

Civil Case No. 47 of 1990

Between: John M. Mala

Plaintiff

And: Vanuatu Co-Operative Federation Ltd

Defendant

Coram: Cooke F.G., Chief Justice

JUDGMENT

It is clear from Section 20 of the Employment Act 1 of 1983 that no proceedings may be instituted by an employee for the recovery of remuneration after the expiry of one year from the end of the period to which the remuneration relates.

On the 29 March 1989 the Plaintiff was purported to be summarily dismissed without notice by the Defendant.

Nothing is contained in the pleading why the Plaintiff was dismissed although I feel sure it was made clear to the Plaintiff why he was dismissed. Section 50 (1) of the Act makes it clear that in the case of serious misconduct by an employee it shall be lawful for the employer to dismiss the employee without notice and without compensation in lieu of notice.

As I am unable to ascertain from the pleadings why the Plaintiff was dismissed without notice or three months salary in lieu of notice, I find the pleadings are defective.

Further if one reads sub-section (4) of Section 50 of the Act it states that termination need not be given if the employer pays the employee the full remuneration for the appropriate period of notice specified in sub-section (3). The contention by the Plaintiff that salary in lieu of notice for a period of three months not having been paid is not remuneration and therefore the period

of time must be extended by three months thus preventing the case from being statute barred, cannot be accepted. The appeal was not lodged within one year, therefore I order that the Plaintiff's Writ of Summons on a Statement of Claim filed on the 1st June 1990 be struck out upon the grounds that the action is statute barred pursuant to Section 20 of the Employment Act 1983.

Costs are awarded to the Defendant.

Dated at Port Vila this 17th day of July, 1990.



Frederick G. Cooke
CHIEF JUSTICE

