IN THE COURT OF APPEAL
OF THE REPUBLIC OF VANUATU
(Civil Appellate Jurisdiction)

Civil Appeal Case No. 23 of 2003.

BETWEEN: PUBLIC SERVICE COMMISSION
Appellant

AND: RAYMOND MANUAKE
Respondent

Coram: **Hon. Justice Bruce Robertson**
Hon. Justice John von Doussa
Hon. Justice Oliver Saksak
Hon. Justice Patrick Treston

Counsel: Mr. M. Edwards and Mr. F. Gilu for the appellant
Mr. Silas Hakwa for the respondent

Hearing Date: 27th October 2003
Judgment Date: 7th November 2003.

JUDGMENT

The short point in this appeal concerns the interpretation of the words "*15 days remuneration*" appearing in s.56 (2) (a) (ii) over the Employment Act [CAP. 160].

Section 56 relevantly provides:-

"*56. (1) Subject to the provisions of this Part, the amount of severance allowance payable to an employee shall be calculated in accordance with subsection (2).*

(2) Subject to subsection (4) the amount of severance allowance payable to an employee shall be –

(a) for every period of 12 months –

(i) half a month's remuneration, where the employee is remunerated at intervals of not less than 1 month;

(ii) 15 days' remuneration, where the employee is remunerated at intervals of less than 1 month;

(b) *for every period less than 12 months, a sum equal of one-twelfth of the appropriate sum calculated under paragraph (a) multiplied by the number of months during which the employee was in continuous employment.*

(3) Where remuneration is fixed at the rate calculated on word done or includes any sum paid by way of commission in return for services, the remuneration shall, for the purposes of this section, be computed in the manner best calculated to give the rate at which the employee has being remunerated over a period not exceeding 12 months prior to the termination of his employment.

(4) The Court shall, where it finds that the termination of the employment of an employee was unjustified, order that he be paid a sum up to 6 times the amount of severance allowance specified in subsection (2).

(5) ...

(6) ...

(7) For the purposes of this section the remuneration which shall be taken into account in calculating the severance allowance shall be the remuneration payable to the employee at the time of the termination of his employment."

The respondent was an officer in the Translation Department of the Public Service at the time of his resignation on 28th May 2003. At that time he had served over 17 years in the Public Service and was receiving an annual salary of VT1,099,008. During the first few years of his employment he received his salary monthly. Commencing in the early 1990's until about the year 2000 the respondent received his salary each fortnight, i.e. on the 15th day and at the end of each month. Thereafter the Government introduced and is now applying 26 paydays in one calendar year. At the time of his resignation the respondent was receiving his remuneration on alternative Fridays.

The respondent contended that he should received a severance payment calculated on the basis that "*15 days remuneration*" means the remuneration paid for 15 actual working days. As the respondent did not work on Saturday or Sunday 15 working days' remuneration would equate to the remuneration he would receive in respect of three calendar weeks.

The appellant, on the other hand, contended that there was no warrant for reading into s.56 (2) (a) (ii) the word "*working*" before "*days*", and that "*15 days' remuneration*" meant the remuneration

received for 15 consecutive calendar days, or, broadly speaking, for half one month. The appellant point out that if the respondent's construction were correct s.56 establishes two quite different regimes for the payment of severance, the difference depending on the fortuitous circumstance whether the employee is paid at intervals either more or less frequently than once per month. This construction would produce the result that those paid more frequently than once per month would receive a severance payment much greater than those paid once each month, even if their annual salaries were the same, and each of them worked the same number of days each week.

In the case of the respondent his severance payment calculated according to his construction would be VT1,099,793, whereas calculated on the appellant's construction the payment would be VT797,162. Had the respondent's annual salary been paid monthly so as to come under the statutory regime of s.56 (2) (a) (i) the severance payment would also approximate the latter of these amounts.

Upon the appellant refusing to acknowledge the respondent's construction, the matter came on for determination in the Supreme Court before the learned Chief Justice in Civil Case No. 198 of 2002.

The learned Chief Justice held that the construction contended for by the respondent was correct, and entered judgment for the respondent for VT1,099,793. His Lordship held that the meaning of the word used in s.56 (2) (a) (i) and (ii) were plain; "*15 days remuneration*" means "*the remuneration which an employee receives for 15 working days*". His Lordship observed that Parliament, had it intended to mean "*calendar says*", would have said so.

His Lordship considered that Parliament had prescribed two schemes in the Act, one for employees who get paid every month, and one for employees who get paid at intervals of less than one month. His Lordship did not indicate why or for what purpose Parliament would have prescribed two separate schemes that differed so widely in the benefits payable under each of them. Before this Court counsel for the respondent was not able to suggest any possible reason for there being two separate schemes, operating as they would on the arbitrary basis of when remuneration was paid.

We are unable to agree with the interpretation given to s.56 (2) (a) (ii) by the learned Chief Justice. In our opinion the construction contended for by the appellant is the correct construction. Our reasons for this conclusion follow.

If it is possible, the words of a statute must be construed so as to give them a sensible meaning: Halsbury's Laws of England, 4th Edition, Vol. 44, para. 860. We have already noted that no reason in fairness or otherwise has been suggested which could support the respondent's construction. On the other hand of the appellant's construction produces a result that is basically the same under either calculation. It is a further general principle of interpretation that the words used in a statute must be read in their context, and on the assumption that words used in statute are used with a consistent meaning throughout: *K & S Lake City Freighters Pty. Ltd. v. Gordon and Gotch Ltd.* (1985) 60 ALR 509 at 514 and *Craig Williamson Pty. Ltd. v. Barrowcliff* [1915] VLR 450 and 452. The words in question in this case are part of a scheme under the Employment Act for the payment of severance allowance on the termination of a contract of employment. Section 56 (1) provides that the amount of severance allowance payable shall be calculated in accordance with subsection (2). Subsection (2) then provides the method of calculation. It will be noted that the whole of subsection (2) is subject to subjection (4), and, in so far as subparagraphs (i) and (ii) of paragraph (a) provide for different methods of calculation, those methods are introduced by the words "*for every period of 12 months-*". There is no suggestion in subs. 56 (1) or (2) that s.56 intends to establish two entirely distinct regimes which will lead to significantly different payments.

Under s.56 (2) (a) (i) the relevant multiplicand is "*half a months' remuneration*". Under s.56 (2) (ii) the multiplicand is "*15 days' remuneration*" – again broadly half a month. If s.56 (2) (a) means 15 calendar days, either subparagraph of s.56 (2) (a) will produce a payment of severance allowance that is basically the same as the other. This would establish a fair and consistent position between employees on equally annual rates of remuneration regardless of how frequently they happened to be paid.

Subsection 56 (3) deals with the situation where remuneration is fixed at a rate calculated on work done or on commission rates. It requires that remuneration for the purpose of the section will be "*best calculated to give the rate at which the employee was being remunerated over a period not exceeding 12 months prior to termination of his employment*". In light of the concern of the Act to

fix a fair remuneration in cases of piece work or commission for the calculation of severance, it would be extraordinary if the severances allowance were then to differ according to whether piece rates or commission was paid monthly, or at more frequent intervals.

The lack of reason for two schemes that would produce markedly different severance allowances, depending only on the interval between payments of remuneration, would magnify up to six times in cases where s.56 (4) applies.

When construing an Act it is usually possible to assert that if Parliament had intended a particular meaning, that meaning could have made more clear by using a different word or a different expression. For example in this case the respondent submits that Parliament could have used the expression "*calendar days*" if that was the intended meaning. On the other hand it could be argued that an expression such as "*days actually worked*" could have been used if that was the intended meaning. However neither of these expressions were used, and we do not find it helpful to speculate about other words or expression that Parliament might have adopted. It is however helpful to consider what expressions were actually used by Parliament elsewhere in the Act. In s.16 (4) the expression "*working days*" is used to describe days actually worked, and in s.29 (1) and (2) the expressions "*working day*" and "*working days*" are used to describe the daily remuneration for a day actually worked. Consistency would have led to the use of the expression "*15 working days' remuneration*" if that was the intended meaning of s.56 (2) (a) (ii). The use simply of the expression "*15 days' remuneration*" suggest that working days was not intended.

The word "*days*", meaning calendar days, appears in ss.14 (1), 16 (6), 34 (2), 34 (4) and 49 (3) (b) (i) and (ii). Again, consistency in use of the word "*days*" in the Act supports of the appellant's construction.

In <u>*Barrett v. Patterson and Patterson*</u> (1992) 2VLR 558 at 570 we note that Vaudin d'Imecourt CJ appears to have adopted the construction which we have placed on the words in question. Counsel for the respondent sought to distinguish the decision on the grounds that the respondent in that case worked for seven days each week in the tourism and hospitality industry whereas in this case the respondent was in the Public Service and only worked 5 days each week. We do not think that <u>*Barrett v. Patterson and Patterson*</u> can be so simply distinguished. As we understand the reasoning of the former Chief Justice on this aspect of the case

before him, we think that he adopted the same construction which we have placed on s.56 (2) (a) (ii).

Counsel for the respondent also contended support for the respondent's construction is to be found in the presence of the apostrophe appearing in the expression "*15 days' remuneration*". Even if those words are read as "*15 days of remuneration*" the same question of interpretation remains, and the section must be construed having regard to the Act as a whole and the purpose and policy for the payment of severance allowance on the termination of a contract of employment.

For the above reasons, we consider that this appeal should be allowed and the Judgment entered in the Court below in favour of the respondent for VT1,099,793 should be set aside. It follows that the enforcement order made on 19th August 2003 should also be set aside. We understand that the severance allowance calculated according to the construction we place on s.56 (2) (a) (ii) was paid to the respondent before judgment. It follows that nothing further remain due to the respondent, and judgment should be entered for the appellant on the claim. The respondent must pay the appellant's costs of this appeal and in the Court below.

DATED at Port Vila, this 7th day of November 2003.

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Hon. B. Robertson J.

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Hon. von Doussa J.

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Hon. O. A. Saksak J.

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Hon. P. Treston J.