

**BETWEEN:** ANNIE SHEM WILLIE  
Claimant

**AND:** PUBLIC SERVICE COMMISSION  
First Defendant

**AND:** REPUBLIC OF VANUATU  
Second Defendant

*Coram: Vincent Lunabek Chief Justice*

*Counsel: Mrs Jane B. Jereva for Claimant  
Mr Hardison Tabi for First and Second Defendant*

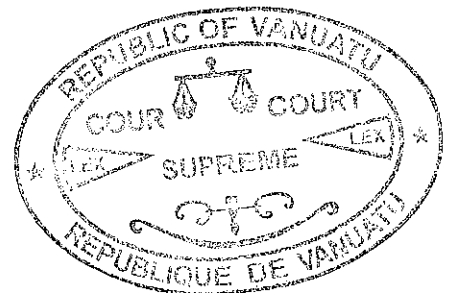
## **JUDGMENT**

### **INTRODUCTION**

1. This is a judicial review claim filed by the claimant on 27 April 2016. The Claimant challenges the decision of the First Defendant dated 21 August 2014 dismissing the Claimant from employment in the Public Service.

### **RELIEF SOUGHT**

2. The Claimant applies for orders that
  - (a) The decision of the First Defendant dated 21<sup>st</sup> August 2014 at its meeting no.18 of 2014 to dismiss the Claimant from employment be declared null and void;
  - (b)The First Defendant decision described under paragraph 1(a) be quashed.
  - (c) The Claimant is reinstated.
  - (d)The First and second Defendants pay the Claimant's costs of and incidental to this proceeding.
  - (e)Such further orders as this Honourable court considers necessary.



## GROUND OF JUDICIAL REVIEW APPLICATION

3. The Claimant advances her review claim on the following grounds that:

(a) She is denied natural justice and fairness when the Commission:

(i) Failed to show or satisfy the claimant that it has received and considered the response of the Claimant to the allegations made against her before making a decision to dismiss her from employment with the Public Service.

(ii) Failed to give the Claimant adequate opportunity to respond to the allegations made against her given the nature of the allegations that are serious.

(b) The process of dismissing the Claimant is contrary to law in that the Commission did not act as a food employer when:

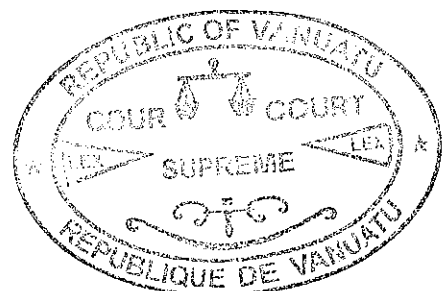
(i) It did not turn its mind to consider subsection (3) of Section 50 of the employment Act before making the decision to terminate the Claimant from employment or does not satisfy the Claimant that it has considered subsection 50(3) before dismissing the Claimant; and

(ii) Failed to invite the Claimant to address subsection (3) of S.50 of the Employment Act in her response to the allegations levelled against her in the disciplinary report before dismissing her from employment ;or

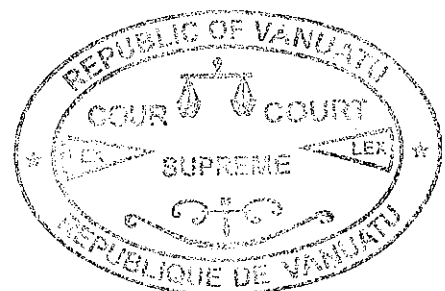
(iii) Failed to comply with the process of dismissing the Claimant as required by the Public Service Act and the Public Service Staff Manual.

## BACKGROUND EVENTS

4. The chronology of events are set out below:-



5. On 26 August 2010, the Public Service Commission ("The Commission") informed the Claimant, Mrs Annie Shem, by letter that the First Defendant has approved and appointed her to the position of communication and Liaison Officer at the Department of Women Affairs in the Public Service.
6. On 18 April 2013, the Claimant was appointment as the Acting Women Gender Officer.
7. As the Acting Women Gender Officer, one of the responsibilities for the Claimant is to coordinate the National Gender Policy Consultation and to control the funding allocated for consultation purposes.
8. On or about September, the Director of Women Affairs ("the Director") received two report statements from two staffs who were part of the National Gender Policy Consultation concerning the Claimant's conduct in signing off a blank receipt and receipting amount of monies that they (two staffs) did not received as part of their Daily Subsistence Allowance ("DSA")
9. On 7 October 2013, by way of a letter, the Director informed the Claimant about the report statement from the two staffs who were part of the National Gender Policy consultation and requested the Claimant to provide explanation and verification on the allegations stated in the report statement.
10. On 11 October 2013, the Claimant responded by email to the Director's letter dated 7 October 2013 and denied the allegations made against her.
11. On 14 October 2013, the Director met the Claimant and in discussion of the allegations, the Director informed the Claimant that such conduct in signing off a blank receipt and receipting false amount of monies are serious offences as provided under Chapter 6, section 4(4)(4.1)(a) and (f) of the Public Service Staff Manuel (PSSM). The Claimant said that she will refund the monies.
12. On 15 October 2013, the Claimant informed the Director by email and proposed to repay the outstanding DSA for the two staffs who made the report statements against her.
13. On 30 October 2013, the Director suspended the Claimant pursuant to section (36)(1)(c) and (f) of the Public Service Act [CAP 246] (the "Act) and further informed her that a full disciplinary report will be made against her and that she needed to respond to it.



14. On 22 January 2014, a disciplinary report stating the allegations against the Claimant was provided to the Claimant and given the opportunity for her to respond to the allegations made against her.
15. On 30 January 2014, the Claimant submitted to the Director the disciplinary report containing her response to the allegations against her.
16. On 21 August 2014, the First Defendant considered the Claimant's disciplinary report and the response and made their determination.
17. On 25 August 2014, the First Defendant informed the Claimant, by letter, of its determination that they (First Defendant) considered that the allegations amount to serious misconduct and so cannot in good faith take any other course but to dismiss the Claimant from the Public Service employment for serious misconduct under section 29 of the Act.
18. The letter of the First Defendant (Commission) dated 25 August 2014 to the Claimant was written by the Secretary of the Public Service Commission (Acting). It is set out in full for reference.

*"Mrs Annie Shem Samuel  
Port Vila  
Efate*

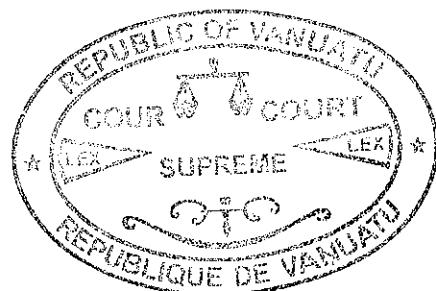
*Dear Madam*

*Re:PSC determination of Disciplinary Report against you by the Ministry of  
justice & Community Services*

*This letter serves to advise you that the Commission at its meeting No.18 of  
2014 on the 21<sup>st</sup> day of August 2014 having considered the disciplinary report  
against you as well as evidences submitted and noted that all allegations  
against you amounted to serious misconduct.*

*Therefore, the Commission decided to dismiss you pursuant to section 29 of  
the Public Service Act on the ground that:*

1. *There is evidence before the Commission that you admitted to have  
misappropriated public money worth VT348,000 which was allocated for Staff*



*DSA during the National Gender and Women's Empowerment consultation between the periods of 17<sup>th</sup> September 2012 to 28<sup>th</sup> June 2013.*

*The Commission further considered your past service as not exemplary therefore you are dismissed without benefit and the amount of VT348,000 will be deducted from your standard payment as reimbursement of public fund misuse under your care during the National Gender and Women's Empowerment consultation between the periods of 17<sup>th</sup> September 2012 to 28<sup>th</sup> June 2013.*

*By copy of this letter the Director General of the Ministry of Justice and Community Services as the Director of the Department of women affairs, the Human Resource Officer of the Ministry and the Salary section to the Department of Finance are duly advised of this decision.*

*Yours faithfully*

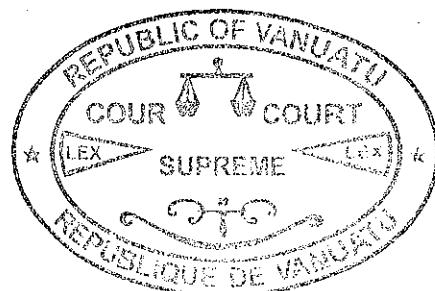
*Charity Bona-Titiulu  
Acting Secretary – PSC*

*Cc: Director, Ministry of Justice & Community Services  
Salary Section-Department of Finance  
Director-Department of Women Affairs  
HRO- Ministry of Justice & Community Services  
P/F  
OPSC-Compliance Files  
Chrono"*

## **ISSUES**

19. The Claimant identifies two(2) issues, namely :

- (i) Was the Claimant accorded natural justice and fairness before the Commission reached a decision to dismiss the Claimant from employment with the women's Department?
- (ii) Was the process of dismissing the Claimant from employment contrary to law?



## DISCUSSIONS AND CONSIDERATIONS

### The Law

20. Sections 29 of the Public Service Act and 50(3) of the Employment Act are relevant provisions of the law to consider. They are set out for ease of reference. Section 29 of the Public Service Act provides:

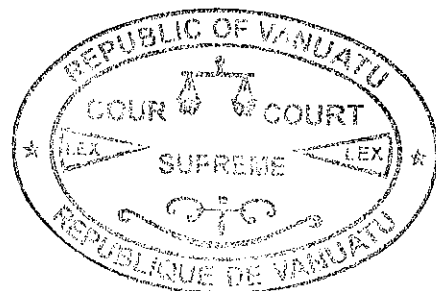
*"Dismissal for cause*

- (1) *The Commission may dismiss an employee at any time for serious misconduct or inability but subject to its obligations to act as a good employer.*
- (1A) *If the Commission dismisses an employee under subsection (1), the matter is not to be referred to the Board for hearing and determined under section 37.*
- (2) *The Commission may where the past performance of the employee has been exemplary provide to the employee a redundancy payment as if his or her employment had been terminated under the Employment Act [Cap 160].*

21. Section 50(3) of the Employment provides:

*"Misconduct of employee*

- (1) *In the case of a serious misconduct by an employee it shall be lawful for the employer to dismiss the employee without notice and without compensation in lieu of notice.*
- (2)...
- (3) *Dismissal for serious misconduct may take place only in cases where the employer cannot in good faith be expected to take any other course.***
- (4) *No employer shall dismiss an employee on the ground of serious misconduct unless he has given the employee an adequate opportunity to answer any charges made against him and any dismissal in*

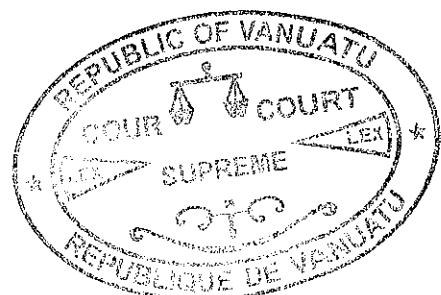


*contravention of this subsection shall be deemed to be an unjustified dismissal. ...”[emphasis added].*

**How the law applies to the present case?**

22. I will answer to this question by addressing the following Five (5) points of the claim as set out in the Amended Judicial Review Claim:
- (i) Failure to receive claimant’s response
  - (ii) Failure to consider the Claimant’s response
  - (iii) Failure to provide adequate opportunity to respond
  - (iv) Breach of obligation to act as a good employer
  - (v) Breach of obligation to consider subsection (3) of section 50 of the Employment Act.
23. The Claimant submits that the Respondent was in breach of the principles of natural justice and fairness when it failed to show that it had received the Claimant’s Response on the allegations made against the Claimant in the Disciplinary Report. The Claimant makes this submission on 3 bases:
24. First, it is asserted the sworn statement of the Acting Secretary of the Commission filed on 26 May 2016 did not show the date on the Disciplinary Report which the Respondent had received the Report and the Claimant’s response.
25. Second, it is said the minutes of the meeting of the Commission No.18 of 2014 dated 21 August 2014 in which a decision was reached to dismiss the Claimant from employment was not in evidence before the Court.
26. Third, there is no evidence to show that the Commission had actually received the Disciplinary Report and the Claimant’s Response.
27. I find it difficult to understand the submissions. The requirement of natural justice and fairness principle in this sort of case, is provided under section 50 (4) of the Employment Act. It provides:

*“No employer shall dismiss an employee on the ground of serious misconduct unless he has given the employee an adequate opportunity to answer any charges made against him and any dismissal in contravention of this subsection shall be deemed to be an unjustified dismissal”.*

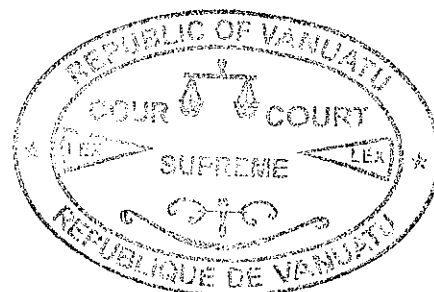


28. There is no legal requirement for an employer to show the employee that (s)he has received her/his response or indicate the date (s)he has received the response of the employee.
29. The requirement for natural justice and fairness is to give an adequate opportunity for the employee to make a response to the allegations and to consider the complaints, allegations and the response of the employee in the decision dismissing the employee for cause.
30. I agree with the submissions of the Defendants that the process of receiving the Claimant's response to the allegations against her is stipulated under chapter 8, subsection 2.3 1(b) which requires a disciplinary report containing also the Claimant's response to the allegations against her before the report is sent to the Commission.
31. In *Public Service Commission –v- John Cullwick Tari [2008] VUCA*, the Court of Appeal observed:

*“The Public Service Manual is intended to give guidance to Managers, the Public Service Commission and the Disciplinary Board in (amongst other matters) staff discipline. The manual anticipates that where serious disciplinary allegations are made (as here) the matter should be referred to the Commission: chp.6:2.3. ... This disciplinary report was served on the Respondent by his departmental Director General. The report included details of the allegations against him, and relevant witness statements. A response was invited. The referral letter identified that this had been served in accordance with S. 36(1) of the Public Service Act.*

*Mr. Tari responded in detail to the Commission. The Commission considered the evidence and his response. They decided the proper course was immediate dismissal. This was the disciplinary process anticipated by law and properly undertaken by the Commission”. (Page3).*

32. On the facts of this case, I am satisfied that in this case the disciplinary process was properly undertaken by the Commission.
33. Before I move on to the next question it is noted that contrary to the second part of the Claimant's submission, the Minutes of the meeting of the Public Service



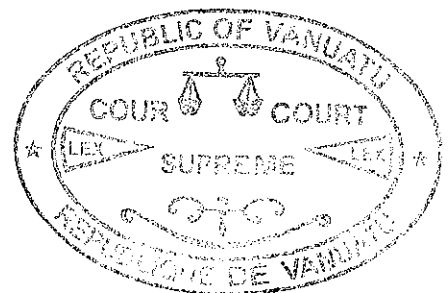


Commission No. 18 of 2014 dated 21 August 2014 was evidenced and marked as "JM1" of the sworn statement of Judith Melsul, Manager of Organisational Performance Improvement Unit ("OPIV"), Public Service Commission filed 11 August 2016.

34. The case of *Jefferies v. New Zealand Dairy Production and Marketing Board* [1966] UKPC 22; [1967] 1 AC 551; [1967] NZLR 1057; [1967] 2 WLR 136; [1966] 3 All ER 863 (13 October 1966) does not support the Claimant's case on the facts of this case, the case supports the submissions of the Defendants on this first point.
35. This Claimant's submission is without basis. It is therefore dismissed.

(vi) Failure to consider the Claimant's response

36. The Claimant submits that the First Respondent (Commission) did not consider the Claimant's Response before making a decision to dismiss the Claimant under Section 29 of the Public Service Act. It is also asserted that there is no evidence to show how the Commission had reached the decision to dismiss the Claimant. It is further asserted that the First Respondent could have ignored or overlooked the Claimant's Response when making a decision to dismiss the Claimant. The Claimant submits therefore that the Respondents had failed to show that they had taken into consideration the Claimant's Response in reaching a decision to dismiss her from employment in August 2014.
37. On the facts, there is material fact that the First Respondent did receive and consider the Response of the Claimant. The sworn statement of Judith Melsul filed 26 May 2015 at paragraph 14 stated: *"on 25 August 2014, they considered the disciplinary report and her response (Claimant's) and are of the view that the Claimant's conduct in misappropriating public money which was allocated for staffs DSA by signing off a blank receipt and receipting false amount of monies amounted to serious misconduct and the PSC cannot in good faith take any other course but to dismiss the claimant pursuant to s. 29 of the Public Service Act"*.
38. Further, the Response of the Claimant to the disciplinary report, which was attached and marked as "ASS8" to her statement filed 20 February 2015, showed that at (page 1 paragraph 3), the Claimant partly admitted the allegations that were made against her by her other colleagues. Also in the Claimant's email to the Director of Women's Affairs, she proposed to repay the outstanding DSA for the

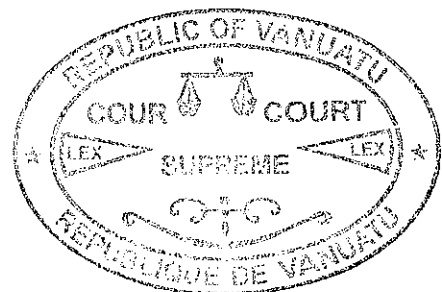


two officers who made the report against her which was attached and marked "JM8" to Judith Melsul's sworn statement filed 26 May 2015.

39. The letter of 25 August 2014 reads: *"This letter served to advise you that the Commission at its meeting No. 18 of 2014 on the 21<sup>st</sup> day of August 2014 having considered the disciplinary report against you as well as evidences submitted and noted that all allegations against you amounted to serious misconduct. Therefore, the Commission decided to dismiss you pursuant to Section 29 of the Public Service Act on the ground that:*

*1. There is evidence before the Commission that you admitted to have misappropriated public money worth VT348,000 which was allocated for staffs DSA during the National Gender and Women's Empowerment Consultation between the periods of 17<sup>th</sup> September 2012 to 28<sup>th</sup> June 2013 ...".*

40. In the present case, the material facts before the Commission include the part admissions of the Claimant to the allegations made by the 2 staffs against her. These part admissions are contained in the Claimant's response to the disciplinary report to the Commission.
41. I accept that both the report and the Claimant's response were submitted to the First Respondent (PSC) and it did consider the Claimant's response also before it made the decision to dismiss the Claimant pursuant to s. 29 of the Public Service Act.
42. The Claimant's submission under this heading is also without basis. It is dismissed.
43. The submissions under this sub-heading could be independently disposed of this way. The Claimant in essence says that there is no evidence to show how the Commission had reached the decision to dismiss the Claimant.
44. The Claimant seems to seek from the Commission the reasons for its decision of 21 August 2014 to dismiss her for misconduct under S. 29 of the Public Service Act. There is no general obligation on the Commission to give reasons for its decision under s. 29 of the Public Service Act.

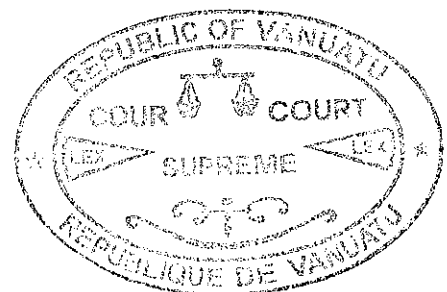


45. In *Public Service Commission v. John Cullwick Tari* [2008] VUCA, the Court of Appeal held: *"We are satisfied that there is no obligation on the Commission to give reasons for its decision to dismiss a public service employee below the rank of Director or Director General. The natural justice do not require, as of course, reasons be given by administrative tribunals: R v. Gaming Board for Great Britain ex part Benaim and Khaida [1970] 2 QB 417; R v. Northhumberland Compensation Appeal Tribunal, ex part Shaw [1952] 1 KB 338. In our view the statutory context does not suggest reasons are required to be given by the Commission for decision to dismiss for cause under Sections 50(1) of the Employment Act or Section 29(2) of the Public Service Act. An employee is protected by the Commission's obligation to give the employee an opportunity to respond to the allegations made against him or her before a decision is made of importance is the fact the employee can challenge the merits of the Commission's decision in the Supreme Court by alleging unjustified dismissal."*

*This case demonstrates the point. Here the Respondent challenged the Commission's decision as constituting unlawful dismissal. Further there is no express statutory obligation on the Commission to give reasons for its decisions. This can be contrasted with the position when a Director or Director General is vulnerable to dismissal. In that case, the Commission is obliged to give "reasons for the decision". S. 19B(6). For other dismissals (as here) there is no statutory obligation to give reasons: s. 29".* These submissions are also without bases. They are dismissed.

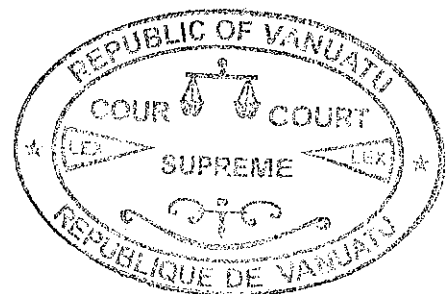
(vii) Failure to provide adequate opportunity to respond

46. The Claimant submits that the timeframe given to the Claimant to provide her response to the allegations made against her was not sufficient and thus inadequate.
47. Subsection 2.31(6) of Chapter 8 of the Public Service Staff Manual requires a disciplinary report to be provided to the Claimant and the Claimant be given 7 days to provide her response to the allegations against her before the report is sent to the Commission.
48. In this case, the Discipline Report was provided to the Claimant on 22 January 2013. The Discipline Report is to return to the Director by 30 January 2013 before



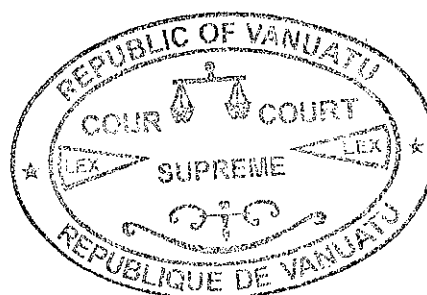
it could be sent to the First Respondent (Commission) for consideration and decision.

49. The Claimant responded to the allegations made against her and she returned the Discipline Report and her Response on 30 January 2013. The Discipline Report and her Response were provided to the Commission on 21 August 2014; the Commission considered the Discipline Report, evidences attached including the Claimant's Response to the allegations and decided to dismiss the Claimant for misconduct pursuant to S. 29 of the Public Service Act.
50. The Claimant was informed of the Commission's decision dismissing her for misconduct on the letter of the Acting Secretary of Public Service Commission of 25 August 2014.
51. I accept the Respondent's submission that the Claimant's claim for timeframe is baseless. Here, the Claimant managed to complete her Response on time and the Discipline Report and the Response were submitted to the Commission for decision. The Claimant was given 7 days period to provide her response to the allegations against her. She did comply with such a timeframe to provide her Response. No additional time was needed or sought by the Claimant.
52. It is also noted that the Claimant did not either request for additional time to be given to her to respond to the allegations made against her. The Claimant's submission under this sub-head is also without basis. It is dismissed.
53. I will now consider the following two questions together –
  - (viii) Breach of obligation to act as a good employer; and
  - (ix) Breach of obligation to consider subsection (3) of Section 50 of the Employment Act.
54. The Claimant contended that the First Respondent breached its obligation to act as good employer because it failed to comply with the required legal procedures in dismissing the claimant by not abiding by the principles set out in Section 4 of the Public Service Act which covers observing the law.
55. The Claimant also submitted that the Respondents failed to act as a good employer when it did not consider subsection 50(3) of the Employment Act which applies to



all employment, public and private before making a decision to dismiss the Claimant from employment on 21 August 2014.

56. The Claimant further submitted that the Respondents did not invite the Claimant to address subsection 50(3) of the Employment Act when it invited the Claimant to provide her response to the discipline report on the allegations made against her.
57. It is further contended that the Respondents have failed to comply with its obligation to consider subsection 50(3) of the Employment Act before making a decision to dismiss.
58. The Claimant finally submitted that the process for dismissal of the Claimant by the First Respondent is contrary to the principles of natural justice and fairness and contrary to law and seeks the orders of the Court specified under the Amended Claim filed on 27 April 2016.
59. The Respondents submitted, to the contrary, that the Respondents did observe the law which sets out the procedures of dismissing the Claimant. They submitted that they did act as good employer in dismissing the Claimant on 21 August 2014. In paragraph 14 of the sworn statement of Judith Melsul, filed 2015, she did said the Commission met after receiving the Discipline Report and the Claimant's Response and made consideration on them and decided that it cannot in good faith take any other course but to dismiss the claimant.
60. It is further submitted that this was emphasized again in her further sworn statement filed on 11 August 2016.
61. They finally say that the Commission lawfully exercise its power under Section 29 of the Public Service Act and subsection 50(3) and (4) of the Employment Act. They say the Claimant's claim is unfounded and must fail. The Claimant is not entitled to the relief sought or to any other relief.
62. To answer to the question posed under these subheadings, I need to have details of what was said or did by the Director General before providing the Discipline Report and the Claimant's Response to the Commission and what was said or done by the Commission when it made the decision to dismiss the Claimant for serious misconduct on 21 August 2014.



63. I set out the Minutes of the meeting of the Commission dated 21 August 2014 leading up to the dismissal of the complainant and the letter of the Acting Secretary of the Public Service Commission of 25 August 2014 informing and explaining the decision of the First Respondent to dismiss the Claimant for serious misconduct without benefit:

*"AGENDA ITEM 04: Discipline Report – Ministry of Justice & Community Services v. Mrs. Annie Shem Samuel Case No. 02 of 2014.*

*DECISION No. 04-18-2014*

*The Commission considered the allegations against Mrs. Annie Shem Samuel and decided to dismiss her pursuant to Section 29 of the Public Service Act.*

*There is evidence before the Commission that Mrs. Annie Shem has admitted to have misappropriated public money worth VT348,000 which was allocated for staffs DSA during the National Gender and Women's Empowerment consultation between the period of 17<sup>th</sup> September 2012 to 28<sup>th</sup> June 2013.*

*Commission considered her past service as not exemplary therefore she is dismissed without benefit. The amount of VT348,000 will be deducted from her standard payment as reimbursement of public fund misuse under her care.*

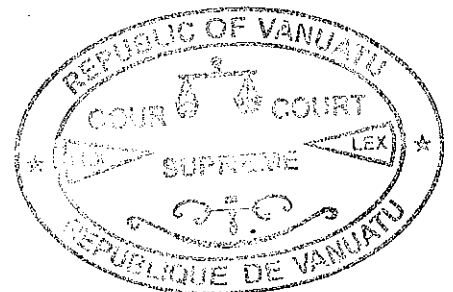
*ACTION OFFICER: EXECUTIVE MANAGER, COMPLIANCE."*

*"Mrs. Annie Shem Samuel  
Port Vila  
Efate*

*Dear Madam,*

***Re: PSC determination of Disciplinary Report against you by the Minister of Justice & Community Services***

*This letter serves to advise you that the Commission at its meeting No. 18 of 2014 on the 21<sup>st</sup> day of August 2014 having considered the disciplinary report against you as well as evidences submitted and noted that all allegations against you amounted to serious misconduct. Therefore, the Commission*



*decided to dismiss you pursuant to Section 29 of the Public Service Act on the ground that:*

*1. There is evidence before the Commission that you admitted to have misappropriated public money worth VT348,000 which was allocated for Staffs DSA during the National Gender and Women's Empowerment consultation between the periods of 17<sup>th</sup> September 2012 to 28<sup>th</sup> June 2013.*

*The Commission further considered your past service as not exemplary therefore you are dismissed without benefit and the amount of VT348,000 will be deducted from your standard payment as reimbursement of public fund misuse under your care during the National Gender and Women's Empowerment consultation between the periods of 17<sup>th</sup> September 2012 to 28<sup>th</sup> June 2013.*

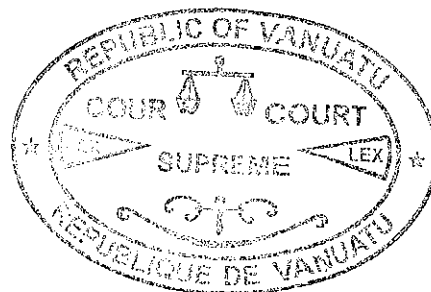
*By copy of this letter Director General of the Ministry of Justice and Community Services as well as the Director of the Department of Women Affairs, the Human Resource Officer of the Minister and the Salary Section to the Department of Finance are duly advised of this decision.*

*Yours faithfully,*

*Charity Bona-Titiliu  
Acting Secretary – PSC*

*CC: Director General, Ministry of Justice & Community Services  
Salary Section – Department of Finance  
Director – Department of Women Affairs  
HRO – Ministry of Justice & Community Services  
P/F  
OPSC – Compliance Files  
Chrono".*

64. It is noted that in the meeting of the First Respondent of 21 August 2014, the Acting Secretary of the Public Service Commission, then, was Charity Bona-Titiliu. Annie Wotu was the principal administration officer and minute taker.
65. None of them filed a sworn statement in this case. The Minutes of the meeting of 21 August 2014 and its content are self-explanatory and speak for themselves. The letter of the Acting Secretary of the Public Service Commission which reproduced



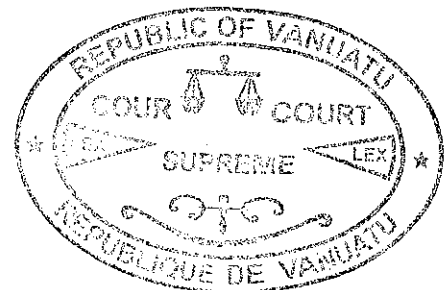
in essence the content of the Minutes of the meeting of 21 August 2014 just confirmed what was considered by the First Respondent in respect to section 29 of the Public Service Act.

66. There is no reference or mention of Section 50(3) of the Employment Act by the Commission when it invited the Claimant's response to the discipline report and accompanying letter. The Commission did not mention s.50(3) when it dismissed her. Nothing on s.50(3) was recorded in the Minutes of the meeting of 21 August 2014 dismissing the Claimant nor the letter of 25 August 2014 informing and explaining to the Claimant her dismissal of employment from the Public Service.
67. In *Public Service Commission v. John Cullwick Tari* [2008] VUCA, the Court of Appeal stated:

*"The terms of ss. (3) impose a positive duty on the Commission. It is only permitted to dismiss an employee if it cannot in good faith be expected to take another course. Other "course(s)" may include demotion or transfer to another government department. These are also serious responses to misconduct by an employee. (See *Government of Vanuatu v. Mathias* [2006] VUCA 7).*

*Consistent with this obligation the Commission should invite those whom it has concluded may have been guilty of serious misconduct to address ss.(3). This should be done before a decision on the employees' future is reached. When communicating its decision on dismissal (or otherwise) the Commission will need to identify it has considered s.50(3) and (if appropriate) concluded (in good faith) that it cannot take any course other than dismissal."*

68. In the present case the Commission did not invite the Claimant to address ss. (3) nor is there anything to illustrate it turned its mind to this fundamental obligation. Ms. Judith Melsul attempted to illustrate this in her sworn statements filed 26 May 2015 at paragraph 14 and 11 August 2016 at paragraph 4.
69. However, she was not part of the Commission which dismissed the Claimant on 21 August 2014. What she was trying to do was interpreting and guessing on what the Commission did on 21 August 2014.
70. The Minutes of the Meeting of 21 August 2014 and the letter of 25 August 2014 to the Claimant by the Acting Secretary of the Public Service Commission speak for





themselves and they do not show that the Commission did consider ss.(3) of 50 of the Employment Act either in the Minutes of the meetings or in the letter of 25 August 2014 to the Claimant.

71. Given this positive obligation and the Commission's failure to establish that it had undertaken the analysis demanded by s.50 (3), I conclude the Claimant could not have been lawfully dismissed and her dismissal was therefore unjustified.

72. I now consider the relief sought.

(x) Whether or not the Claimant should be re-instated.

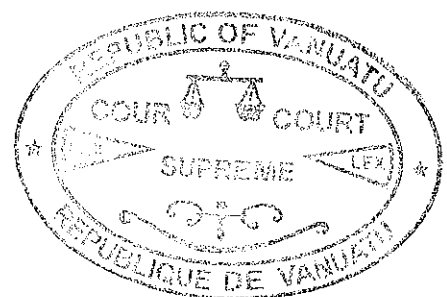
73. The claimant did not submit on this subheading although she sought an order to this effect.

74. I agree and accept the submissions of the Respondents that the re-instatement of the Claimant should not be made here because the Respondents (employer) had already dismissed the Claimant from her employment and the Respondents as the employer should not be compelled to employ the Claimant. I agree that *Iauko v. Vanuaroroa* [2007] VUSC and *Air Vanuatu Limited v. Bong* [2015] VUCA 17 are the authorities in support of this proposition.

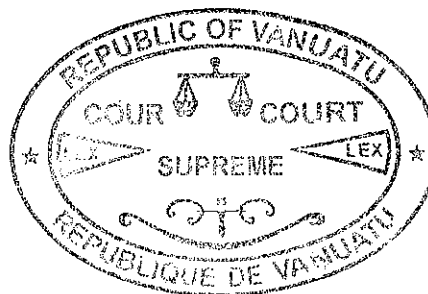
75. It is noted that the Claimant's claim did not seek for an order declaring the dismissal of the Claimant by the Commission on 21 August 2014 unlawful and therefore unjustified.

76. It is noted that the Claimant's submissions asserted that the Claimant's dismissal was contrary to law and seeks for the orders of the Court specified under the Amended Claim filed 27 April 2016.

77. It is also noted that in the Amended Claim for Judicial Review, the Claimant applies, apart from reinstatement, for a quashing order. A quashing order cannot be granted unless there is a finding that the decision was made contrary to law or is unlawful and then a declaration by the Court to that effect followed by a declaration of "null and void" and/or "quashed" as the consequence of the declaration of unlawfulness.



78. In this case, given my finding that the decision of the First Respondent on 21 August 2014 was contrary to law or unlawful because the First Respondent failed to address s.50(3), I need to declare that the said decision of the First Respondent was unlawful and, thus, unjustified.
79. There was no such relief in the Amended Judicial Review Claim of the Claimant filed 27 April 2016.
80. I note finally that in the Amended claim for judicial review, the Claimant applies also for "*(e) such further orders as this Honourable Court considers necessary*".
81. I have recourse to the relief (e) in the Amended Claim for judicial review and add a declaration as part of the relief sought in the claim that the decision of the Commission dated 21 August 2014 was unlawful and thus unjustified as a necessary declaratory order in the interest of justice to the case.
82. The Claimant is qualified for a severance allowance by virtue of Section 54(1) of the Employment Act. The Court may order the employer to pay up to six times the severance allowance if the dismissal is unjustified: s.56(4).
83. The Commission made no severance allowance payment to the Claimant because they dismissed her for cause. In this case, I have concluded the dismissal was unjustified in that the Commission failed to address s. 50 (3). A severance allowance was payable and I request that counsel provide additional submissions on the multiplier factor. If a severance allowance is to be paid "*on termination of the employment*" s. 56(5), ss.(6) empowers a Court to order an employer to pay interest of up to 12% from the date of termination of the employment on the severance allowance. Counsel will also need to provide submissions on this.
84. Counsels were directed to provide additional submissions on these points by 26 May 2017. They respectfully filed additional submissions as directed.
85. On the question of the multiplier factor, the Respondents submitted that in the circumstances of this case, the Court should award the Claimant an amount equivalent to her severance allowance only without any multiplier. I think the fact that the Commission failed to consider s.50(3) of the Employment Act and its effect in the dismissal of the Claimant is a serious failure on the part of the Respondents and justified a multiplier factor to be considered and applied on the



severance allowance to be paid to the Claimant. I assess that multiplier factor to be (x4).

86. The severance to be paid to the Claimant is as follows:

Annual salary –VT 1,411,200/12 months = VT 117,600. The amount of severance under s.56(2)(a) is “ for every period of 12 months (1 year) – 1 month remuneration”. The Claimant was employed for 4 years (rounded up) VT 117,600 (one month remuneration) x 4 years = VT470,400. That amount is to be multiplied by 4 to take into consideration of the multiplier factor, which equals to VT 1, 884,600.

87. On the question of interest, she will be entitled to 5% interest from the date of her dismissal, ie. 21 August 2014 to the date of payment.

88. The Claimant is also entitled to her costs against the Respondents to be agreed or assessed.

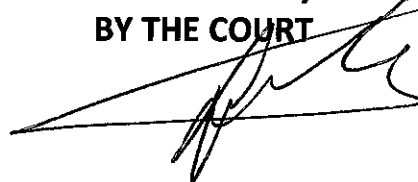
89. In summary, the Claimant is entitled to:

- Severance allowance of VT 1, 884,600;
- Interests of 5% on that amount from the date of dismissal (21 August 2014) to the date of payment ; and
- Costs to be agreed or assessed.

90. These are the remedies I consider appropriate to make in the way the Claim was advanced and as the consequence of the findings and rulings by the Court. Other remedies sought in the additional submissions are not specifically claimed and there were no specific evidence in support. They were refused.

**DATED at Port-Vila this 16th day of February 2018**

**BY THE COURT**



**Vincent LUNABEK  
Chief Justice**

