

**BETWEEN: TAMBE G., NIMOHO F., & OTHERS**  
Plaintiffs

**AND: THE GOVERNMENT OF THE**  
**REPUBLIC OF VANUATU**  
First Defendant

**AND: THE MINISTER OF FINANCE**  
Second Defendant

**AND: THE COUNCIL OF MINISTERS**  
Third Defendant

**AND: THE COMPENSATION BOARD**  
Fourth Defendant

**AND: PUBLIC SERVICE COMMISSION**  
Fifth Defendant

## **Reasons for Order**

This is an action brought by many plaintiffs. The point in issue in all cases is the same. They are public servants who were involved in the 1993 strike, they were dismissed but have been re-employed by the Public Service Commission.

In 1996 the Compensation Strike Act No17 of 1996 was enacted. This Act enabled the government to pay compensation to persons who were dismissed following the strike.

The plaintiffs allege they submitted their claims to the compensation Board established by the Act in accordance with the Act. The Board made

no payment to them. They say they were fully and properly qualified for compensation and that the Board's decision only to compensate those who had not returned to work was unlawful and discriminatory.

In the defence filed on 16 May 2000 the defendants, along with other matters, said that the Plaintiffs have failed to disclose a cause of action. On 6 June a summons to that effect was taken out, and also claiming that the claim was vexatious and frivolous. That summons was heard on 17 July and my decision was announced later in the day, with written reasons to follow.

Ms Sage for the defendants filed and served written submissions on the plaintiffs' in accordance with the directions of 11 July. No written submissions were filed or served by the plaintiffs as required by the directions.

Ms Sage's argument was simple. There was no suggestion that the Board was not properly constituted, that the plaintiffs had applied for compensation and been rejected. There are no criteria in the Act setting out who is entitled to compensation and who is not. If the Act intended compensation for all strikers then the amount, subject to certain provisions, was a matter for discretion of the Board. Further, the Board's determination of all claims was subject to the approval of the council of Ministers. (Section 7(i)).

She continued that if any attack was to be mounted on the Board's decision then it should have been done by way of judicial review and not in a way which, in itself, reveals no cause of action. If her application was successful, she argued that the action was fundamentally flawed, and not even wholesale amendment could save it.

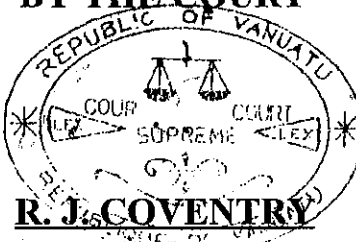
Mr. Kalsakau, for the plaintiffs replied that the action could be maintained. The Board was wrong to reject the plaintiffs claims when they clearly met all the criteria and had complied with the prescribed procedures. He did state in argument that any attack upon such a Board for acting ultra vires or upon wrong principles should be brought by way of judicial review. He further argued that if that was the correct course, then the merits of the action and fairness to the plaintiffs dictated that amendment should be allowed.

Ms Sage replied that if that point was reached then it would be clearer and more expeditious if the proceedings were recommenced on the correct basis.

This action seeks to call into question the decisions of a statutory Board, purportedly acting in accordance with its enabling statute. It is given a discretion to determine sums of compensation and do so subject to an overall budget ceiling (Section 7 (2)). The correct course for the plaintiffs is to seek judicial review.

Accordingly I allow this application and strike out the claim. I do not consider the matter is remediable by amended pleadings. The attack goes to the very nature of the cause of action. Further, the merits of the plaintiffs' claims are more likely to be identified and considered in a fresh properly brought action, than by amendments to the wrong one. The action is struck out. Ms Sage did not seek costs. There will be no order for costs.

**DATED at Port Vila, this 17<sup>th</sup> day of July 2000**

**BY THE COURT**  
  
**R. J. COVENTRY**  
**Judge**

The seal of the Republic of Vanuatu Supreme Court is circular. It features a central scale of justice. The words "REPUBLIC OF VANUATU" are written along the top inner edge, and "COURT SUPREME" is written across the center. On either side of the center, the words "LEI" and "LEX" are written. The seal is flanked by two stars.