

**BETWEEN:** Alpet Christelle Saltukro and 36 Others  
Claimants

**AND:** Teaching Service Commission  
First Defendant  
Republic of Vanuatu  
Second Defendant

*Date:* 24 June 2019  
*Before:* Justice G.A. Andrée Wiltens – in Chambers  
*Counsel:* Mr E. Molbaleh for the Claimants  
Ms Jelinda Toa for the Defendants

---

**JUDGMENT**

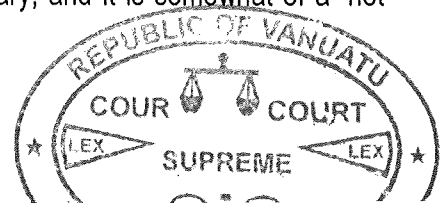
---

A. Introduction

1. Thirty-seven teachers at the Vanuatu Institute of Technology (“VIT”) have claimed that they have not been appropriately paid for their services as teachers, since as far back as 1 January 2006. The Defendants dispute the factual basis for the claims, but in the alternative also plead that the action is time-barred by section 20 of the Employment Act [Cap 160].

B. Preliminary Issue

2. In order to assist the parties, and as a possible means of achieving resolution, it was decided that the issue of whether or not the claims are time-barred should be first determined by the Court. Hence, written submissions have been provided by both sides and a decision on this point of law was requested.
3. The statutory interpretation of section 20 of the Employment Act is not a new issue. That provision has previously been the subject of Court commentary; and it is somewhat of a “hot



topic" – several cases in the Courts are affected. It is timely therefore for the Court's opinion to be sought.

C. Law

4. Section 20 reads as follows:

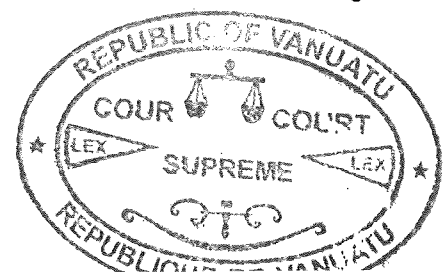
**"20. Period of limitation**

No proceedings may be instituted by an employee for the recovery of remuneration after the expiry of 3 years from the end of the period to which the remuneration relates."

5. The Court of Appeal has considered this provision in *National Bank of Vanuatu v Cullwick* [2002] VUCA 39. My reading of that decision is that the term "remuneration" ought to be read as "salary only" and does not relate to other employment benefits. A secondary, although no less important, statement by the Court was to the effect that the time limit was not discretionary but operated in a mandatory fashion. The third point I take from the decision is stated thus: "Section 20 operates as a bar to instituting proceedings, as the section says. It does not operate so as to extinguish the underlying legal right to receive the remuneration."
6. The Court of Appeal again considered section 20 in *Tabouti v Health Department* [2010] VUCA 7. In that case, Mr Tabouti was compulsorily retired due to his age in December 2004. His claim against his former employer was only filed in June 2007 – this despite the fact that the true cause of his action stemmed from events in December 1999. The Court held that, due to the operation of section 20, only the remuneration not properly paid as from June 2004 was claimable.

D. Application of Law

7. The teaching profession has the advantage of the Government Remuneration Tribunal ("GRT") having the jurisdiction to set the appropriate levels of remuneration, for all teachers depending on their seniority and experience, as well as taking into account their qualifications and the levels of teaching undertaken. The GRT determination is binding on the Government. The GRT 2005 determination for teachers set the remuneration rates as from 1 January 2006 onwards. The subsequent GRT determination for teachers in 2017 raised the remuneration rates as from 1 January 2018.
8. As stated earlier, 37 of VIT staff claim that their remuneration has been paid at something less than that set by the GRT 2005 determination. They accordingly seek redress in claiming back pay to 2006. Whether each is entitled, will depend on their particular circumstances – their qualifications, experience and the level of teaching undertaken over that period. This decision does not address that.
9. This decision is simply considering whether or not the teachers are time-barred and can only claim 3 years of back pay from the date their claim was filed, namely 25 February 2016. If time-barred, the teachers would be restricted to look for redress as from 25 February 2013 only, not 1 January 2006 or from the day they commenced their service for the Teaching Service Commission ("TSC") if later.




E. Discussion

10. The authorities referred to above make it plain firstly that only the correctness of the salary paid is at issue. Secondly, there is no discretion whereby the Court can extend time. Finally, if there has been underpayment of salary, the teachers' legal entitlement to redress has not been extinguished. Their ability to enforce any claim is however affected by section 20 – they need to file their claim within 3 years of the cause of action arising to be able to pursue their full entitlements.
11. To me it seems quite iniquitous, if what is alleged is accurate, for the Government, as good employers, to effectively ignore the GRT determination by its conduct and underpay teachers for 11 years and to then plead that the teachers are only entitled to claim 3 years back pay, as they commenced their action too late.
12. For that fundamental reason, it is appropriate in my view to interpret the terms of section 20 in as favourable a manner as possible to the Claimants.
13. In this particular case, all the claimant teachers remain in the employ of the TSC. The example of what occurred in *Tabouti* therefore offers only limited assistance to the defendants – it is distinguishable.
14. Throughout the period from 1 January 2006 (or when they commenced to serve) to 31 December 2017, the teachers were entitled to be remunerated by the defendants as per the 2005 GRT determination for teachers.
15. It further follows, as this is a continuing issue, that the 3 years restriction provided for in section 20 cannot be calculated as commencing from when the teachers were dismissed, or when they resigned. The only remaining relevant point of time is when the terms of their remuneration were altered, namely the further GRT determination for teachers in 2017, which set the new remuneration rates as from 1 January 2018.
16. Therefore, I hold that 1 January 2006 to 31 December 2017 is "...the period to which their remuneration [claim] relates". Three years from the end of that period is the cut-off point.
17. On that basis, the teachers' claim, filed with the Court on 26 February 2016 is clearly not time-barred. That is a result that I consider just in all the circumstances.

F. Result.

18. This claim is not time-barred.

Dated at Port Vila this 24th day of June 2019  
BY THE COURT

  
Justice G.A. Andrée Wiltens

