

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

**Civil
Case No. 20/2949 SC/CIVL**

BETWEEN: Marie Pia Palo
Claimant

AND: The Republic of Vanuatu
Defendant

Coram: Justice Dudley Aru

Counsel: Mrs. P. Malites for the Claimant
Mr. L. Huri for the Defendant

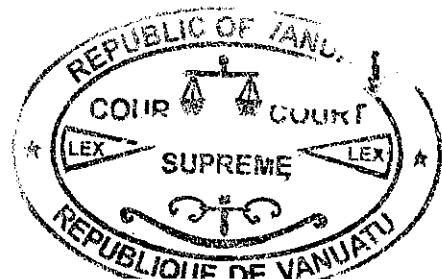
RESERVED JUDGMENT

Introduction

1. The claimant's original claim was filed on 26 October 2020 and since then it was amended several times. Initially it started as a claim for difference in salary, three months' notice and severance. At a hearing of the defendant's application to strike out the claim on 2 February 2023, the claimant informed the Court that she withdrew all her claims from the beginning of her employment up to 2006 and "the *only claim being pursued was salary difference from 2006 to the date of her retirement and her claim for three months' notice.*" The application to strike out was dismissed.
2. At the trial the claimant put forward two issues agreed by the parties for determination namely:
 - a) whether the claimant was entitled to an extra responsibility allowance or a salary scale taking into account the extra responsibility allowance for extra duties performed since 2001; and
 - b) if the answer to a) is Yes, whether the claimant is entitled to the difference severance allowance.

Background

3. The claimants first appointment by the Teaching Service Commission (TSC) was as a temporary teacher commencing 7 February 1994. Her salary scale then was E1.1 with an annual salary of VT328,129. By letter dated 10 November 1994 the claimant was formally appointed by the TSC to the Teaching Service with an annual salary of VT455.086 at salary scale E2.1.



4. On 5 January 2001 she was advised by the TSC that her new salary scale would be E5.1 of the TSC salary scale with a salary level of VT 667,321 plus VT51,000 cost of living allowance.
5. The source of contention is she claims she was promoted by the Director General of Education to the post of 'Maitres d'application' or supervising teacher at salary scale level E.5.1 by letter dated 22 March 2001. Following that purported promotion she alleges that all her attempts to get payment for this extra responsibility were ignored by the defendant hence her claim which she filed after retiring on 27 January 2018.
6. The Government Remuneration Tribunal (GRT) came into effect in 2005. According to the 2005 determination the salary scale E5.1 was for Junior Secondary School Principals. At the relevant time, the claimant was not a Junior Secondary School Principal. The GRT determination was reviewed in 2006 which replaced the 2005 determination. In the 2006 GRT determination there was no longer a salary scale E5.1. The claimant was placed on the salary scale E02.6 with an annual salary of VT 917,280. This was salary scale she continued to receive from 2006 until her employment came to an end on 27 January 2018.

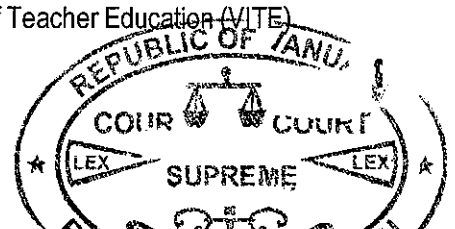
Evidence

7. The claimant relied on the following three sworn statements which were tendered at trial namely: the Sworn Statement Blo Suppotem Supreme Kot Claim tendered and marked as **Exhibit C1**, Further Sworn Statement in support of Supreme Court claim tendered and marked as **Exhibit C2** and a sworn statement of Raupepe Jean Dominique in support of the claim tendered and marked as **Exhibit C3**. Both the claimant and Mr Raupepe were cross examined on their evidence.
8. For the defendant, they relied on a sworn statement of Mr Hardison Tabi tendered and marked as **Exhibit D1** adopting the sworn statements of Moulin Tabouti filed on 1 June 2021 and 12 July 2021 who was no longer the chairman of TSC. Mr Tabi was also cross examined.

Discussions

Issue 1 - whether the claimant was entitled to an extra responsibility allowance or a salary scale taking into account the extra responsibility allowance for extra duties performed since 2001

9. The claimant submitted that she was entitled to the extra responsibility allowance that reflected the extra duties as maitresse d'application from the date the Acting Director General promoted her. It was submitted that she should be placed on a salary scale that reflects the additional responsibilities she took on after her appointment.
10. The claimant relies on the letter dated 22 March 2001 as giving her extra responsibilities in addition to her role as a teacher. The claimant claims that being a supervising teacher is an extra responsibility which requires a special skills allowance. She submits that she is lawfully entitled to claim this allowance from the date she was given the extra responsibility.
11. She has withdrawn her claims from 2001 up to 2006. Therefore, the current claim is only for the period from 2006 to her date of retirement on 27 January 2018.
12. During cross examination both the claimant and Mr. Raupepe confirmed that the claimant was involved in supervising trainee teachers from the Vanuatu Institute of Teacher Education (VITE).



The claimant said she provided reports to the VITE on what she did but could not and did not produce any of those reports in her evidence in chief.

13. The Teaching Service Act No 38 of 2013 came into force on 17 March 2014 (the Act). It repealed the old Teaching Service Act [CAP 171]. The Teaching Service Commission (TSC) is established under the Act and one of its main functions is to recruit and employ teachers (s9) and as a good employer it is duty bound to ensure that the promotion of teachers is based on merit without undue influence. (s18) 2 (b).
14. The Director General does not have the powers to appoint or promote teachers. Therefore, the appointment of the claimant as maitresse d'application is without power and is unlawful. The claimant's claim must fail for the very reason that the TSC did not make the appointment. The claimant's first appointment on a temporary basis on 30 March 1994 was done by the TSC and her formal appointment to the teaching service on 10 November 1994 was also done by the TSC and the confirmation of her new salary level on 5 January 2001 was also done by the TSC. It therefore follows that the TSC could not pay any extra responsibility allowance for the position of maitresse d'application as it was not part of its decision.

Issue 2 - if the answer to a) is Yes, whether the claimant is entitled to the difference in severance allowance.

15. As the answer to the first issue is No, the answer to the second issue is the claimant is not entitled to any difference in her severance for the same reason. She has been paid her full severance upon her retirement

Result

16. The claim is therefore dismissed. The defendant is entitled to costs to be agreed or taxed by the Master.

DATED at Port Vila this 11th day of July, 2025

BY THE COURT

Dudley Aru
Judge

