

BETWEEN: KALTON SAKARI, Tagabe Area, Port Vila,
Vanuatu
Claimant

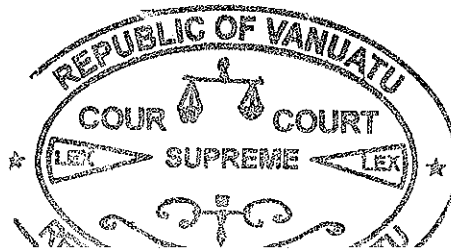
AND: ORIGIN ENERGY LP GAS &
APPLIANCE SUPPLIERS LTD
Defendant

Corum: Vincent Lunabek, CJ

*Mr Britten Yosef for Claimant
Mr Nigel Morrison for Defendant*

JUDGMENT

1. This claim concerns the monetary entitlement of the claimant from the Defendant, his former employer, consequent upon the termination of his employment by the Defendant on 17th August 2012.
2. The facts of this case are simple and not in dispute.
3. The claimant started work with the Defendant on the 17th August 2009 as a heavy duty delivery driver. On 17th February 2012, he attended to work and was being hand delivered a letter from the then General Manager of the Defendant, Mrs Tara Pedro. The letter was dated 14th February 2012 and it was a termination letter, terminating the claimant from his employment.
4. The letter contained the following particulars:
 - (a) It stated that the Defendant had conducted an in-depth investigation and had found that on or about August 2011, the claimant illegally sold 5 x 11Kg of full cylinders to Chen Zhang Store at Tagabe.
 - (b) It is alleged that on that date, the claimant did his normal routine and after serving a shop at Malapoa White Wood, he did not return to the terminal with left over of the 11Kg full cylinder, but left and followed the road to Chen Zhang Store at Tagabe. At Chen Zhang Store, the claimant negotiated a deal with the Chinese shop owner and sold those cylinder for 10,000VT.
 - (c) It is further alleged that the claimant was seen selling 7x11 Kg full for reduced price of 2,500VT to the same Chinese at Chen Zhang Store in 2011.
 - (d) It concluded that with the above evidence, the claimant had committed the offence of theft which is clearly spelt out on Part 2, section 122 of the Penal Code Act.
 - (e) It dismissed the claimant from his employment on the ground of very serious misconduct.

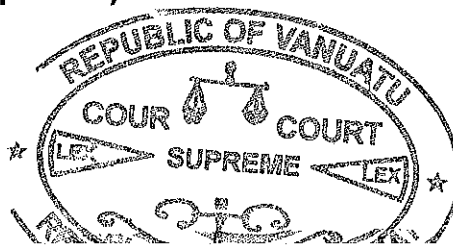


5. At no material time, did the General Manager of the Defendant called the claimant into her office and questioned him about all the allegations she mentioned in her letter of 14th February 2012.
6. The Defendant did not provide the claimant with an opportunity to provide a response to the allegations that were being made against him.
7. The Defendant did not provide a three months notice to the claimant to advise the claimant that his employment with the Defendant will be terminated and the Defendant did not pay any severance entitlement to the claimant.
8. Thus, this claim by the claimant claiming for his employment benefit entitlements.
9. On 25th April 2014, in a conference hearing of this proceeding, both Counsel agree on the following:
 - (i) It was agreed that, the claimant started work with the Defendant on the 17th August 2009 and was terminated from his employment on 17th February 2012. Therefore, the total duration of his employment with the Defendant is 2 years and 5 months which is less than 3 years.
 - (ii) It was agreed that the claimant is entitled to be paid –
 - a notice payment; and
 - a severance payment.
 - (iii) It was agreed that the claimant's monthly salary is 24,000VT.
 - (iv) It was agreed that having worked for less than 3 years, the claimant is entitled to 1 month salary notice payment which is 24,000VT pursuant to section 49 (3) (b) of the Employment Act [Cap160] which provides:

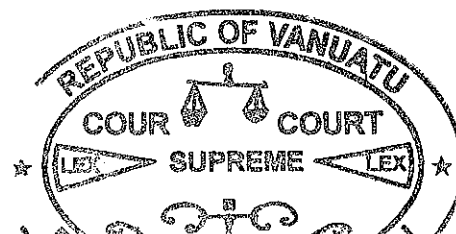
"49. Notice of Termination of Contract.

- (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) –*
 - (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 given at least equal to the interval.*

(underlined are my emphases)



- (v) The Defendant agreed to pay the claimant the sum of 24,000VT being for the one month notice.
- (vi) It was agreed that the dismissal of the claimant by the Defendant was unjustified as it was done in breach of section 50 of the Act [Cap 160].
- (vii) As to the claimant's basic severance allowance, the claimant is entitled to 60,000VT (calculated as $2.5 \times 24,000 = 60,000$). The Defendant agreed to pay the basic severance allowance of the claimant of 60,000VT.
10. The sole issue for the Court to decide is:
"Is the Claimant entitled to relief under section 56 (4) of the employment Act by having his basic severance entitlement of Vatu 60,000 multiply up to 6 times?"
11. Both Counsel provide submissions in respect to the remaining issue. The claimant also filed a sworn statement in support of this last outstanding issue.
12. I have perused the submissions of both counsel and the authorities referred to in the submissions. I accept the guideline judgments of the Court of Appeal in *Banque Indosuez Vanuatu Ltd v. Ferrieux* [1990] VUCA 3; [1980 – 1994] VAN LR 490 (23 October 1990) and others.
13. I draw from the Defence counsel submissions and accept that in respect to section 56 (4) the following is determined from the guideline judgments [*Banque Indosuez Vanuatu Ltd v. Ferrieux* [1990] VUCCA3; *Hack v. Fordham* [2009] VUCA 6; *Melcoffee Sawmill Ltd v. George* [2003] VUCA 24]:
- (i) It enables compensation for "special damages" where the basic severance allowance is insufficient.
 - (ii) Damages under s.56 (4) cannot be aggravated or punitive damages.
 - (iii) Damage under the section are not to be awarded for difficulty in obtaining fresh employment or loss of career prospects.
 - (iv) Damages under the section are not awarded for the manner of the dismissal.
 - (v) It enables compensation reflecting the circumstances leading up to dismissal.
14. The claimant must prove special damage. The claimant in his sworn statement on 9 May 2014 relies on the following facts to show "special damages":
- (i) Low morale and self-esteem. I note the Defence's Counsel submissions that there is nothing to suggest this is any more severe than anybody suffering dismissal would ordinarily suffer. However, the claimant after receiving his termination letter, attended to the Defendant's office and asked for a job reference to be provided to him. But the Defendant's



General Manager refused to give him a job reference. He was depressed and humiliated as he lives in a crowded community and the news of his dismissal has spread rapidly based on the gossips of the allegations that were made against him, although he was not given an opportunity to give an explanation or his side of the story. This amounts to a degree of distress on him. I consider the claimant be entitled to a level of multiplier under s.56 (4) of the Act.

- (ii) Difficulty getting further employment. I accept that relying on the Court of Appeal decisions, this is non compensable under s.56 (4);
 - (iii) Personal hardship. I accept that nothing extraordinary is alleged that would not have arisen from a justified termination.
15. On the evidence, the claimant is entitled to a multiplier by 3. He will therefore be entitled to severance allowance of 60,000VT x 3 = 180,000VT under section 56 (4) of the Act.
16. As to the interest claimed under section 56 (6), the claimant is entitled to 5% from the date of termination to the date of payment.
17. The claimant is entitled to costs against the Defendant on the standard basis.

ORDERS

1. The claimant is entitled to the following entitlements:

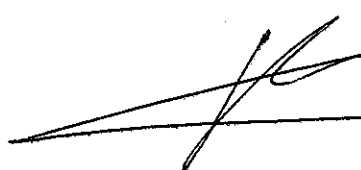
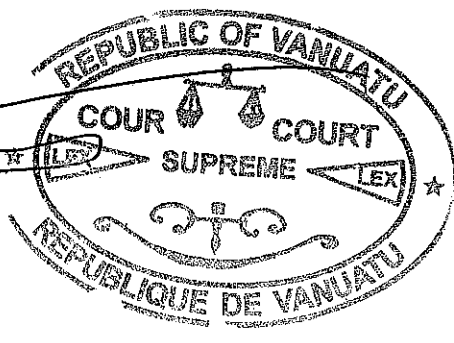
- (i) 1 month notice payment: VT 24,000
- (ii) Basic severance allowance
multiply by 3
(60,000VT x 3) = VT 180,000
- Total = VT 224,000

(iii) Interest of 5% on the amount of VT 224,000 from the date of termination (17 February 2012) to the date of payment).

2. The claimant is entitled to his costs against the Defenant on standard basis. Such costs be agreed or taxed.

DATED at Port Vila this 21st day of May 2014

BY THE COURT

**Vincent LUNABEK
Chief Justice**