

BETWEEN: MESSEK HOMAN

Claimant

**AND: BOURDET JEAN –PIERRE Trading as
DEPARTMENT PROTECTION SECURITY
ASSISTANCE (DPSA)**

Defendant

Coram: Stephen Felix, Chief Magistrate

*Counsel: Pauline Kalwatman for the Claimant
Britten Yoseph for the Defendant*

Date of Judgment: 12th December 2018

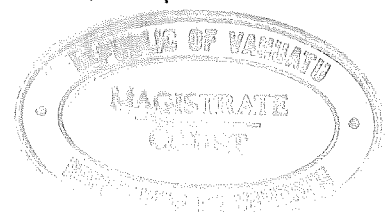
JUDGMENT

Introduction

1. Mr. Jean Pierre Bourdet, trading as Department Protection Security Assistance (DPSA) tried Mr. Messek Homan as a security guard on 15 July 2013.
2. On 14th April 2013, Mr. Messek claimed that he was unlawfully terminated from employment with being served with any notice and without any justifications.
3. He is claiming damages at an amount of VT960, 000 together with costs.

Agreed Facts

4. The terms of the employment contract between the parties are straight forward. The Claimant was to patrol and provide security in and out of the business premises of the Pacific Petroleum during the night hours of 6pm to 6am 4 nights a week.
5. In return, the Defendant would pay the Claimant a salary of VT30, 000 per month.



Issue

6. The question to be answered is:

Was the Claimant's termination of Employment unjustified and unlawful?

Findings of Facts

7. The Defendant, through its supervisor submits that the Claimant was terminated because of his nonperformance results in their client's numerous complaint.
8. The supervisor also stated that Mr. Homan was warned a number of times over his conduct, but he has failed to listen and to comply with instructions.
9. The Claimant however disputes that he has not received any letter of termination; he has not been given any opportunity to be heard; he has not been served with a 3 months' notice or paid compensation in lieu of notice; he has not received any letter of suspension or warning.
10. He also disputes that he has committed any serious misconduct.
11. The conduct of the Claimant upon which he was terminated was the non-cooperative attitude and the refusal to comply with advice and instructions of the supervisor.

Discussion

12. There therefore the question of whether or not that conduct is to be considered serious misconduct.
13. I am of the view that the conduct was indeed serious on the basis that the place where the Claimant was tasked to provide security over during night times is a fuel depot.
14. The level of vigilance required is quite high and which explains the need to follow strict checks on different areas and on short time periods.



15. The next question then to ask is whether under section 50(3) of the Employment Act, there is no other course to take by the Defendant except to terminate the Claimant's employment by the Defendant.
16. The answer to that other question is yes and no.

Yes if there are other contracts available or secured by the Defendant if the Claimant be transferred from Pacific Petroleum t.

No, if there was no other option but to terminate the Claimant and replace her with another security guard.

In this case, there was no other option but to terminate the Claimant and replace him with another security guard.

ORDERS

17. On the findings, I rule that the conduct of the Claimant was indeed a serious misconduct.
18. I also rule that the termination is justified and lawful under section 50 (1) of the Employment Act and section 50 (3).
19. The Claim is therefore dismissed.
20. I make no order as to cost. 30 days to appeal.

**Dated at Port-Vila, this 12th December 2018
BY THE COURT**

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