

IN THE SUPREME COURT OF
THE REPUBLIC OF VANUATU
(Civil Jurisdiction)

Civil
Case No. 20/3412 CVL

BETWEEN: Emil Michael

Claimant

AND: The Republic of Vanuatu
Defendant

Date of Hearing: 29th and 30th August 2022
Date of Judgment: 24th November 2022
Before: Justice Oliver A Saksak
Counsel: Mr Lent Tevi for the Claimant
Mr Sammy Aron for the Defendant

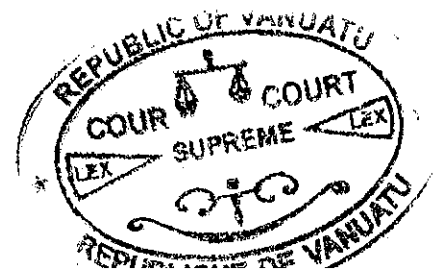
JUDGMENT

Introduction and Background

1. This is a claim for compensation for overtime duties and responsibilities performed in 1,033 working days.
2. Those days were days-off entitlements of 2 days for every 24 hours worked as a fireman within the Fire Service stationed at Luganville, Santo.
3. The relevant periods was from 1993 until 2017 when the claimant was retired from the Vanuatu Police Force.

Claims

4. The claimant claims that due to shortages of firemen, he was required to work 24 hours each day, Mondays to Sundays. As a result he lost his 2 days-off entitlements totalling up to 1,033 days.
5. He claims that he lost 60% of his records and documents in relation to his days-off during cyclone Harold in 2020, but that in any event he had consulted his commanding officer about his days off entitlement in 2019 before the damage was done to his documents and properties in 2020.
6. He was remunerated at the rate of VT 7,140 per day for 10 working days at VT71,404 per fortnight. His total claim is VT 7, 375, 620 plus VT 2,000,000 in general damages and interest of VT 5% per annum.



The Defence

7. The defendant admitted in its defence the claims in paragraphs 1 to 7 but says the claimant is not entitled to 1033 days but to only 14 days. Further they deny the claimant is entitled to any damages as he did not suffer damages. The defendant says the claim should be dismissed with costs.

The Issues

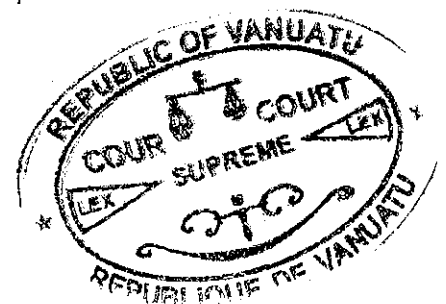
8. The issues raised by the defendant are-
 - a) Whether the 2 days-off are employment entitlements under the Police Act and the General Orders?
 - b) Whether the defendant should compensate the claimant for the outstanding days-off?
 - c) For the claimant, how much?

Discussion

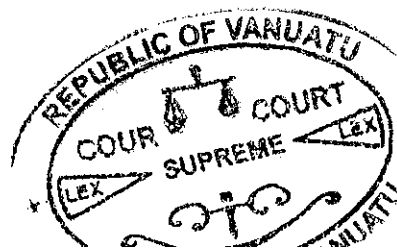
9. Generally speaking the facts are not in dispute.
10. In relation to the first issue whilst acknowledging in paragraphs 5 and 6 of their written submissions, the practice within the Force toward compensation for overtime hours in the form of days off, that the practice differs in relation to different units, the defendant then says these practices had no basis in law and that there is no provision of the law or orders that governed such practices.
11. With respect, that submission is inconsistent with the defendant's submission in the very next paragraph 6 of their submissions where they submit the practice of 2 days- off are set out in the Standing Operating Procedures (SOP) for the Fire Service dated 28th October 1987.
12. Whilst the SOP provides for 2 days off entitlement, the Police General Orders issued under section 82 of the Police Act provides for benefits of officers of the Vanuatu Police Force. See Annexure "JK1" of Kency Jimmy's statement dated 30 April 2022. Those benefits are House- Class A, Child Allowance- Class B, Severance- Class C, Entertainment Allowance – Class D, Annual Leave- Class E, etc and overtime – Class I.
13. For Overtime, Class I provides:

"Entitled to an overtime rate from 6pm – 6am at the rate of VT 100 per hour for any official working during those late hours. Unofficial hours rate during weekends and public holiday from 7:30am-4:30pm at the rate of VT 120/ hour.

All overtime and unsocial hours entitlements shall be paid on a monthly basis and approved by a filled timesheet certified by his /her formation Commander by the DCMs responsible for financial matters."



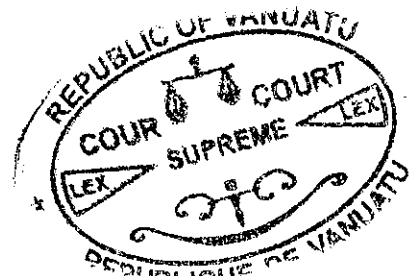
14. The evidence of the claimant as supported and confirmed by the evidence of Lt Benjamin Bani, Titus Ham, Emile Atis, and Wilkins Uguna (Exhibits C1, C2, C3, C4, C5 and C6 show that the claimant from 1993 worked 24 hours each day for 7 days (Monday to Sunday) due to shortage of manpower.
15. That meant that despite he was entitled to 2 days-off for every 24 hours worked, he did not take those 2 days but worked also on those days. Those days became his "overtime" including official, unofficial and unsocial hours. As such the claimant was entitled to his overtime payments at the rates of VT 100 per hour and of VT 120 for working unofficial hours and unsocial hours.
16. The Court therefore rejects the submission that there is no provision in the law about the entitlement for days-off as these arise by way of overtime.
17. For the first issue therefore, the answer is "Yes".
18. Having answered the first issue in the affirmative, the answer to the second issue therefore must be also " Yes".
19. The defendant's defence claims that the claimant was paid in full upon his retirement in 2019. There is evidence that the claimant was paid severance and leave entitlements but there is no documentary evidence to disclose and show what amounts were actually paid and received by the claimant.
20. The claimant is claiming for 1033 days as his entitlement. The defendant says he is only entitled to 14 days because he has no record to show he is entitled to 1,033 days.
21. The question is how many days is he entitled to?
22. The evidence of 1033 days is verified by the claimant's Commanding Officer Joel Thompson by letter dated 15th April 2019 ("JJ1") of Joel Thompson's statement (Exhibit D4).
23. Joel Thompson revoked that letter on 4th February 2021 almost some 2 years later and stating he was only entitled to 14 days.
24. Joel Thompson was not available for cross-examination despite his statement was tendered into evidence by the defendant. As such the Court cannot place much weight on the revocation letter.
25. The information and verification done by him on 15th April 2019 was done by inference, by reference to some records, otherwise the verification should have been made at all.



26. The 14 days disclosed by the evidence of Jeffrey Wimbong (Exhibit D1) ("JW1") is a copy of the Master Register Book for National Security Unit (NSU). That is a different unit. The claimant is claiming for the Fire Service.
27. His reasons for non-disclosure of records was that his documents were destroyed by TC Harold in 2020. The letter of verification was written prior to TC Harold in April 2015. In all probability the claimant had his records before his Commanding Officer to have enabled him to do the verification letter.
28. And in all probability the claimant has shown he has a total of 1033 days he worked as "overtime" on his days-off as official, unofficial and unsocial hours for which he is entitled to be paid.
29. I therefore accept the claimant's evidence and the evidence of his witnesses in support of his claim for compensation for 1033 days. And I reject the evidence of the defendant's witnesses as lacking credibility.
30. Finally for the amount. First I deal with the compensation amount. He claims the sum of VT 7,373,620 at a rate of VT 7,140 per day. In my view that is not the correct amount. The correct amount should be VT 120 per hour for 1033 days. I prefer the higher figure and treat his engagements on those days as official, unofficial and social hours. Therefore $1033 \text{ days} \times \text{VT } 120 = \text{VT } 1,236,600$ as compensation.
31. For damages the claimant worked during his days- off including his weekends and public holidays as unofficial and unsocial hours. He lost those days with his family and community. He suffered damages obviously as a result. He is therefore entitled to damages and the sum he claims as VT 2,000,000 is not unreasonable.

Result

32. I therefore give judgment for the claimant in the sum of VT 1,236,600 as compensation for his days off and VT 2,000,000 being for general damages. The total awarded is VT 3,263,600.
33. The claimant is entitled to 5% interest per annum on VT 3,236,600 from April 2015 to date of judgment. He should have been paid in 2015 or 2017 but was not.



34. Finally the claimant is entitled to his costs of the action on the standard basis as agreed or taxed.

Dated at Luganville this 24th day of November 2022

BY THE COURT



Judge Oliver A Saksak

