

PUBLIC PROSECUTOR

V

SALI LANGRUP

Before: Senior Magistrate Moses Peter
In Attendance: Mr. Kevin Nathan for the State
Defendant appear in person

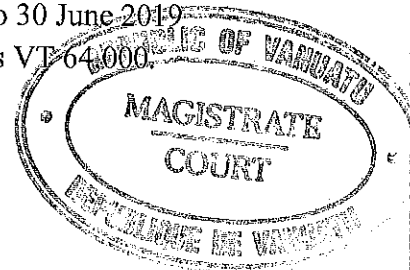
SENTENCE

A. Introduction

1. Mr. Sali Langrup you pleaded guilty to thirteen charges of Failing to Pay to the Vanuatu National Provident Fund Board monthly contributions of his employees contrary to section 50 (1) (c) and section 26 (1) of the Vanuatu National Provident Fund Act [Cap 189].
2. I therefore convict you on your guilty plea and summary of facts presented by the Counsel for the State.

B. Facts

3. Mr. Sali Langrup you traded in business as Pestar Logistics as confirmed in the register of the Vanuatu Financial Service Commission.
4. You recruited several individuals whose employment and outstanding VNPF contributions records shows as follows:
 - o Fred Malverus was employed from 4th January 2019 to 30 June 2019 and the amount owing for his VNPF contributions is VT 17,280.
 - o Serge Bule was employed from 1 November 2017 to 30 June 2019 and the amount owing for his VNPF contributions is VT 90,880.
 - o John Worwor is employed from 1 November 2017 to 30 June 2019 and the amount owing for his VNPF contributions is VT 64,000.



- Peter Louis Philemon was employed from 19 April 2017 to 30 June 2019 and the amount owing for his VNPF contributions is VT 153,600.
 - Peter Meltegran was employed from 1 March 2018 to 30 June 2019 and the amount owing for his VNPF contribution is VT 51,200.
 - Herbert Melteckral was employed from 1 March 2018 to 30 June 2019 and the amount owing for his VNPF contributions is VT 38,400.
 - Martin Tokon was employed from 18 December 2018 to 30 June 2019 and the amount owing for his VNPF contributions is VT 17,920.
 - Eli Tavunwo was employed from 5 January 2019 to 30 June 2019 and the amount owing for his VNPF contributions is VT 17,280.
 - Jacques Stephene Waresul was employed from 1 July 2018 to 30 June 2019 and the amount owing for his VNPF contributions is VT 34,560.
 - Jeremiah Massing was employed from 1 January 2019 to 30 June 2019 and the amount owing for his VNPF contributions is VT 24,960.
 - Andrew Namol was employed from 1 January 2018 to 30 June 2019 and the amount owing for his VNPF contributions is VT 108,000.
 - Crajily Denis was employed from 1 February 2019 to 30 June 2019 and the amount owing for his VNPF contributions is VT 12,800.
 - Jean Dennie was employed from 19 September 2018 to 30 June 2019 and the amount owing for his VNPF contributions is VT 76,800.
5. The total amount of VNPF contributions owing to each of the employees amounts to VT 698,080.
 6. You have made a part payment of VT 208,960 on 4th October 2019 leaving a balance of VT 489,120.

C. Law

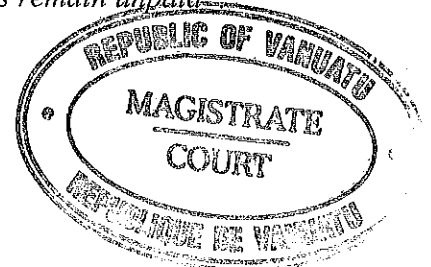
Vanuatu National Provident Fund Act [Cap 189] section 26 (1) states thus:

“The employer shall pay to the Board the contributions payable in any month for and by all of his employees by the end of the following month in such manner and such form as may be prescribed”.

Section 26 (2)

“Where the employer fails to pay some or all of the contributions due within the time specified in subsection (1) he shall be liable to a surcharge on the amount of the contributions not so paid at the rate of 5 percent in respect of each month or part of the month after due date for which the contributions remain unpaid”.

Section 50 (1) of the Act:



“ Any person who

(c) fails to pay to the Board in any month any amount which, under section 26 (1), he is liable to pay in that month in respect of any employee;

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding VT 100,000 or to a term of imprisonment not exceeding 6 months or to both such fine and imprisonment.”

D. Aggravating Factors of Offending

7. You have total disregard of your statutory obligations to pay for all VNPF contributions for your employees.

E. Mitigating Factors of the Offending

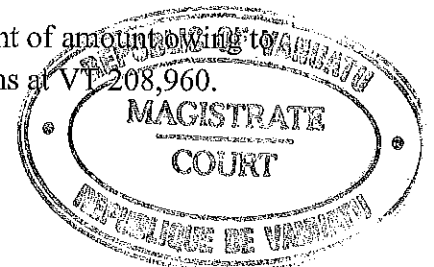
8. You displayed remorse in that you endeavored to make part payment of VT 208,960 towards the total outstanding payment of VT 698,080.
9. You are a first time offender and pleaded guilty in the first given opportunity.

F. Offending Starting Point

10. You ventured into a shipping business and prior to establishing your business have met all the requirements, and paid the legitimate fees and charges to set up the business. This is reflected in the registration of your business name in the record of the Vanuatu Financial Service Commission.
11. However, what appears in context of this proceeding is that you failed to pay for VNPF contributions for all of your employees. Your action has left the employees in an unfortunate situations where they could have been deprived of these benefits had the Prosecution not initiate this proceedings against you.
12. The record revealed you failed to pay for your employees contributions starting from 2017.
13. After considering the factors of offending, I set a starting point of 5 months imprisonment. This is to mark the need for deterrence in this type of offending, the need to protect the rights of all employees to their superannuation entitlements and to reflect an appropriate punishment for your offending.

G. Personal Factors

14. Mr. Sali Langrup you are 34 years of age at the time of offending. You have four children who depend entirely on you for maintenance and financial support.
15. You are entrusted with management position of your shipping business including its operations.
16. You are a first time offender and you made part payment of amount owing to your employees as their VNPF outstanding contributions at VT 208,960.



17. For your factors personal to your offending, I make a deduction of your sentence by one (1) months imprisonment.

H. Deduction for Guilty Plea

18. You pleaded guilty on your own volition on the date of plea hearing despite being reminded of your right to legal representation. This follows your prior admission to the Prosecutor when you made an effort to correct your failure by making a first payment of VT 208,960.
19. You are therefore entitled to five weeks reduction as one third deduction for your early guilty plea.

I. End Sentence

20. Taking into account all these matters, the end sentence imposed is eleven (11) weeks imprisonment.

J. Suspension

21. I consider your expression of remorse translated into your efforts to make part payment of the outstanding contributions for all of your employees and the payment plan discussed with the prosecutor is a positive step towards keeping all records clear for your employees' VNPF contributions.
22. I therefore suspend your imprisonment sentence for 12 months. However, in the event that you are further convicted for any other offences, this sentence will automatically be activated and you will serve the full sentence together with any other sentences imposed on you for your reoffending.
23. You are also ordered to pay a fine of VT 5000 consecutive to each 13 counts totaling to VT 65,000. This must be cleared in 30 days from today's date.
24. For completeness, you are ordered to comply with the payment plan as discussed and agreed upon with the Prosecution in the following terms:

Schedule Number	Outstanding Month	Total Salary	Total Contribution	Payment Month	Amount to Be Paid
569762	Sep-18	489,000	39,120	Nov-19	39,120
569763	Oct-18	489,000	39,120	Dec-19	39,120
569764	Nov-18	489,000	39,120	Jan-20	39,120
569765	Dec-18	573,000	45,840	Feb-20	45,840
569766	Jan-19	661,000	52,880	Mar-20	52,880



569767	Feb-19	693,000	55,440	Apr-20	55,440
569768	Mar-19	693,000	55,440	May-20	55,440
569769	Apr-19	693,000	55,440	Jun-20	55,440
569770	May-19	693,000	55,440	Jul-20	55,440
569771	Jun-19	641,000	51,280	Aug-20	51,280
TOTAL		6,114,000	489,120		489,120

25. The payment is to be made into VNPF based on the transaction months as depicted on the schedule numbers. This payment plan does not waive the obligations to pay surcharge pursuant to section 26 (2) of the Vanuatu National Provident Fund Act.

K. Other

26. You have 14 days to appeal to the Supreme Court if you disagree with this sentence.

DATED at Port Vila this 3rd day of August 2020

BY THE COURT

MOSES PETER
Senior Magistrate

