

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

Civil Case No. 46 of 2012 SC/CIVL

BETWEEN: **ASSIAL ROLLAND & ORS**
First Claimants

AND: **PIO LETINE, YALITA CEDRIQUE AND**
JOEL NIRUA
Second Claimants

AND: **TEACHING SERVICE COMMISSION**
First Defendant

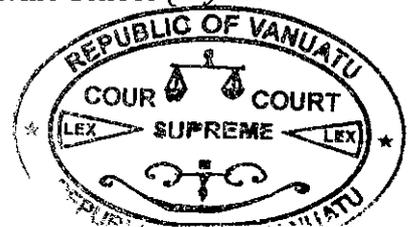
AND: **THE GOVERNMENT OF THE**
REPUBLIC OF VANUATU
Second Defendant

AND: **THE SCHOOL COUNCIL OF LYCEE**
LAB
Third Defendant

Hearing: **October 16th, 17th, 18, 19th and 20th 2017**
Before: **Justice JP Geoghegan**
In attendance: **Mr E Molbaleh for Claimants**
Mr L Huri (SLO) for the First and Second
Defendants
Mr W Kapalu for the Third Defendants

JUDGMENT

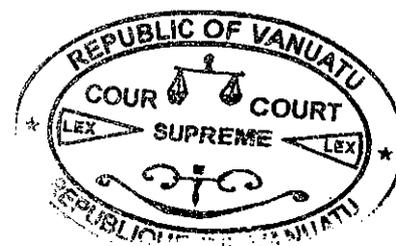
1. These proceedings involve a claim by 47 teachers who allege that they have been teaching the senior classes at Lycee Louis Antoine de Bougainville School (*“Lycee*



LAB”) but that at all relevant times they have not been paid as senior secondary teachers in accordance with the salary determination issued by the Government Remuneration Tribunal in 2005.

2. It is alleged by the claimants that rather than having been paid at a senior secondary teacher rate as applicable under the Government Remuneration Tribunal Determination (“GRT determination) they have simply been paid as secondary school teachers. Their collective claim is for the difference in salary between the two salary grades backdated to the date that the GRT determination came into force. They allege that sum to amount to Vt 44, 661, 526.
3. The second claimants are also teachers at Lycee LAB. They allege that they were hired by the School Council of Lycee LAB in 2011. At that time they were university students and were employed to teach at a senior level when recruited. Their claim relates to the 2011 year only as it is accepted that since 2012 the State has paid their salary in accordance with the appropriate rates.
4. At the commencement of this hearing I was advised by counsel that the claim between the second claimants and the defendants had been settled. A consent order was signed and sealed and accordingly this judgment is in respect of the first claimants only.
5. The statement of claim filed on behalf of the claimants is a 63 page document, the first 61 pages of which set out the work qualification and payment history of each claimant. It also sets out the amount claimed by each claimant, those amounts varying depending on their work history.
6. Paragraphs 6 to 9 of the statement of claim set out the purported cause of action in respect of the claim. Those paragraphs are as follows:-

“6. Each of the first claimants deserves at least the salary scale of E04.1 in equivalent of Vt 1, 446, 480 per year as provided for the teachers teaching senior secondary schools.

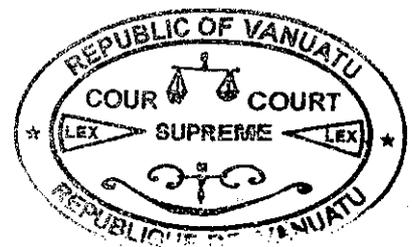


7. *Each of the first claimants deserves a back pay of their salary from now as far back as January 2006.*
8. *The first and the second claimants, Vanuatu National Provident Fund (VNPF) contributions have to be increased according to the increase of the salary scale.*
9. *The first claimants have been teaching senior classes and deserve to be paid at the salary scale of E04.1 even if they are subsequently posted to teach in a Junior Secondary School."*

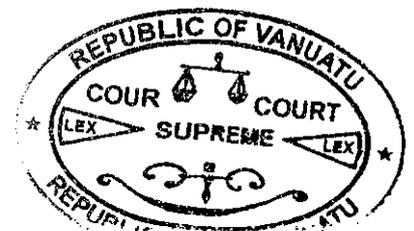
7. It is immediately apparent that the statement of claim does not set out any specific alleged breach of statutory duty or any specific cause of action against any of the defendants. Neither does the statement of claim set out the alleged obligations of each defendant towards the claimants or specify how each of those defendants are alleged to be liable to the claimants in respect of their claim. I shall say more about that later in this judgment.

8. The statement of defence filed on behalf of the first and second defendants denied liability as claimed by the defendants and may be summarized as follows:-

- a) Apart from seven named claimants who were being paid at their appropriate salary scales of E4.1, E3.5 and E3.6, the claimants were paid under the salary scale E3.7 as they were secondary teachers, serving in posts with that salary scale in accordance with the GRT determination. Accordingly they were being paid at their appropriate salary scale.
- b) The claimants are entitled to the salary scale they are allocated based on their qualifications and pursuant to the GRT determination and annexure 1, paragraph 1 of the Teaching Service Staff Rules.
- c) The GRT determination provides for two classes of secondary teacher, namely secondary teachers who are eligible to receive a salary within an applicable range from E03.5 to E04.0 and senior secondary teachers who are eligible to receive a salary scale ranging between E04.1 to E04.6.



- d) The claimants had been paid according to the new regrading of their posts and could not claim for a salary scale of at least E04.1 as it was not the appropriate salary scale for their qualification.
- e) That pursuant to section 20 of the Employment Act [Cap. 160], the claims of some of the claimants were statute barred as section 20 of the Employment Act provided that 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 related. Accordingly any claim by the claimants for salary payable in the years 2006 to 2008 were statute barred.
9. The position of the third defendant Lycee LAB School Council is that it should not be a party to these proceedings as it is not responsible for the recruitment and payment of teachers. That is a responsibility of the first and second defendants.
10. The Court heard evidence from a total of twenty-six witnesses. Twenty-one of those witnesses were the first claimants. While it was intended that all of the first claimants would give evidence in respect of the proceedings, Mr Huri for the first and second defendants conceded that it was accepted that all of the first claimants were both teaching at a senior secondary level and were qualified to do so. That concession meant that evidence from the remaining first claimants were not required.
11. The remaining evidence came from Mr Eric Alexander the Chairman of the Teaching Services Commission who had sworn statements dated December 18th 2012 and October 13th 2015 and four witnesses who were summoned by Mr Molbaleh, counsel for the claimants, to give evidence. Those witnesses were Mrs Gorretti Lunabek, the Principal of Lycee LAB, Mr Calib Sandy, the Director of the Government Remuneration Tribunal, Mr Roy Obed, the Director for Education Services with the Ministry of Education and Mr Jessy Dick the Director General of Education and Training in the Ministry of Education.
12. At paragraph 10 of his sworn statement dated December 18th 2012, Mr Alexander stated:-

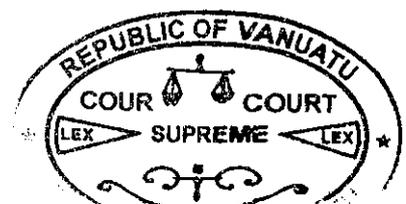


"I wish to state that although the first claimants are entitled to their increments it was no recommendation made by from the School Management to the Teaching Service Commission in regards to the performance of the first claimants because the increments can only be paid if the management is satisfied with work and performances of the first claimants."

13. In a subsequent statement Mr Alexander stated¹:-

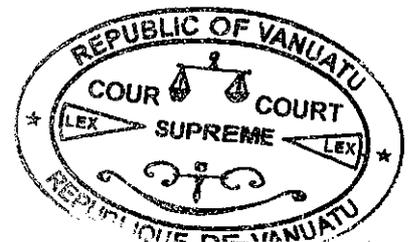
"I confirmed that to be eligible for a salary upgrade a teacher must be appraised twice or more by the Principal of the school he/she has been appointed to teach in. But the claimants were never appraised thus they were not entitled to a salary upgrade".

14. Accordingly the essential point relied upon by the first and second defendants seems to be a relatively narrow one namely that the first claimants have never been appraised by their school management and that there has never been formal notice of such assessment as required by the relevant legislation.
15. The Principal of Lycee LAB Mrs Lunabek gave evidence that Lycee LAB is the largest Francophone school in Vanuatu with a role of 736 and that she had been Acting Principal since 2008. She confirmed that Lycee LAB has both junior and senior classes and stated that every claimant in these proceedings had taught at both levels.
16. The decision as to whether a teacher teaches senior classes is a decision made by the school Principal according to the performance of the teacher and their qualifications and/or ability to do so.
17. Mrs Lunabek deposed that she had responsibility to the Government in running the school. Those responsibilities included writing a report on each teacher in the school every year and submitting that report to the Principal Education Office which then submits it to the Ministry of Education and the Teaching Service

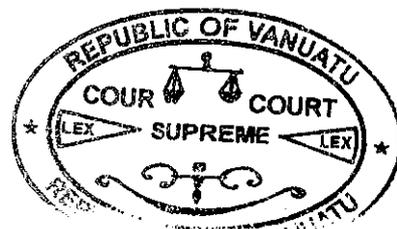


Commission. The report is based on observations of the teacher by the Principal and is regarded as a confidential one. It is standard form report provided by the Ministry of Education and in the case of teachers who have taught for more than five years, recommendations are made regarding regrading (i.e. increasing) their salary scale.

18. Mrs Lunabek produced a blank copy of the report completed for the Ministry of Education. It contains a number of questions and a scale for assessment in various areas such as punctuality, character, teaching ability and whether or not a teacher requires further training. The final part of the form includes recommendations by the Principal including a recommendation in respect of salary. Mrs Lunabek stated that in respect of these reports she does not specify any scale to be adopted but simply recommends a regrading of the salary.
19. It was the evidence of Mrs Lunabek that she was aware of the GRT determination of 2005, as it was forwarded to her by the Ministry. She also stated that she was aware that neither the Ministry nor the Teaching Service Commission had followed the recommendation from the GRT determination and she was aware that teachers were not being paid according to the appropriate salary scale. She gave evidence that in respect of one of the teachers and claimants in these proceedings, Malere Alexandre, she had personally gone to see the Director General of the Education Service, Mr Roy Obed concerning a regrading of salary and was advised that the teacher was not qualified to be paid at an increased salary level. She stated that she also took the opportunity to mention to Mr Obed the rest of the claimants and the need to regrade their salary scale and was told that they were not qualified. Mrs Lunabek said that this was in 2014.
20. Mrs Lunabek stated that Lycee LAB had seven year 11 classes, six year 12 classes, four year 13 classes and five year 14 classes. There were approximately 30 students per class. She stated that if the claimants were not engaged to teach at senior level the school would be unable to teach senior students and would be left teaching at a junior level only.

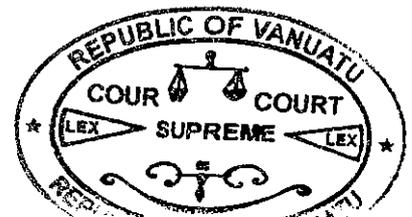


21. Under cross-examination by Mr Huri, Mrs Lunabek confirmed that when she started in 2008 the claimants were already teaching at senior level. She maintained that she had sent annual reports every year in respect of the claimants and she undertook two observations each year of each teacher resulting in the report which was then sent to the Ministry. She confirmed that the teachers had been teaching at level E03.7 but it was her opinion that they should be paid at level E04.1.
22. I asked Mrs Lunabek what she understood Mr Obed to mean when he told her that her teachers were not qualified. She replied by saying that she had understood him to mean that they had no qualifications to teach at senior level. When asked what qualifications were needed to teach at senior level Mrs Lunabek replied that I would need to "*ask the authorities*" but all that she knew was that a teacher was required to have a degree from a University to teach Year 14 level. A diploma from the Vanuatu Institute of Teacher Education ("*VITE*") would not qualify a teacher to teach at Year 14 but it would qualify a teacher to teach at years 11, 12 and 13 all of which were senior levels. She confirmed that she had not enquired of Mr Obed as to what he had meant when he referred to "*qualifications*". She said that she was unaware of any legislation, rule or regulation which stipulates what a teacher must have by way of qualifications to teach a senior school.
23. As far as regrading of salary goes, Mrs Lunabek said that the Teaching Service Commission regrades teachers at the beginning of each year. Mrs Lunabek stated that the school receives a copy of a letter confirming the regrading of salary from the Teaching Service Commission.
24. Despite the evidence regarding the sending of reports and confirmation of regrading of salary by letters from the Teaching Service Commission, the Court was not provided with one copy of any such report or letter.
25. Mr Obed gave evidence that as the Director for Education Services in the Ministry of Education he was "in charge of all schools" from early childhood level to Year 13 which is considered the top level of senior school. Year 14, which is a year level



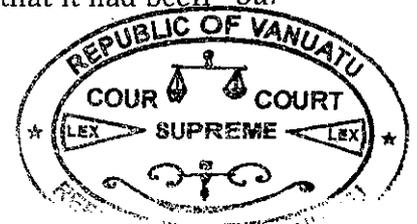
offered at some schools including Lycee LAB, is considered as a pre-university program. Mr Obed confirmed that Lycee LAB is the biggest school in Vanuatu.

26. Mr Obed gave evidence that the salary scale of 4.1 did not mean that every senior teacher automatically qualified to receive a salary at the 4.1 scale. In that regard the GRT determination provided guidance for payment of salary levels and had different levels for senior secondary teachers to determine what salary structure should apply to any senior teacher. Mr Obed deposed that if a teacher were teaching at senior levels on a full time basis then the Ministry would make a submission to the Teaching Service Commission to approve a salary structure at the senior scale.
27. In direct contrast to Mrs Lunabek's evidence, Mr Obed stated that the Ministry had not received reports from Lycee LAB regarding its teachers. It appeared from Mr Obed's evidence that this is a problem within Vanuatu and he stated that "*year after year*" the Ministry emphasized that Principals were required to provide reports.
28. Mr Obed accepted that a teacher with a teaching diploma would be able to teach at senior school level when taken together with appropriate teaching experience. Mr Obed also stated that a teacher would have to teach a minimum of 15 hours (presumably per week) at senior level to qualify for a senior salary.
29. Mr Obed recalled his meeting with Mrs Lunabek regarding regrading of a salary structure for the claimants. He did not however recall making any comments about the teachers not being qualified. He indicated that in reaching a decision as to the appropriate salary scale for any particular teacher the Teaching Service Commission would consider Mr Obed's recommendation regarding that matter.
30. With respect to the consideration of a Principal's report, Mr Obed stated that the Principals provide their reports on teachers through the appropriate Provincial Education Office. Lycee LAB is in the Shefa Province and accordingly the reports would go to the Shefa Provincial Education Office. That office then forwards the



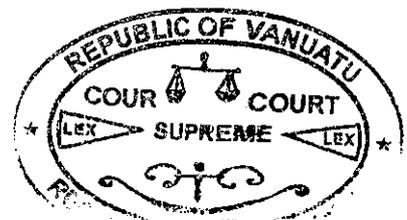
report to the Director for Education Services after "*signing them off*". When it was put to Mr Obed that the reports referred to by Mrs Lunabek could still be with the Provincial Education Office, Mr Obed stated that that would be unlikely. Upon receipt of the reports by his office, Mr Obed stated that he receives the reports, considers the recommendations and then signs those recommendations. They are then sent off to the Teaching Service Commission.

31. When asked whether he had ever not signed a recommendation, Mr Obed replied that he had always signed the recommendations received. In response to an enquiry as to whether or not the Court could safely assume that Mr Obed would have signed off Mrs Lunabek's reports he confirmed that that assumption could be made. His evidence however, was that he never received any reports from Lycee LAB. When it was put to him that he had not received any reports from Lycee LAB since 2006, Mr Obed stated that he had "*come across one*" in the week of this hearing but that it was incomplete.
32. Mr Obed's evidence was that there were over 2,000 teachers in Vanuatu and that while he could delegate the examination of reports to his officers he had not done so since he had assumed the position of Director for Education Services in December 2009. The reports, Mr Obed said were received generally from November through to February and when he was asked how many reports on average were received by the Ministry his astounding evidence was that in the last year he had received no reports. That was despite the obligation of Principals to file reports each year.
33. He stated that in 2016 he received 50 reports from Penama province and a similar number from the Sanma province. In 2015, the number of reports were "*probably similar*". The Ministry was working on trying to provide further support for Principals in this area. Mr Obed stated that he had reminded the Provincial Authority about the need to get Principal's reports.
34. When asked what the applicable criteria were for increased salary Mr Obed referred to qualifications, financial resources to support the increase in salary, the need for the Minister of Finance to approve a budget increase and at least 15 hours teaching across the senior level. Mr Obed commented that it had been "*our*



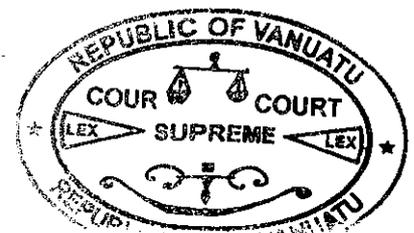
experience over the years" that the Minister of Finance had not approved the budget thereby creating obvious issues in terms of regrading salaries.

35. Mr Dick gave evidence that he commenced in the position of Director General of Education and Training in the Ministry of Education in 2011. He gave evidence that he was the Chief Administrator in the education sector and was "*aware of reports*" filed by the Principal of Lycee LAB. He confirmed that these reports go from the Principal of each school to the Provincial Education Office and then to the Director of Education Services and then to the Teaching Service Commission. He stated that the processes were clearly laid out in staff manuals and that the role of the Director was to follow up on these reports.
36. He stated also that the Chairman of the Teaching Service Commission briefed him in respect of those reports on a monthly basis. In terms of salary and regrading of salary this normally occurs in March. When asked whether he could confirm whether there were reports filed with the Teaching Service Commission over the last five years, particularly from Lycee LAB, Mr Dick's answer was that the briefing he usually received was in respect of teacher's performances, absences and the like and that he could not deny that there were challenges regarding the completion and filing of reports by Principals and the passing on of those reports to the relevant authorities. He then said he did not know whether Lycee LAB had filed reports at all and stated that he was "*simply told*" that reports are filed and are "*being filed all the time*".
37. Mr Dick stated that a senior teacher would be paid at a minimum level of 4.1 if he or she had qualifications to teach at that level. When asked to clarify what he meant by the term "*qualification*" he stated that for secondary school if a teacher qualified with a diploma then they received the salary scale at 3.7. If they had a degree they were then paid at 4.1. While it was possible to obtain a degree in English in the University of the South Pacific thereby qualifying for a salary scale of 4.1 teachers who had qualified with diplomas, as had most of the claimants who had qualified through the Vanuatu Institute of Teacher Education, did not qualify for payment of salary at the salary structure 4.1. Mr Dick stated that there were scholarships available to the University of New Caledonia for those teachers who



wanted to obtain degrees which would then qualify them for payment of the relevant salary structure.

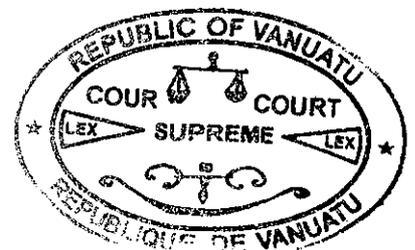
38. Mr Dick's role did not directly involve him with the annual reports to be filed by Principals however he was aware of the fact that no annual reports had been received by Mr Obed in the last year. When it was put to him that the evidence of Mrs Lunabek was that she filed reports in which she sought regrading of salary for the claimants, Mr Dick deposed that if Mr Obed had not seen the reports then he had not received them.
39. It was put to Mr Dick that it appeared that theoretically a teacher could be on a salary scale of 3.7 but teaching at senior level and qualified to do so but who could be being paid at salary scale 3,7 rather than 4.1 simply because of poor financial resourcing. In response to that proposition Mr Dick stated that the Director of Education would check with the Director of Finance to ensure that there were funds to accommodate the submission for a higher salary. If there were not the funds available then the matter would not go any further and the application would simply be held back for another year. If there were funds available then that would not normally present a problem.
40. Under cross-examination Mr Alexander confirmed that the Teaching Service Commission is the employer of all teachers in Vanuatu. He confirmed his earlier evidence that the Teaching Service Commission took the view that the appropriate processes had not been followed in terms of filing of reports and recommendation for salary increases. In evidence which appeared totally at odds with the evidence given by Mr Obed, Mr Alexander stated that he had never received a Principals from Lycee "*or any other school*" with the exception of Central School in Vila. That included the Penama province which, according to Mr Obed, had provided about fifty reports.
41. When it was put to Mr Alexander that the Commission as a good employer would have to ensure that the Principals reports were filed, Mr Alexander replied that the Commission was required to act on matters that were "referred" to it and that the



it provided support based on reports received from the Director of Education Services which was to monitor the delivery of programs and schools.

42. Mr Alexander expressed the view that had reports been received for consideration then it is more than likely that scale E04.1 would have been awarded.
43. When asked whether he had endeavoured to resolve these proceedings, Mr Alexander stated that after the first Supreme Court hearing had been dealt with in the Court of Appeal he had met with the Principal and Deputy Principal of Lycee LAB, however agreement had not been able to be reached.
44. Mr Alexander conceded that the TSC had never declined a recommendation for an increase in salary during his 10 years as a member of the Commission.
45. He also commented on the issue of financial resources as being an issue taken into account in the approval of salary increases. In this regard he stated that the Commission communicated with the Director of Finance of the Ministry of Education who in turn communicated with the Director of the Ministry of Finance who approves the salary increases if there are sufficient funds available. If there is no money available then the application for a salary increase is held by the Director of Education until there is money at which point the decision is confirmed and there is a back payment of salary to the date of approval.
46. Given that the existence and content of the GRT determination of 2005 was not in dispute the evidence of Mr Sandy in these proceedings did not add anything in respect of the matters to be determined.
47. The impression that I was left with having heard the evidence of those involved in this system is that it is a chaotic, unmonitored and unreliable system which is not subjected to any close or regular scrutiny. The evidence which I have heard casts those involved in the administration of education services in Vanuatu in a very poor light.

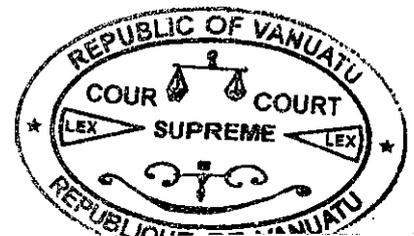
DISCUSSION



48. The Government Remuneration Tribunal Determination 2005 ("GTR") is dated November 23rd 2005. It describes its own background as follows:-

"The Teaching Service Commission, and Teachers Union has sought an increase in remuneration for both Secondary and Primary Teachers based on work value and the determination in the Teacher's salary when compared to the cost of living, which has increased by 20% since the last increase in Teacher's salary structure in 1994".

49. The GTR introduced a new salary structure for teachers and stipulated that the effective date for implementation of that salary structure was January 1st 2006.
50. Schedule 3 of the GTR sets out the new teachers salary scale. The salary scale distinguishes between Secondary Teachers who are paid on a scale from EO3.5 to EO 4.0 with a salary range of Vt 1,234,800 to Vt 1,401,200, and Senior Secondary Teachers who are prescribed a scale from EO4.1 to EO 4.6 with a range of salary between Vt 1, 446, 480 and Vt 1,622,880. In these proceedings most, but not all, of the claimants are in a receipt of salary scale EO3.7 which sets salary at Vt 1,305,360.
51. There is no dispute in this case that the claimants are secondary school teachers. Secondary school encompasses educational years 7 to 14 with junior secondary comprising years 7 to 10 and senior secondary comprising years 11 to 14.
52. The primary pieces of legislation governing education in Vanuatu are the Education Act no 9 of 2014 which came into force on June 23rd, 2014 and the Teaching Service Act No 38 of 2014 which came into force on March 17th, 2014. Both statutes had replaced earlier legislation. There are regulations pursuant to both Acts addressing various subsidiary matters.
53. The Education Act divides Vanuatu into various education provinces and places responsibility for the administration of schools within those provinces to Provincial Education Boards. The functions of such Boards are set out in section



70 of the Act. Pursuant to that section they are required to operate and manage the schools in their province, to advise the Director-General regarding the need for any new schools, to assist in planning for the provision of sufficient schools and to provide annual reports on the operation of schools within their respective provinces.

54. A Provincial Education Board does not, however employ teachers. That role, as confirmed by the evidence, is undertaken by the Teaching Service Commission, a body established under the Teaching Service Act. Pursuant to section 5 of the Act the Commission is directed to, inter alia, *"make officers and employees available to the Minister for the performance of educational duties."*

55. The Teaching Service Commission was established under the Teaching Service Act [Cap. 171] which came into force on November 21st 1983. That Act was repealed and replaced by the Teaching Service Act No. 38 of 2013. While the purpose of the original Act was *"to provide for the establishment of a Teaching Service Commission and to confer powers and functions on that commission, and to provide for matters connected therewith"* the purpose of the 2013 Act is described as being, *"to establish a Teaching Service and a Teaching Service Commission, to make arrangements for the effective management of the Teaching Service and to provide for the licensing of teachers"*.

56. There is no dispute in this case that teachers are the employees of the Teaching Service Commission which has the responsibility of appointing teachers.

57. Regulations 6 and 7 of the Education Regulations prescribe the qualifications and experience required for a senior secondary school teacher and provides that:-

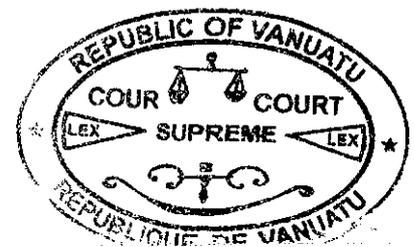
"(1) The prescribed teacher qualifications for the purposes of section 15

(b) of the Act for a senior secondary school are:-

(a) an undergraduate degree in Education from any recognised tertiary institution; or

(b) a post graduate certificate, diploma or degree in Education from any recognised tertiary institution.

(2) Despite sub regulation (1), a person may be employed as a teacher at a senior secondary school if the person has:-



- (a) a diploma or degree in the arts, humanities, science, agriculture, economics, accounting, information technology, commerce or management and recognised experience in teaching; or
- (b) a year 13 or 14 leaving certificate, or foundation level or an equivalent program from a recognised educational institution, a strong interest in teaching and at least 5 years teaching experience in a junior second school; or
- (c) been recommended by the Ministry of Education to teach at a senior secondary level."

58. In this case it has been conceded by the first and second defendants that the claimants are qualified to teach at a senior secondary level.

59. While the Teaching Service Act 2006 contained provisions regarding the promotion of "officers" re: classification of positions, it contained no specific provisions regarding the provisions for an increase in a teachers salary. That may be contrasted with section 19 of the Teaching Service Act 2013 which provides that:-

"19. Creation and abolition of positions

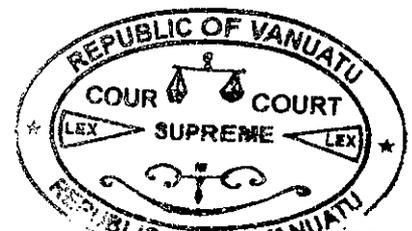
The Commission may, after receiving a report from the Minister –

- (a) create and abolish positions in the Service;
- (b) classify a position by determining the salary, or the range of salary, applicable to a position in the Service."

60. Section 38 of the Teaching Service Act 2013 provides for salary increments as follows:-

"38. Salary Increments

- (1) *If an employee is entitled to a salary increment on condition of satisfactory service, the Commission may award the increment provided the decision is based only on merit.*



(2) *In awarding a salary increment the Commission must consult with and take into consideration the views of the immediate supervisor of the employee concerned.*"

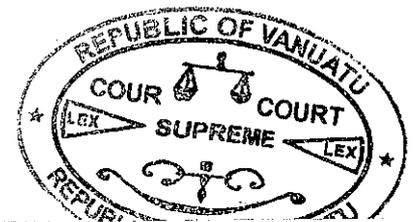
61. It is clear therefore that the award of any salary increment lies with the Commission and is completely discretionary although the Commission must *"consult with and take into consideration the views of the immediate supervisor of the employee concerned"*. It is clearly open therefore for the Teaching Service Commission to refuse to accede to a salary increment although such a decision would obviously be susceptible to an application for judicial review.
62. Also relevant is the Teaching Service (Statutory Orders) [Cap. 171] known as the *"Teaching Service Staff Rules"*. Those Rules commenced on July 16th, 1985, Section 1.1 of the Teaching Service Staff Rules provides that:-

"1.1 These Teaching Service Staff Rules contain the rules of conditions of service for all officers of the Vanuatu Teaching Service. The rules are comprehensive and where there is no provision, authority for any matter shall not be presumed except is hereinafter provided".

63. Section 3.2 of the Staff Rules provides that:-

"3.2 Salary and increments may be granted in accordance with the officers categories under the provisions of Annex 1 of the Teaching Service Staff Rules".

64. Annex 1 sets out various categories for the payment of salaries and increments. Those categories are graded from salary scale E1 through to E9. E1 is applicable to teachers with three years secondary education and no teacher training qualification while E9 applies to Principals of what are described as "full" secondary schools. Within each category is a 6 point scale with increments stated to be at 2 year intervals.



65. As to increments in salary, Annex 1 section 2 provides as follows:-

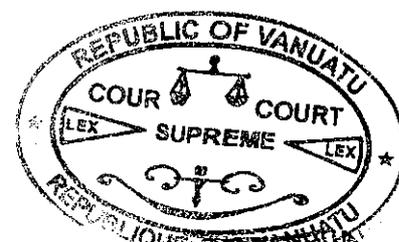
"2. Increments

All increments awarded to teachers, at all scales, E1-E9, will not be automatic but will be subject to satisfactory Annual Confidential Report.

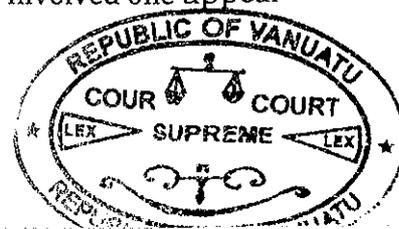
Annual confidential report on each primary school teacher will be completed by Regional Education Officers or any other persons delegated by P.E.O. primary education to perform the task.

Annual confidential report on trained teachers, teaching in secondary and/or post-secondary institutions, will be completely by Principals of the respective institutions or any other persons delegated by the Principal Education Officer responsible for Secondary and further education to perform the task".

66. What is clear from the relevant legislation is that the awarding of salary increments is at the discretion of the Commission and involves a process where any request or recommendation must be conveyed by way of the filing of a confidential report which must be must be approved by the Commission having been first considered by the relevant provincial authority. It does not involve a system where increments are automatic.
67. Clearly the responsibility for providing the annual confidential report lies with the Principal but even upon the filing of that report the decision as to whether or not a salary increment will be awarded is a decision for the Teaching Service Commission alone.
68. Having considered the evidence in this case I regret to say that despite the fact that all of the claimants are teaching at senior secondary level and are qualified to do so, matters accepted by the second and third defendant, the claimants have failed to prove their case in this matter.



69. In order to find for the claimants in this matter I would need to be satisfied that the defendants had breached some legal duty to the claimants.
70. I do not consider that the claimants have established such a breach. The evidence, such as it is, suggests, as I have said, a very poorly monitored system of confidential reporting and I am not satisfied that the claimants have established that the First Defendant received the required reports and that the process for undertaking salary increments was thereby triggered. The evidence in that regard was completely confusing and the lack of any documentary evidence at all is extremely concerning. It would appear that a process of discovery of documents has never been undertaken on behalf of the claimants as one might readily anticipate that given the number of claimants and the period covered by their claims, that a discovery process would have revealed the reports which, it is contended by the claimants, were sent on their behalf. But there is simply no evidence of such reports at all.
71. In addition, I regard the claimant's statement of claim as being completely inadequate in setting out not only the legal duties owed by each defendant to the claimants but how those legal duties have been breached. While it is asserted on the part of the claimants that they "*deserve*" an increase in salary and while the claimants may well deserve such an increase, that does not establish a cause of action against the defendants. On the basis of the statement of claim alone, the claimants have failed to establish any cause of action in these proceedings.
72. Pleadings are a matter of fundamental importance in any civil proceeding. As a matter of fairness any defendant is entitled to know what is being alleged by a claimant and the legal basis upon which a claimant relies for the relief which he or she seeks. The claimants pleadings in this respect have been wholly inadequate. In such circumstances the claimants must bear the consequences that flow from that.
73. I would add however that, despite the fact that the claimants have not established their claim, this saga is one that should have been resolved by the parties by way of mediation rather than determination in a Court. While there was some evidence referring to an attempt to resolve this matter it is difficult to understand why, given the history of this matter and the fact that it has already involved one appeal



to the Court of Appeal, the parties did not do their utmost to reach an agreement. This is the type of dispute crying out for such an approach.

74. While the claimants have not been successful, the evidence in this case has revealed what I consider to be a very poorly monitored and supervised system regarding the filing of confidential reports necessary to trigger salary increments. I consider that it is incumbent upon the Teaching Service Commission as a good and responsible employer to attend to a review of this situation as a matter of priority to ensure that teachers salary increments are dealt with efficiently in the future.
75. For the reasons I have given the claimants claim is dismissed.
76. The defendants are entitled to costs which are awarded on a standard basis to be agreed between the parties within 28 days failing which they are to be taxed.

Dated at Port Vila, this 13th day of March 2018

BY THE COURT

