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

Judicial Review
Case No. 24/2752 SC/JUDR

BETWEEN: Vanuatu Teachers Union
First Applicant

AND: Norah Naviti Wells and the persons named in the Schedule appearing at the end of this decision
Second Applicants

AND: Teaching Service Commission
First Respondent

AND: Republic of Vanuatu
Second Respondent

Before: Hon. Justice EP Goldsbrough

In Attendance: Mr. A. Bal for the Applicants
Mr. K. T. Tari for the Respondents

Date of Hearing: *19th 20th and 21st May 2025*
Date of Decision: *30th May 2025*

JUDGMENT

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1. The Vanuatu Teachers Union (1st Applicant), and twenty-one individual teachers (2nd Applicants) filed a claim for Judicial Review of a decision of the Teaching Service Commission (1st defendant) on 3 September 2024. The challenged decision was described as No. 5 of 2024. The effect of that decision was to suspend the teachers from their employment. The claim also seeks a declaration that the 1st defendant acted dishonestly and in the absence of good faith or in dereliction of his functions and powers under the Teaching Service Act.

2. This decision follows from the trial of a further amended claim filed on 29 January 2025. Whilst continuing to attack decision No. 5 of 2024 and seeking similar relief as the original claim including declaratory relief, the further amended claim also seeks to

attack subsequent decisions made by the 1st defendant on 22 November 2024. The further amended application is filed by the same 1st Applicant but additionally by a further five hundred and seventy-seven teachers affected by the subsequent decisions.

Introduction

3. The first applicant is a registered trade union (VTU) and the second applicants school principals and teachers who were active members of that trade union and employees of the 1st and 2nd defendants. For some time prior to the filing of the first claim all the parties were involved in dialogue, discussion and attempted resolution of grievances raised by the VTU on behalf of its members. The attempted resolution was unsuccessful. A notice of industrial action (IA) was sent by the Secretary General (SG) of the VTU to the Acting Chairman of the first defendant (TSC), to the Director General of the Ministry of Education and Training (MOET), and the Commissioner of Labour (COL).

4. The notice provided for the IA to begin on 6th of June 2024. On that day the Minister of Internal Affairs exercised his power and issued an order of discontinuance of the industrial action with a view to conciliation and resolution of the dispute between the parties. Again, those discussions were unsuccessful.

5. By the 9th of August 2024 the period within which the varied notice of discontinuance remained in effect came to an end. On the 10th of August 2024 the SG of the first applicant informed its members of the resumption of industrial action following the failure to settle the outstanding disputes.

6. On 16th August 2024 the first defendant suspended the 1st twenty-one of the second applicants. That action was prompted by advice of 12th August 2024 from the office of the Attorney General that the industrial action was now unlawful.

7. The claim for Judicial Review was filed on 3rd September 2024. Interim relief against the orders for suspension followed. The decision on interim interlocutory relief was unsuccessfully challenged in the Court of Appeal. Nevertheless, the first defendant

continued in its disciplinary actions against the 2nd applicants, culminating in the dismissal of some of them on the 22nd of November 2024 and the initiation of disciplinary proceedings based on the same allegation of the five hundred and seventy-seven additional applicants.

8. The further amended claim was filed, and interlocutory relief amended to reflect the new position. No further amended defence was filed, counsel indicating at the Rule 17.8 Conference that reliance would be placed on the defence already filed *mutatis mutandis* given the amendments to the application and the changes to the situation on the ground through the passage of time and progression of the expanded disciplinary proceedings from suspension to dismissal.

9. The defence was filed on 10 October 2024, late, and without seeking any condonation. It appears to be supported by sworn statements filed in September 2024 by the Acting Chairman of TSC. In it there are two questions raised as to the lawfulness of the recalled strike action, firstly that it was done without a 30-day notice under s 33 A of the Trade Disputes Act and secondly that the recall was not signed by the President of the VTU but by the SG.

Agreement on issues

10. On 16 May 2025 counsel filed a memorandum of agreed facts and issues. The following is provided in the memorandum: -

11. Agreed facts:

    i. The 1st Applicant is a Registered Trade Union under the Trade Union Act [Cap 161]
    ii. The 2nd Applicants are school Principals and teachers who are members of the 1st Applicant and employed by the 1st Defendant, the Teaching Service Commission (TSC).
    iii. The 2nd defendant is the Republic of Vanuatu
    iv. On 29 April 2024 the 1st Applicant requested a tripartite social dialogue concerning teachers' funds, addressing the request to the DG of MOET and Acting Chairman of TSC.

v. The 1st applicant issued a Notice of Industrial Action on 6 May 2024, with the action scheduled to commence 30 days later on 6 June 2024

vi. A series of Conciliation Notices were issued by the Commissioner of Labour (COL) on 27 and 30 May and 3 June 2024

vii. On 6 June 2024 the Miniter of Internal Affairs issued a Discontinuance Order No. 82, later amended by Discontinuance Order No. 84

viii. On 17 June 2024 an Undertaking Agreement was signed between the 1st applicant, the 1st Defendant and the DG of MOET requiring negotiations to be concluded within 14 days.

ix. A variation of the Undertaking Agreement was signed on 29 July 2024 extending the negotiating period to 8 August 2024.

x. On 10 August 2024 the 1st Applicant recalled the Industrial Action due to failure of the negotiations.

xi. The 1st defendant at its meeting of 12 July 2024 resolved to approving the granting of immunity from discipline to the teachers (VTU members) who participated in the strike from 7 to 17 June 2024.

xii. On 16 August 2024 the 1st defendant suspended the 2nd Applicants citing breach of employment duties and legal provisions.

xiii. Some of the 2nd Applicants were later dismissed on 22 November 2024.

xiv. The Applicants assert that the Industrial Action complies with section 33A of the Trade Dispute Act [Cap162].

12. Issues for determination:

i. Whether the Industrial Action recalled on 10 August 2024 was lawful and of legal effect

ii. Whether the 1st defendant's decision in Meeting No. 5 of 2024 to suspend the 2nd applicants was valid and lawful

iii. Whether the dismissal of the 2nd applicants on 22 November 2024 was valid and lawful

iv. Whether the 1st defendant acted dishonestly, in bad faith, or in dereliction of its statutory functions under the Teaching Service Act.

Preliminary issue

13. On 29 January 2025 at a hearing for directions, counsel were required to file a memorandum setting out an agreement as to the conduct of the trial bearing in mind that the same issues affect all of the 2nd applicants and so as to avoid each and every applicant filing evidence, often in identical terms, but rather to agree to have the contested issues determined on representative evidence. Whilst counsel agree that this should be the case, nothing has been filed. After some discussion, counsel undertook to file such a memorandum before close of business on Monday 19 May 2025. It was eventually filed on Tuesday 20 May 2025.

14. Counsel for the 1st and 2nd defendants raised, without notice, the question of late filing and service of three witness statements from the Applicants. Those witness statements were responsive statements. They were all filed in May 2025, less than 21 days prior to this trial. The statements to which they responded were themselves only filed at the end of April 2025, not allowing the applicants a great deal of time to file responses before the 21 days deadline arose. He sought an order that the statements be excluded from evidence in the trial. He noted that on behalf of the defendant, notice to cross examine witnesses had been filed late, and submitted that the Court should condone that lateness but not the lateness in the filing of evidence. He agreed that no notice of objection had been given prior to the hearing today.

15. Having heard counsel in opposition, the Court determined that the evidence should be received, albeit allowing counsel whatever time he required to take instructions on anything disclosed in the material which took his clients by surprise. As the material was responsive, it seems that no material took his clients by surprise and when offered time, he declined the offer. It seems that the objection was made even though there was no prejudice to his clients, and when they needed no further time to give instructions to him on the material. This question of excluding the evidence of Mr Forau and Ms. Natapei, albeit unsuccessful, takes on a much greater significance when it comes to considering final submissions filed by the defendants.

16. He was allowed to cross-examine any witness even though his notice to cross examine was given later than required under the rules, there being no objection from the Applicants.

Evidence

17. The following sworn statements were relied upon by the Applicants as evidence-in-chief in support of the application.

    a. 3 statements Jonathan Yonah, filed 19 November 2024 7,12, and13 May 2025
    b. Bryent Forau filed 12 May 2025
    c. Rhonda Natapei filed 12 May 2025

Cross-examination by the 1st Defendant was conducted on each of the above three witnesses. During cross-examination, Jonathan Yonah confirmed the present Constitution of the VTU (Exhibit D 1) and agreed that some actions required a decision by secret ballot, and that this Industrial Action was not supported by a secret ballot. In re-examination, he gave evidence that at Triennials held in Santo (2019) and in North Efate (2023) the power was given by those meetings to the National Executive to initiate industrial action after it had been authorised in advance by what he called the high-level meeting. He suggested that this was a sufficient authority for industrial action. He also drew attention to Part 7 clause 7.14 of the Constitution which provides similarly.

The evidence of Bryant Forau confirmed suspension and dismissal of a teacher based solely on participation in industrial action. He gave evidence that the then Chairman of VTU, Hyacinth Balmassen did not attend a National Executive meeting when the industrial action was recalled. He understood that Mr Balmassen was on sick leave but only knew this from something he had been told. His evidence was that he was told by the SG of VTU Mr Yonah. In his evidence and cross-examination, Mr Yonah was not asked about this.

Rhonda Natapei gave evidence that as a teacher she was suspended and dismissed and that the disciplinary action on which this action was taken was based solely on her

participation in industrial action. She had also been told that Mr Balmassen's absence from the significant meeting of the National Executive Committee was occasioned through sickness.

This saw the close of the case for the applicants.

18. The following sworn statements were relied upon by the 1st defendant as evidence-in-chief in support of the defence to the claim.

    a. 2 statements of Hardison Tabi filed 6 September 2024 and 26 November 2024
    b. Muriel Meltoven filed 25 April 2025
    c. Hyacinth Balmasen filed 24 April 2025

The witnesses cross-examined by the Applicants were: -

    a. Hardison Tabi
    b. Muriel Meltoven
    c. Hyacinth Balmassen

19. Hardison Tabi gave evidence for the defendants. His three sworn statements were admitted into evidence as his evidence in chief. He was cross-examined. In his view, according to his answers in cross-examination, the industrial action for which notice had been given came to an end when the parties, including the VTU, executed the Undertaking Agreement. He pointed to paragraph 3 where the VTU commits to releasing its members to return to work as of 18 June 2024. In his view, that meant that the Industrial Action had come to an end. He did not agree that the Industrial Action was merely paused whilst negotiations took place. He was questioned about the effect or meaning of the following paragraph 4 which speaks about recalling of the Industrial Action but again insisted that the effect of the return-to-work provision was an absolute end to the Industrial Action. He agreed that the grievances raised, as set out in Schedule 1 to the UA had not been settled in full but maintained that many of them had been agreed upon and payments made and continued to be made in settlement of those agreed matters. He agreed that all disciplinary action covered by this action was a direct result of participation in the Industrial Action. He referred to the

advice from the Office of the Attorney General on the lawfulness of the strike action. That advice is exhibited as HT 13. He agreed that no one suspended or dismissed has been re-instated. He agreed that he had been asked to consider revoking a Circular he had issued but had refused and noted that the refusal was quickly followed by the SG of VTU walking out of negotiations. He did not consider his refusal as provocative.

20. Muriel Meltoven was cross examined. In her sworn statement, she did not assert that she attended meetings but described what had taken place, describing an officer of her office as conducting the meeting. When questioned, she said that she had also been at these meetings and so could give direct evidence of what took place. Indeed, she is a signatory to the UA. She described how it was executed in the VTU compound as an example. Yet when questioned about a document exhibited to her statement which she described in her statement as minutes of a meeting, she agreed that the document was no more than an email saying that there were no minutes taken of the meeting. That email did not include her name as a person who might have attended the meeting described. She was unable to explain why she gave evidence that she did attend the meeting that she had not actually attended. What she was clear about was that the industrial action ended when the VTU asked their members to return to work following the execution of the UA. That evidence and her conclusion was identical to that of the earlier defence witness, ended and not paused by virtue of clause 3 of the UA.

21. She exhibited advice from the Office of the Attorney General but not her request for that advice. She did not know why her officer who she had described as taking most of the action she described in her statement was not giving evidence on behalf of the defendants, simply that he was not on the list of witnesses.

22. When asked to consider the hypothetical position if her opinion that the industrial action had ended rather than paused, she testified to the effect that the VTU would still have to give a second 30-day notice of intention to institute industrial action without being able to point to any legislative provision requiring the same.

23. In re-examination she told the Court that she had attended when the UA was signed at the VTU compound and had heard the SG of VTU call off the strike.

24. Hyacinth Balmassen gave evidence and was cross-examined. He was, at the time of the Industrial Action, the President of the VTU. He gave evidence that during the week beginning on Monday 5 August 2024 he was on sick leave for four days ending on Thursday 8 August 2025 but that also he did not go to work on Friday 9 August 2024 and so was unaware of the urgent meeting of the National Executive called for that day.

25. His evidence included details of how he believed from the Constitution of the VTU that notice should be given of NEC meetings, how some powers were reserved to be exercised only by the President of VTU and how, in his view, the calling for Industrial Action may have fallen outside of the rules of VTU. He gave evidence of how he protested with the SG, after the action had been recalled, but that his attempts to stop the action were fruitless.

26. In cross-examination, he could not explain why, if not on sick leave, he absented himself from the offices of the VTU on Friday 9 August 2024 but noted that after a visit to his home over that weekend, he was encouraged by others to attend the office on Monday 12 August 2024 to discuss the IA with the SG. He testified that a meeting of the NEC must be called by the President of VTU and not by anyone else, and that it must be called on notice. He suggested that these provisions could be found in the Constitution but could not point to any specific provision after scrolling through that document which was before him.

27. No further evidence was sought to be called or witnesses sought to be recalled.

Legislation

20. The taking and conduct of industrial disputes is regulated by the Trade Disputes Act [Cap 162]. That legislation has been amended on two occasions, first in 202 and then in 2023. The relevant provisions are set out below: -

Section 33A **Notice of strike or other industrial action**

(1) Where any strike or other industrial action is contemplated by a trade union or workers the following procedure shall be followed –

(a) at least 30 days' notice of the proposed strike or other industrial action shall be given in writing to the Commissioner and to the employer of every worker who may be involved in the action;

(b) the notice shall be signed by the person or persons giving it and if given by a trade union, shall specify the name of such trade union and, if not given by a trade union, shall specify the names, addresses and employment of all persons by or on behalf of whom it is given;

(c) the notice shall state the date on or after which the strike or other industrial action is contemplated; and

(d) the notice shall be delivered by hand or by forwarding the same by registered post.

(2) Any person contravening or failing to comply with any of the requirements of subsection (1) shall be guilty of an offence:

Provided that no prosecution in respect of such offence shall be instituted except with the written consent of the Attorney General.

(3) The immunity against liability in tort conferred on a registered trade union or any other person by, or in pursuance of, sections 18 of 19 of the Trade Unions Act [Cap. 161] shall not apply with respect to any action taken without complying with the provisions of subsection (1).

and 34. **Minister may order industrial action to be discontinued or deferred**

(1) Where it appears to the Minister –

(a) that in contemplation or furtherance of a trade dispute, industrial action, consisting in a strike, or irregular industrial action short of a strike, or a lock-out, has begun or is likely to begin; and

(b) that the condition stated in subsection (2) is fulfilled; and

(c) that it would –

(i) be conducive to a settlement of the dispute by conciliation or arbitration under this Act; or

(ii) assist in the exercise of its functions by a Commission of Inquiry set up in pursuance of section 38;

if the industrial action were discontinued or deferred;

the Minister may make an Order directing that during the period for which the Order remains in force, no person or a member of a class of persons specified in the Order shall –

(i) call, organise, procure or finance a strike, or any irregular industrial action, or threaten to do so;

(ii) institute, carry on, organise, procure or finance a lock-out or threaten to do so.

(2) The condition referred to in subsection (1)(b) is that the industrial action in question has caused or would cause an interruption in the supply of goods or in the provision of services of such a nature, or on such a scale, as to be likely –

(a) to be gravely injurious to the national economy, to imperil national security or to create a serious risk of public disorder; or

(b) to endanger the lives of a substantial number of persons, or expose a substantial number of persons to serious risk of disease or personal injury.

(3) An Order under this section shall specify –

(a) the industry, undertaking (or a part thereof), and the description of workers in respect of which the Order is to have effect, or all or any of these matters;

(b) the persons or description of persons who are to be bound by the Order;

(c) the date on which the Order is to take effect and the period, not exceeding 60 days, for which the Order, unless revoked earlier, shall remain in force.

(4) Any person contravening or failing to comply with any of the directions contained in an Order under this section shall be guilty of an offence:

Provided that no prosecution in respect of such offence shall be instituted except by, or at the instance of, or with the written consent of the Attorney General.

(5) The immunity against liability in tort conferred on a registered trade union or any other person by, or in pursuance of, section 18 or 19 of the Trade Unions Act [Cap. 161] shall not apply with respect to any act which constitutes an offence under this section.

Discussion

21. It is common ground that each and every one of the disciplinary actions taken by TSC against the 2nd Applicants, whether resulting in suspension pending investigation and hearing or dismissal is based on participation in the IA called for by the 1st Applicant. This decision is focussed on the lawfulness or otherwise of the IA.

22. The most important and significant challenge to the lawfulness of the action is brought under section 33 A of Cap 162. It is on that question that the 1st defendant prays in aid the advice provided by the Attorney General. In that advice, the Attorney General sets out the provisions of s33 A making it clear that IA is to be prefaced with a 30 days' notice to the employer. All of that is very clear and again not in dispute in this trial.

23. The dispute here is whether a second notice was required in circumstances where notice had already been given. The issue arises only because the Acting Chairman of the 1st defendant and the Commissioner of Labour (COL) both arrived at the same conclusion as to the effect of the third paragraph of the UA executed by the parties. That third paragraph provides for the VTU to call its members back to work whilst the UA and subsequent attempts at conciliation were carried out. The fourth paragraph of the same UA notes that if all else fails, VTU will recall the IA without notice.

24. It is not said here that the fourth paragraph displaces the S 33 A requirement, simply that the effect of paragraph three of the UA was not such as to bring the original IA to an end. Indeed, no provision of an agreement between parties could displace a lawfully imposed statutory requirement. In simple terms, the 1st Applicant says that the effect of paragraph three was to pause the IA to foster the necessary atmosphere within which to conduct the conciliation attempts, and that paragraph four did no more than state the obvious, that in the event of no agreement, the strike would resume and no notice would then be necessary as it would be a continuation of a pre-existing action.

25. The intervention of the Minister in making a Notice of Discontinuance takes the matter no further. Such an order has the effect of bringing any IA to a halt whilst negotiation to resolve are attempted. When that Notice of Discontinuance comes to an end, as it must as such orders are required to be time limited, although they can be extended by variation, the IA may be continued. But does such an order of discontinuance require the resumption of that which is held in abeyance for the duration of the Minister's order to be started *ab initio*? In my view, the answer to that question is no. An order under s 34 requires that no IA is called for, organised or carried on. There is no power provided for the Minister to order that the IA be discontinued, even if he thought that appropriate. All he can do is, effectively, pause it.

26. Stepping back from IA is not uncommon during attempts to conciliate, arbitrate or otherwise resolve a dispute between an employer and its employees. Indeed, it is to be encouraged. What such a stepping back should not involve, in my view, is that the parties are then required to start the IA process again from the very beginning including the given of a second 30-day notice.

27. The fourth paragraph of the UA seems only to state that obvious fact. In effect the VTU is saying that they agree to suspend the IA but reserve the right to resume (or recall) it if the resolution process does not succeed.

28. Reference to provisions said to be in the Constitution of VTU does not assist the 1st defendant. On the evidence of the former President of VTU concerning the use of the Common Seal and when affixed to a document that document to be signed by the President only, there is nothing which sets out which documents must bear the Common Seal. There is nothing which says an IA can only be begun by a document bearing the Common Seal.

29. His evidence that the IA did not follow from a secret ballot is equally unhelpful. That was never raised until his evidence was filed in April 2025 and did not feature in the evidence filed to support the defence. It is common ground that there was no secret ballot of members immediately prior to the filing of the 30-day notice of intent but none of the parties, from the 1st defendant to COL and the Attorney General to the Minister who made the s 34 Order took that point until now.

30. The evidence from COL about witnessing the SG of VTU 'call off' the strike when executing the UA is not, in my view, conclusive evidence that the strike was brought to an end and needed to be begun again. That evidence was never put to SG, it did not form part of the evidence in the sworn statement of the COL, was not pleaded in detail in the defence and lacked the specificity of words to permit such a conclusive finding as counsel for the defendants asks this Court to adopt.

31. I conclude that it is not vital to the questions raised in this trial as to the lawfulness of this strike. It was not raised in the defence in October or referred to in the supporting evidence filed prior to the defence but only most recently on 25 April 2025. The corresponding responsive evidence the defence sought to have excluded.

32. At this point, I will set out what Rule 17.7 says about a defence to a Judicial Review claim which is: -

> **17.7** (1) The defendant must file a defence within 14 days of service of the claim.
>
> (2) Any other person served with the claim who wants to take part in the judicial review must file a defence within 14 days of service of the claim.
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> (3) The defence must be served on the claimant within 14 days of service of the claim.
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> (4) With the defence the defendant and other person must file:
>
> (a) detailed grounds for disputing or supporting the claim; and
>
> (b) a sworn statement supporting those grounds.

33. As pointed out earlier, no defence was filed within fourteen days of the original claim and there is nothing contained in the detailed grounds of the defence setting out the failure of the President to sign a document and affix the Common Seal as a defence to the claim, the requirement of a secret ballot or failure to give notice of an NEC meeting. Whilst it is correct to assert that the defence raised the issue of the lawfulness of the IA, the detail provide at the time of the defence concerned the S 33A notice, not that the President did not know that the IA had been recalled, that no secret ballot had taken place or that the President had not received a notice of an NEC meeting.

34. How properly to raise issues in pleadings is discussed by Mummery LJ in *Boake Allen Ltd & Ors v Revenue & Customs* [2006] EWCA Civ 25 at paragraph 131 where he said: -

> "While it is good sense not to be pernickety about pleadings, the basic requirement that material facts should be pleaded is there for a good reason - so that the other side can respond to the pleaded case by way of admission or denial of facts, thereby defining the issues for decision for the benefit of the parties and the court. Proper pleading of the material facts is essential for the orderly progress of the case and for its sound determination. The definition of the issues has an impact on such important matters as disclosure of relevant documents and the relevant oral evidence to be adduced at trial."

35. In some instances, the parties have won or lost through inadequate pleadings. In his submissions, without quoting any authority, counsel for the Applicants submits that anything not properly raised in the defence should ignored. Counsel for the defendants submits that it was sufficient to raise the illegality of the IA to allow any alleged illegality into the mix. He offered no authority for that proposition. This is less that a Court should expect from counsel. Conceding that Rule 17.7 of CPR had not been complied with, counsel for the defendants nevertheless maintained that he relied upon his submissions, suggesting that he still relied upon material not properly raised in pleadings.

36. Counsel should heed the warning from *UK Learning Academy Ltd v Secretary of State for Education* [2020] EWCA Civ 370 at 47: -

> I would add here that I endorse the view expressed by the judge to the parties at the trial and repeated in his judgment at [11] that the statements of case ought, at the very least, to identify the issues to be determined. In that way, the parties know the issues to which they should direct their evidence and their challenges to the evidence of the other party or parties and the issues to which they should direct their submissions on the law and the evidence. Equally importantly, it enables the judge to keep the trial within manageable bounds, so that public resources as well as the parties' own resources are not wasted, and so that the judge knows the issues on which the proceedings, and the judgment, must concentrate. If, as he said, there was "a prevailing view that parties should not be held to their pleaded cases", it is wrong. That is not to say that technical points may be used to prevent the just disposal of a case or that a trial judge may not

permit a departure from a pleaded case where it is just to do so (although in such a case it is good practice to amend the pleading, even at trial), but the statements of case play a critical role in civil litigation which should not be diminished.

37. Because of that, I have chosen to deal with the issues raised as no objection was taken to the evidence from the defendants on this question, even though it causes delay in the publication of this decision.

38. In summary, I do not find that the evidence supports a finding that the IA was unlawful through alleged procedural irregularities. Nor do I find that the calling of an urgent meeting of NEC required written advance notice to be served, as no witness could point to any requirement in the Constitution nor that the affixing of the Common Seal and the signature of the President was necessary to the IA. I find that, given he was on sick leave for four days and then did not turn up for work on the fifth day, it was not unreasonable to allow any of the appointed VTU Vice Presidents to stand in his stead nor would I expect him to be given notice of meetings whilst he was on sick leave.

39. The former President, for reasons that he did not explain in his evidence, was not a supporter of the IA but equally was content to absent himself from office whilst it was discussed and eventually recalled. He was not involved in any of the steps or meetings, important documents were executed on behalf of the VTU by the SG without complaint from him. His evidence could not now be relied upon to support any strong adverse findings against the Applicants.

40. The COL gave evidence that she arrived at the same conclusion as the Acting Chair of TSC about the effect of the third paragraph of the UA. She could not reconcile the following provision in paragraph four of the same UA. Whilst she exhibited in her evidence the advice received from the Attorney General, she did not exhibit the question that she asked of him, even though that request was, according to her evidence, in written form.

41. Without seeing what the Attorney General was asked to comment upon, it is not possible to conclude that the resultant advice was wrong. If he was presented with the scenario as described by both COL and Acting Chair Tabi, the advice was perfectly correct. If his advice was based on the notion that the VTU had ceased the 1st IA and were

commencing a second IA, his advice is impeccable, a second 30 days' notice was required. As his advice does not cover the issue, one cannot speculate as to whether his advice about the meaning of paragraph three of the UA would have concurred with the opinions of COL and Acting Chair Tabi. I suspect not.

42. It did not occur to COL that she may not be correct in her assessment of the effect of paragraph 3 of the UA. Indeed, so confident was she that she was correct, that she reported the matter to the Commissioner of Police for him to prosecute the alleged offenders. One must have sympathy with the Commissioner of Police in those circumstances.

43. At a much earlier interlocutory stage of these proceedings, this Court suggested to counsel for the parties that an efficient and satisfactory, as well as less expensive route to resolve this debate over lawfulness was for the employer to seek a declaration from the Supreme Court, rather than to proceed with disciplinary proceedings based on their own belief and advice from the Attorney General. That proposed course did not meet with favour nor was it adopted. Instead, the employer chose to continue with those disciplinary proceedings even whilst interlocutory relief was in place and proceeded to dismiss teacher who had been suspended. That combination, of referring matters for criminal prosecution and failing to await, or even seek, a decision of the Supreme Court, does not reflect well on the defendants or the Office of the COL.

44. Indeed, both the decision to proceed with the disciplinary proceedings resulting from this case beginning with 22 2nd Applicants and ending with 598 Applicants and the conduct of this litigation suggests that indemnity costs should be awarded against the defendants whether they are successful or not. When counsel agrees that the Civil Procedure Rules have not been complied with yet insists that he maintains reliance upon submissions which themselves rely upon such non-compliance, indemnity costs are indicated. CPR 15.5 (5) (a), (c) and (d).

45. Counsel were afforded the opportunity to make submissions to the court on matters not pleaded and provide authority for any submissions but were not inclined to do so. Counsel were invited to make submissions on costs and in particular whether the conduct of the defendants merited consideration of indemnity costs.

46. Counsel for the Applicants indicated that he no longer sought orders 3, 4 and 5 in the further amended JR and so only sought: -

I. That the decision No. 5 of 2024 of the 1st defendant to suspend the Applicants be called up, quashed and declared void and

II. A declaration that the IA initiated by the 1st Applicant resumed on 10 August 2024 is of legal effect and

III. costs

Decision

47. The application for Judicial Review of the determinations of the 1st defendant in relation to the disciplinary proceedings set out in Decision No 5 of 2024 and thereafter against the 2nd Applicants is successful and all decisions following therefrom are hereby quashed. A declaration that the Industrial Action initiated by the 1st Applicant on 6th June 2024, recalled on 10 August 2024, is, was and remains lawful is made.

48. Costs of and incidental to these proceedings incurred by the 1st and 2nd Applicants are awarded against the 1st Defendant on an indemnity basis, to be agreed or assessed.

DATED at Port Vila this 30th day of May 2025

BY THE COURT

REPUBLIC OF VANUATU COUR COURT SUPREME LEX LEX REPUBLIQUE DE VANUATU

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Hon. Justice EP Goldsbrough

SCHEDULE

Norah Naviti Wells, Leiwia Caroline James Pakoa, Fred Ottiman, Serah Henry, Walter Bong, Jean Marie Virelala, Timothy Mahit, Daniel Steel, John Noel Alick, Rhonda Natapei, Kalo Tasso, Fitu Natouivi, Bryent Forau, Sigal Iaruel, Paul Sam, Jessynta Saribo Buleman, Honore Enock, John Graham Frezher, George Kalman, Molley Alice Avok, Jack Morris Reuben, Alice Tom, Arianne Cyriaque, Eva Melteres, Felix Nirua, Gina Bouleuru, Jean Gabriel Yamak, Jeremiah Joseph Hosea, Lisa Paniel, Marie France Batick Tiomai, Mnnietoto Sileye, Seraphine Meranie, Trinita Jelpao, Annie Patrick, Korah Robson Vakoumali, Alick Thomas Willie, Geraldine Niptir, Sabrina Lisa Tevanu, Anniely Kaitip, Livan Jack Phillip, Winnie Marie Joe, Godwin Ryain Joe, Claudie Bule, Dick Taigo, Francois Sakama, George Yalimyao, Sylvie Lamoureux, Urbain Dametesso, Calros Luan, Catherine Leinasei Kalo, Celine Kombe, Christelle Tavi, Christiane Amstrong, Delphine Gihiala, Eline Malili, Eugenie Titi, Fabrice Tari, George Lingtamat, Grelinda Qwevira Garae, Lilian Kolomule Majilole, Marie Lea Iapatu, Sylvie Gihiala, Evelyn Yaviong, Endis Claudine Kalsrap, Anne Josephine Amos, Olivia Malsangwul, Rayline Tari, Sussan Naris Kassou, Veronica Temar, Robsen Abel, Julie Natou, Veriri Touwata Andrew, Janette Vevira Korah, Dominiqu Niali, Kalotap Marae, Madlen Morsen, Angela Lessica Tokio, Anika Nari, Calo Regina, Erima Borau Moses, Florence Olul, Fred Amos Bosbos Alvea, Jessica Kalkandi, Louisa Yelliah, Melten Jack Nasse, Nettie Masseng Mahit, Philip Nasse, Shane Francois Viranamangu, Daniel Lalau Tavoa, Alex Suvoli Jacques, Jayline Mary Roban Gesa Morris, Netty Goh Kalworai, Roserlina Kuta Betsesai, Ernest Alexandre Rai, Macklen Tubena Hakebihu, Angelina Nahan, Berthier Bongnebou, Ciriaque Tabiguru, Delphino Baticklamap, Freddy Clarence Anis, Gedeon Sawan, Harrison Solomon Kaloran, Jean Willie Manwo, Johnny Tevanu, Julien Floyted Signo, Luan Christelle, Mhedy Lessy, Pita Kuse, Thierry Worwor, Yosina Bororoa, Yves Sizai, Boe Barry Patrick, Lyn Marou, Robert George, Sheena Maria Mala, Belinda Wogis Kaloris, Betty Taripu, Evelyne Karl Joel, Ireene Gaviga, Juliette Naviti, Klinder Toi, Tony Raymond, Paul Joe Stephen, Herve Nako, Joseph Stevens Bongnembu, Kensy Bilnet, Lydie Maltapie, Lyn Siba Samana, Payato Jimmy, Rose Erevoke, Tony Bule Bebe, Wema Matavussi, Johnny Kalomor, Alick Kaspa, Alick Jimmy, Tasso Mowa, John Jav Kenneth, Clotilde Hivird, Ella Peter Dajoe, George Reuben Songi, Joeme Peter, John Roy Umou, Lise Tamath, Marie Eugenie Bebe, Marie Laure Vira, Rosine Sarafina Ariki, Abdon Terong, Doroline Maleb, Ernestine Lingsarey, Lilone Rosalee Peter, Marius Tevanu, Ruth Lamun, Urbain Damassing, Ernest Mera, Carmina Hakebihu Niowenmal, Esther Benamie, Graem Carl Tarivuge, Magret Rose Aru Avock, Naileen Tavi, Naime Sawan, Regina Bumseng, Rosina Tubi, Jenny Malessy, Armelle Leymang, Carine Sese, Marie Patrick Massi Ragui, Masden Garaebiti, Albertine Lingban, Claudine Belbong, Diana Maleb, Elisabeth Kuras, Jean Yves Valivu, Letitia Manwo Kaloran. Marcelina Bathelemy, Marily Metmetsan, Marylene Therese Raupepe, Maryse Signo, Mireille Mestan,

Myriam Lop, Pascaline Axam, Rene Tevanu, Rory Agnes, Vivian Rouvoune, Eugenie Nafiau Kuau, Alice Sanderson Tari, Apelle William, Astride Jacques, Bethel Banza Wells, Charley Tari, Dyren Arukelana, Elton Aru, Frisco Cebastien Lini, Helen Morea Garoleo, Jenny Wilson, Loise Bule Mabon Melve, Paute Nimissa, Robsen Mana, Shirofanua Floyed, Stuart Mario Williau, Yonel Nimbwen Yonel, Paul Poita, Samuel Sandy, Keith Silona, Donald Tom, Leiman Willie, Flince Benedick Mata, Morrison Avusa Segken, Stephanie James, Benson Talagh Raptgh, Hanson Mata Aru, Helen Daniel, Jeannot Aptin Ankey, Maki Reuben, Noella Yona, Kalo Yona, Royson Yona, Marcie Eric, Moli Ben, Lina Naouga, Lency Yona, Willie Alick, Sabrina Turere, Jimmy Yona, Gideon Ben, Pita Keliu, Tom Jack, Henry Orah, Samson Kenneth, Barbra Noelline Thomas, Serona Roy, Charley Pakoa Carolyn, Norah Bouas, Joseph Kalo, Ronolea Benjame, Miguel Tarisup, Catherine Niowenmal, Fatima Buroro, Paul Ben, Edmond James Vurobaravu, Emory William, Fiona Ngwele, Ivana Tamata, John Konali, Joshua Moveth, Josianne Claire Woi Vire T, Markward Natu, Morine Lapsae, Charity Faith Ihu, Glenna Moli, Victoria Sandy Roslyn, Raella Malisa Raaia Sela. S., Roline Bihu, Rose Hinge, Vokarai Vanua, Kleton Albert Navat, Branson Garae, Dominique Mahuri Bruce, Keithson Fraser Tete, Kaloman George, Rayleen Joy Botleng, David Willie Tien, Sylveo Lamoukli, Jean Dominique, Rex Takatevi, Alison Paul, Patrick Gilu, Lauri Boe, Leonard Tari, Frederic Maeto, Joel Tabi, Paul Vuhu, Victor Novataliawke Korisa, Alex Jill Mala, Marie Omeliu Nasere, Melody Avock, Naser Tevanu, Graham Miller, Branson Gideon, Diallo Wabbak, Julienne Nevy, Arnaud Massingkon, Sylviane Paululum, Jessica Liwuslili, Laura Viraki, Eugenie Kavick, Germain Sam, Marie Antoineth, Voilet Joel, Fiona Mangue, Gertrude Ngwele Tugu, Alphine Jimmy, Theresina Maltaus, Pierrot Lesteour, Peter Jack, Asal Tino Buleban, Francois Tarivondo, Jerome Siom, Florence Kalpukai, Lysiane Meltetake, Francky Rouvoune, Vorakes Baniuri, Judyson Ngwele, Joseph Kemuel, Delina Bosara, Jessica Patrice, Donna Bangtor, Lewia Waspre, Leinase Karpus, Shirley Bangtor, Lidia Maso, Jineth Homal, Klera Edwin, Judith Toa, Sonia Wilson, Linda Garae, Cassandra Dono, Salome Andrew, Kre William, Mary Ala, Elena Ulas, Luisa Paul, Leo Tasso, Cinderella Toa, Rodcheleen Morsen, Nadia Ameliu, Ludvine Marvir Lani, Leonie Bong, Rolline Enrel, Melinda Elton, Gratien Melteck, Betty Buleuru, Ernest Mera, Rodnye Mansale, Silas Sese, Elsie Sese, Knox Tugu, Kamuel Diniwok, Joel Daniel, John Ken Hopkins, Fiona Grimound, Tapsi Ngwele Maeto, Emosi Pakoro, Yuen Vatu, Roselyn Fox Gaihala, Marie Tavusimoli, Leonie Vuti, Patrick Ravo, Massosoh Lenny, Vatu Sandrine, Rite Ninie, Waback Florina, Molvido Christophe, Bomwel Niva, Kylie Helen Steplon, Janet Livo, Julie Johnny, Gloria Paul, Vombani Viramata, Valentine Teguebou, Esther Tal, Selvin Talo, Prescilla Ben, Lylly Jacob, Severine Micheal, Salome Garavi, Elisa Molirong, Simrai Shirley, Sabrina Taikwary, Leitora Jacob, Violette Edgar, Cedella Lesah Henry, Julie Walla Bematakasi, Fiona Nevy, Diana Kency, Anna Mabon Sue, Danella Tari, Susanna Palaud, Christian Lessa, Sandra George, Veronique Billy, Soksok Melucine, Cecile Matansus Kawol, Hubert Karu, Joyce Asero Nial, Jenifer Unity Lokai, Kathie George Morsel Kaot, Sale Baniuri, Joana Sumbeto, Rosana Rosbong, Marius Nelrove, Nelly Niala, Susan Varu, Sophie Seri, Jean Paul Vavaharu, Valerie Butacol, Rachel Naru, Michelline Arabela, Emelyn Manhe, Adline Nial, Besivon Hinge, Catsilenda Tomua, Michael Bebe Rob, Augustine Garavi, Joy Womak, Tom Willy Lae, Stephanie Karae, Evelyne Karae,

Herve Kavick, Mauela Bong, Madalaine Livoholo, Madleine Zonarzuru, Noel Ruruely, Rose Olovela, Michael Lirohou, Zaza Guy, Annie Tanavusi, Marie Maliu, Maylin Wilson, Ronal Sava Levu, Lorres Ninisa, Merry Newman, Rebbecca Imbert, Judah Karae Voyamere, Sophia Sumbertori, Kyline Hinge, Clarissa Erevoke, Francis Reginalds Mera Aru, Benjamin Kombe, Didier Bila, Johnny Shem, Rebeake Tasi Paul, Gloria Luss, Denise Pisroi, Jinnifer Andrew Sewen, Roy Amon Kon, Raynold Vira, Leah Muhango Toa, Jean Daniel Matan, Mark Toanaure, Christophe Nauta, Gelnda Matan, Floyd Ravo, Valory Vogol, Tiffany Garae, Liviana Ligo, Lora Ser, Jean Alrua, Willien Sariseths, Sylvano Makali S, Lorin Tawi, Rex Tavi, Peter Kams Kaiar, Jean Marie Malvaru, Martha Harnpel, Fabiola Nguen, Richard Samson Malsale, Jean Patrice Niowennmal, Nathan Daniel Kali, Fathley Aleres, Leo Mermer, Auken Romassing, Frank Kenneth, Renesi Stephen, Nichsolsen Garae Kapdum, Revanna Keke, Derickson Jacob, Timothy Mahit, Paveliani Malvirlani, Vinabit Paolo, Algiane Massingman, Anthony Tulili, Claire Marie Nalet, Cosette Arcknaveth, Dephine Kiliteir, Edrico Malterong, Francois Sizai, Jean Baptiste Litenmal, Marietta Viteptir Lingsare, Obed Slee Albert, Rory Renie, Ruth Boas Noube, Slee Obed Francois, Sylvia Matansangul Malres, Wilson Willow Nguen, Marie Laure Marie Sagan, Claire Sewere, Albert Raptih, Estelio Bae, Firmin Namol, Francky Wollaerang, Geofroy Vianey, Jackson Hosea Josen, Jean Luk Sewere, Josiane Wari, Nathalie Nale, Willy Naguy, John K Kampai, Batick Bertrand, James Lose Laus, Hencely Kaum Tiwor, Melisa Terenabit, Joseph Joe Numaimeimei, Richard Vakas, Caroline Sailas, Cynthia Bule, Lindong Amet, Claubert Emile Melteroh, George Nial Maltera, Darius Betsesai, Johnsey Rambey, Honore Enock, Elson Johnwell Jack Vakas, Emelyn Maltaus, Tamat Niptick, Etienne Maltaus, Nadine Bani, Laurent Donts Hugaisive, Giselda Basilio, Jack Lawac, Maria Molwait, Marie Louise Mirene Maltaus, Wilfred Tomo, Jemnion Johnny Antoine, Igrind Hirvir, Albert Laldam Bule, Olivier Bule, Daison Nari, Myriam Ware Williams, Clifford Siro, Stelin Leo, Jean Pierre Olul, Moses Sali Patrick, August Veronkes Louis, Erman Kaenbo, Louis Marie Sumptoh, Lucien Molves, Joseph Kalo, Norah Bus, Charley Pakoa Carolyne, Samuel Liben, Jonah Kerry, Guilain Harry, Diana Kota, Yan Manu, Aristide Malone, Celestine Tau Niere, Tom Brown Saute, Caroline Kasso, Namaha Takifu, Jelson Tawea, Moise Anita, Alexis Kapalu, Figo Loughman, Sawia Luk Stephen, Timothy Kawia, Mary Vira Iati, Ginette Yanimul, Harry Nakek Mulek, David Bill, Makoya Niagarum Ben, Samson Hiwa, Bob Sanga, Sergio Poita, Ian Iaruel, Jim Riando Iaukawai Kalua, Joel Nirua, Roger Hiwa Nalau, Sebastian Iarapia, Charley Kautea, John Selwin Garae, Blandine Lop, Lavinia Ligo, Lorah Ser, Harry Jimmy Moju, Marie Claire Voyate, Frida Velouvu Raphael, Josiane Mauri Tieya, Lavinia Loveliu, Tari Pierre, Elina Vetavul Valivu, Dennis Livingston, Kalistar Pantutun, Lancelot Wotiemaro, Rayclerence Norvaglea W, Winistone Alice Vovei, Judith Meta Mol, Kensley Noah Bolengam Sophia Rodaraban Ray, Wilson Talo, John Fox Webas, Elsion Toswel Fred, Frazer Tuse Malcom, Esther Mera, Charles Vanler, Marie Hanson Towbah, Jean Marie Woleg, Louis John, Alice Savoa