

BETWEEN: Assial Rolland & Ors
Appellants

AND: Teaching Service Commission
First Respondent

The Government of The Republic of Vanuatu
Second Respondent

Date of Hearing: 23rd day of April, 2018 at 11:00 AM

Coram: Justice J. von Doussa
Justice R. Asher
Justice D. Chetwynd
Justice O. Saksak
Justice G.A. Andrée Wiltens

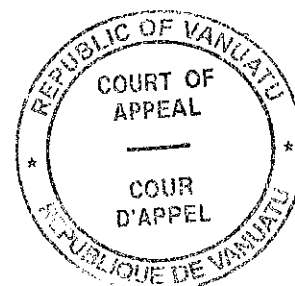
In Attendance: Mr E. Molbaleh for Appellants
Mr L. Huri for both Respondents

Date of Judgment: Friday, 27th April 2018

JUDGMENT

A. Introduction

1. This was an appeal against the decision of Justice Geoghegan dated 13 March 2018 disallowing a claim by some 47 senior secondary teachers from the Lycee Louis Antoine de Bouganville School. The way the claim was advanced at trial was on the basis that the teachers deserved, by dint of their qualifications and experience, increments of salary back-dated to 2006.
2. Justice Geoghegan, correctly in our view, determined that the process for increments in salary required a number of steps to occur before a discretionary decision was made – and he fully set out those steps in his judgment. On the basis that the final decision was discretionary, there was no obligation on the part of the Teaching Services Commission or the State to acquiesce to any such application for an increment in salary to be awarded; and the claimants had not established a breach of any legal duty owed to them.



B. Appeal

3. The matter was argued before us on a different basis.
4. Firstly, Mr Molbaleh refined his claim. He now sought to distinguish "base salary" from "increments of salary". He argued that all the teachers were entitled to the difference between what they had been paid and the base salary of EO4.1, as that remuneration was set by the Remuneration Tribunal Determination dated 23 November 2005 ("the 2005 Determination"), and which was effective as from 1 January 2006.
5. Mr Molbaleh was content to deal with the issue of any increments on another day.
6. Secondly, Mr Molbaleh was greatly assisted by the concession by Mr Huri, on behalf of both respondents, that each of the applicant teachers was of sufficient experience and held the requisite qualifications to be classed as a "senior secondary teacher". That concession meant that each was within the EO4.1 base salary bracket.

C. Legal Obligation

7. The Remuneration Tribunal Act 2006 ("RTA") is the determinative legislation. The functions of the Tribunal are set out in section 13 and include as a "principal" function that it "...review and determine the maximum remuneration payable to", among others, "...persons, or classes of persons employed in the public sector". We have no doubt that includes teachers, and indeed the Tribunal itself considered that to be the case in the 2005 Determination.
8. Section 14 of RTA states:

"Implementation of determination of Tribunal

Every determination of the Tribunal fixing rate or rates of remuneration shall have effect according to its tenor, and notwithstanding any provision in any other enactment, no order will be required to give effect to that determination."

9. Section 24 of RTA states:

"24. Act to prevail

Subject to section 20, and notwithstanding any provisions in any other Act authorizing any person or body to fix any remuneration, as from the commencement of this Act, any remuneration over which the Tribunal has jurisdiction to determine under this Act will be fixed by the Tribunal."

D. Discussion

10. The Teaching Service Act 2013 established the Teaching Services Commission, and it sets out the Commission's function at section 9, which includes to "...recruit and employ teachers" in all government and assisted non-government schools. Each of the claimants also provided evidence of their employment by the Commission.

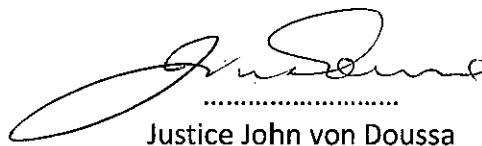


11. The 2005 Determination set the base salary rates for teachers as from 1 January 2006. The appropriate pay scale for "senior secondary teachers", starts at level EO4.1. It naturally follows that each of the 45 applicant teachers should have been paid at least at the EO4.1 rate as from the date the 2005 Determination became effective – it is accepted that all of them were not paid at that rate. Mr Huri conceded this in argument before us.
12. It follows that any shortfall for each appellant between what was actually paid and what should have been paid following the 2005 Determination needs to be redressed. That is a legal obligation falling on the employers, the Teaching Service Commission. That obligation also falls on the Republic of Vanuatu under the Government Proceedings Act 2007.

E. Result

13. The case for each applicant is different in that their personal allowances, date of appointment, posting and other factors need to be taken into account.
14. Therefore this case is remitted to the Supreme Court for final determinations of quantum to be made in respect of each applicant.
15. We consider further that each applicant is entitled to 5% interest on each annual shortfall.
16. We allow costs to the appellants of VT185,000.
17. Lastly, we are advised by Mr Huri that there was a further Remuneration Tribunal Determination in 2017 which affected the rate of pay for teachers. That document appears to set new rates for teachers as from 1 January 2018 (even though the English and French versions say 2019). This new base salary rate should be taken into account when the calculations are made. Additionally, contributions to the Vanuatu National Provident Fund will need to be recalibrated.

DATED at Port Vila this 27th day of April, 2018
BY THE COURT


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Justice John von Doussa

