

**IN THE SUPREME COURT  
OF THE REPUBLIC OF VANUATU**  
*(Civil Jurisdiction)*

**Civil  
Case No. 16/2830 SC/CIVL**

**BETWEEN: Henry Vano**  
*Claimant*

**AND: Airports Vanuatu limited**  
*Defendant*

**Before: Justice Aru**

**Counsel: Mr J. Kilu for the Claimant  
Mr. N. Morrison for the Defendant**

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## **JUDGMENT**

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### Introduction

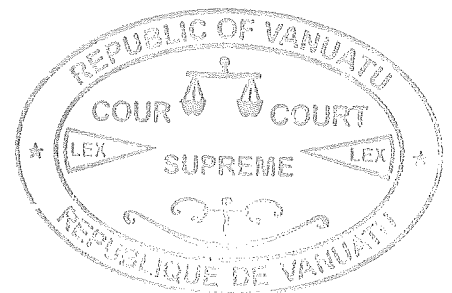
1. Mr Henry Vano is a former employee of Airports Vanuatu Limited (AVL). He was suspended from his employment on 31 July 2015. Whilst still on suspension on 27 April 2016 he received another letter terminating his employment.
2. As a result he filed these proceedings.

### Pleadings

3. The claim asserts that Mr Vano's termination was unjustified as no opportunity was given to answer the charges against him therefore the relief sought was for an order that the defendant pay severance in the sum of VT 5, 967,042, common law damages in the sum of VT 1, 500,000 damages for stress and anxiety and finally interest on the ordered sum at 12 %.
4. The defence case is that the claimant was not terminated for cause but by notice and all legal entitlements due to the claimant for termination on notice were paid to him in full.

### Background

5. Mr Vano begun his employment with AVL around 6 January 2003 as an Airports Rescue and Fire Fighting Service Officer (ARFFS).



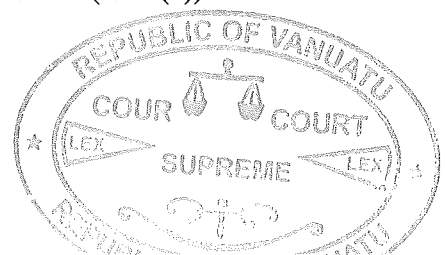
6. On 31 July 2015 he was suspended from his employment by letter headed "Suspension of employment with AVL". He was also informed that his suspension was due to him bringing alcohol onto work premises and working under the influence of alcohol. In addition he was informed that he will be notified of a date to appear and defend the charges against him.
7. Mr Vano waited for some time for a hearing date to be advised. During that time he joined the Regional Seasonal Employment scheme (RSE) and went abroad to work in Australia for a period of 6 months.
8. Upon his return from abroad he enquired with AVL again about his status .On 27 April 2016 he received another letter headed "Termination of employment with AVL". This was the letter of termination of his employment.

#### Issue

9. The only issue is a narrow one and that is whether Mr Vano was dismissed for reason/cause or was he dismissed on notice.

#### Submissions

10. Mr Morrison submits that the claimant was dismissed by notice pursuant to s 49 of the Employment Act [CAP 160] and not s 50. He submitted that such a course was open to AVL as the employer rather than a dismissal under s 50 as long as all the entitlements are paid out. He relies on **Air Vanuatu (Operations) Limited v Virelala** [2018] VUCA 19.
11. It was submitted that severance and notice were paid out and accepted by the claimant as admitted in the claim at paragraphs 23 and 8 respectively. In addition it was submitted that half salary for the period of the suspension was also paid including leave earned but not taken.
12. Mr Morrison submitted that the claim was misconceived and should be dismissed. He seeks an order for costs to be paid on an indemnity basis for reasons that he had pointed out to Mr. Kilu prior to the hearing that the law, the evidence and authorities were against Mr. Vano.
13. Mr Kilu on the other hand submits that Mr Vano was suspended and notified of the charges against him. In his suspension letter, Mr Vano was informed that he will be notified of a date and time to appear to defend those charges.
14. As no opportunity was given to Mr Vano to defend the charges against him, it was submitted that the termination of employment was unjustified (s.50 (4)). It was also



submitted that if the court finds that the termination was unjustified then it must order payment of a sum up to 6 times the amount of severance. (s 56 (4) ) with interest at 12 % (s 56 (6) ).

## Discussions

15. The starting point of discussion has to be the letter of 27 April 2016 terminating the employment of Mr Vano with AVL. The letter was headed termination of employment with AVL and reads as follows:-

*“Dear Vano*

*Re: Termination of Employment with Airports Vanuatu Limited*

*I wish to write to you to convey the intention of AVL to terminate your employment with AVL immediate effect.*

*Part 6.19 of the AVL Corporate Policy & Procedures Manual provides that:*

*(5) A contract of employment for an unspecified period of time shall terminate on the expiry of notice given by either party to the other of his/her intention to terminate the contract.*

*(6) Notice may be verbal or written and subject to specific details below, maybe given at any time.*

*(7) Notice of termination need not be given if pays the employee the full remuneration for the appropriate of notice specified.*

*(8) Employment may be terminated by any of the following circumstances*

*Under section 49 of the Employment Act CAP 160 of the Republic of Vanuatu, it clearly provides that:*

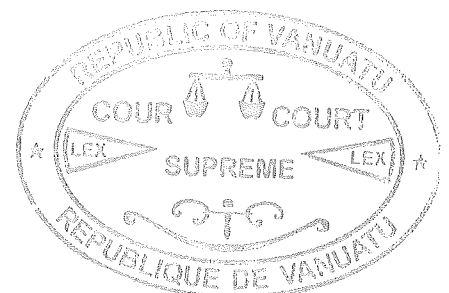
*(1) A contract of employment for an unspecified period of time shall terminate on the expiry of notice given by either party to the other of his intention to terminate the contract.*

*(2) Notice may be verbal or written, and, subject to subsection (3), may be given at any time.*

*(3) The length of notice to be given under subsection (1) –*

*(a) where the employee has been in continuous employment with the same employer for not less than 3 years, shall be not less than 3 months;*

*(b) in every other case –*



(i) where the employee is remunerated at intervals of not less than 14 days, shall be not less than 14 days before the end of the month in which the notice is given;

(ii) where the employee is remunerated at intervals of less than 14 days, shall be at least equal to the interval.

(4) Notice of termination need not be given if the employer pays the employee the full emuneration for the appropriate period of notice specified in subsection (3).

You ae required to return all AVL properties such as keys, ID, uniforms and/or whatever AVL property in your possession on your last day of work with AVL.

Wishing you all the best in your future endeavours.

Enclose is your three (3) months' notice payment and your entitlements.

Yours sincerely

[signed]

Vivianne Laumae

Manager Human Resource

For Jason Rakau

Chief Executive Officer "

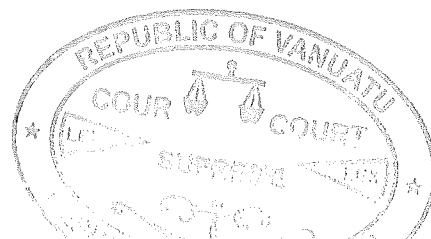
(emphasis added)

16. The letter in my view makes it quite clear that termination is in line with s 49 of the Employment Act. It acknowledges AVL's intention to terminate the employment immediately and encloses payment of all his entitlements. The details of these payments are shown in Annexure "JY1" to the sworn statement of Jimmy Yaviong as follows:-

- Severance - VT 994,507
- 3 months' notice - VT 223,206
- ½ pay salaries - VT 171,690
- Leave - VT 55,802

17. The case on point is **Air Vanuatu (Operations) Limited v Virelala**. Mr Virelala was also on suspension on charges which were made known to him. Air Vanuatu opted to terminate his services pursuant to s 49 of the Employment Act and pay all his entitlements including severance, outstanding salaries, 3 months' notice and all outstanding leave. At paragraphs 14 and 15 of the judgment the Court said:-

"14. The premise of the Supreme Court judgment was that the termination was under s.50, and that the termination was invalid because no opportunity was given to Mr Virelala to answer the allegations of misconduct under s.50(4). If this had been a termination under s.50, that would be right. But it was not such a termination. It was a termination under s.49, and there is no obligation to give notice under that section.



*The quid pro quo for this is that notice or payment in lieu must be given, and there are entitlements including severance. Mr Virelala received these.*

*15. Thus there was an error made in the judgment, as Mr Virelala had not made out his claim. He has misinterpreted the nature of his termination. He had not been terminated for serious misconduct, despite the allegations of misconduct that had led to his suspension, and which were re-iterated in the letter. He had been terminated under the notice section.”*

18. In cases of misconduct by an employee s.50 (1) provides that “it shall be lawful for an employer to dismiss the employee without notice and without compensation in lieu of notice”. The termination is made without notice and without compensation in lieu of notice. Whereas under s49 either party (employer or employee) may give notice “of his intention to terminate the contract”. For an employer notice need not be given if the full remuneration for the period of notice is paid. Both options were available to AVL and it opted to terminate the employment and pay the 3 months’ notice period, all severance, leave and outstanding salaries. I am satisfied that the claim was misconceived. Mr Vano’s termination was clearly made under s 49 of the Employment Act.

#### Conclusion

19. The claim is dismissed. On the question of costs Mr Morrison sought indemnity costs in the sum of VT 500, 000. The basis of the submission is that the issue was drawn to Mr Kilu’s attention twice by Chetwynd J and Mr Kilu was served with all the defendant’s evidence and relevant authority drawn to his attention but he persisted with the claim.
20. I am mindful of my discretion under rules 15.5 (5) of the Civil Procedure Rules to order such costs. However, Mr Morrison has also offered an alternative that the defendant be paid standard costs in the sum of VT 250, 000.
21. I am not satisfied that this would be an appropriate case to order indemnity costs. The defendant is entitled to costs on a standard basis in the sum of VT 250,000 to be paid within 21 days.

**DATED at Port Vila this 12 day of April, 2019**

**BY THE COURT**

.....  
**D. Aru**  
**Judge**

