the Terms and Conditions of employment specified under the 11 clauses of the FTE Contract of 1st April 2015. From time to time means in the Court’s view, parties can still explore the issue of backdate payment of upgraded salaries in the future.
24. Additionally Section 7 (a) of SINU Act also gives power to SINU Council to determine Terms and Conditions of Service and on such remuneration as may be determined by Council. So issue of back dating of upgraded salaries, which is a remuneration issue is still left open for parties to look into. According to correspondences, SINU Council has resolved to back date payment of upgraded salaries pending availability of funds. But it is not a term covered under the FTE contract (s) of 1st April 2015. In the Court’s view, parties can still explore in the future.

Conclusion

25. In deciding the issue before this Court, there is clearly no back dating of upgraded salaries to the 1st January 2013 in the FTE contract of 1st April 2015. This Court cannot write anything else into that contract for there is no circumstance justifying such intervention. The transition taking place at SINU are fundamental and long lasting. Therefore stake holders will have to adapt to these changes. What is happening

between SINU and SINU Academic Staff is just an issue of transition that parties have to adapt to. Hence I will not order cost against any particular party.

26. Accordingly, Court orders are:

26.1. Appeal is upheld. No back dating of upgraded salaries to 1st January 2013.

26.2. No order on cost.

THE COURT

JOHN A KENIAPISIA
PUISNE JUDGE