

BETWEEN : PARENTS TEACHERS ASSOCIATION (SANTO EAST SCHOOL)
(Appellants)

AND : JOSEPH ATKIN
(Respondent)

JUDGMENT

In this appeal the Appellants appealed against the decision of the learned Senior Magistrate ordering the Santo East Primary School Committee to pay to Joseph Atkin the sum of 30,808VT for what was termed as an 'unjustified dismissal'.

Two representatives, one the Headmaster of the school, appeared before me. They were Alfred Lobu and Eric Tora. They informed the Court that the Respondent resigned in 1985, then worked on a fishing boat and was re-employed by the school again in 1986. That on the day of the incident in August 1986, the Respondent came to the school at 9 a.m. and found the store room locked. It was locked because there was only one key and anyone who required the key had to come to the Headmaster. That the Respondent came at 9 a.m. He asked for the key and the Headmaster asked him what time he started work. The Headmaster further stated that the Respondent did not request permission to go to the Hospital. If he did, such request would be granted. That he, the Headmaster then asked the Respondent to sit down and discuss the work he should do. That he was to do four hours in the morning and four hours in the afternoon but the Respondent did not want to listen to him. That the Respondent came up to him in the office in front of teachers and children and hit him twice with the result he was dazed. That the same day, he wrote to the Respondent and told him not to come to work until the Committee discussed the matter. It was discussed by the Committee on the 17th September and it was felt that the incident was too serious to happen at the school and the Respondent was dismissed. A complaint was made to the Police. The Respondent was charged, pleaded guilty to assault and fined 1,000VT and compensation of 500VT. The Committee thought the incident was serious misconduct under the Employment Act No. 1 of 1983, Section 50.

On reading through Section 50 of the Act, the Committee are entitled to dismiss an employee for serious misconduct, without giving notice and compensation in lieu of notice. This is qualified in Section 50 (4) which states:-

"No employer shall dismiss an employee on the ground of serious misconduct unless he has given the employee an adequate opportunity to answer any charges made against him and any dismissal in contravention of this subsection shall be deemed to be an unjustified dismissal."

In this case an adequate opportunity to answer the charge of assault was given to the Respondent. He was charged and pleaded guilty and fined. Accordingly, in my opinion, the action of the School Committee was not unjustified dismissal, and therefore the Respondent

was not entitled to severance pay (Section 55 (2)) or indeed anything.

I allow the appeal of the Appellants and cancel the Order of the learned Magistrate.

Dated at Luganville, this 2nd day of October, 1987.

Frederick G. Cooke
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CHIEF JUSTICE

