

**IN THE COURT OF APPEAL OF
THE REPUBLIC OF VANUATU**
(Civil Appellate Jurisdiction)

Civil Appeal
Case No. 25/1645 COA/CIVA
[2025] VUCA 25

BETWEEN: TEACHING SERVICE COMMISSION
Appellant

AND: VANUATU TEACHERS' UNION
First Respondent

**AND: NORAH NAVITI WELLS AND THE OTHER
PERSONS NAMED IN THE SCHEDULE TO THIS
JUDGMENT**
Second Respondents

Date of Hearing: 4 August 2025

Before: *Hon Chief Justice Vincent Lunabek*
Hon Justice Mark O'Regan
Hon Justice Anthony Besanko
Hon Justice Oliver Saksak
Hon Justice Dudley Aru
Hon Justice Viran Molisa Trief
Hon Justice Maree MacKenzie

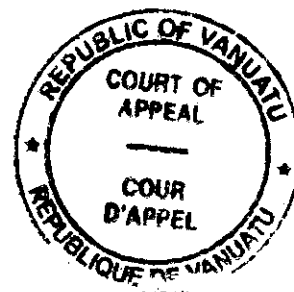
Counsel: *Mr Kent Ture Tari for the Appellant*
Mr Andrew Bal for the Respondents

Date of Decision: 14 August 2025

JUDGMENT OF THE COURT

Introduction

1. This is an appeal against a decision of the Supreme Court dated 30 May 2025 (*Vanuatu Teachers' Union v Teaching Service Commission* [2025] VUSC 118). In that decision, the primary Judge upheld an application by the first respondent (the Union) and the second respondents for judicial review of certain decisions made by the appellant (the Commission).

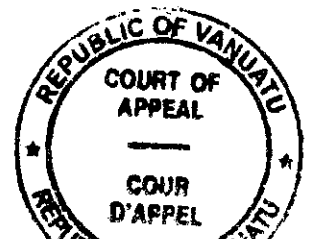


Context

2. The context for the decision was an industrial dispute involving the Union and the second respondents, who are teachers belonging to the Union, and who had taken industrial action. The Commission formed the view that the industrial action was unlawful and as a result decided to suspend a large number of teachers and principals, all of whom are second respondents in this appeal. The primary Judge found for the respondents. He made an order quashing the decision of the Commission to suspend those teachers. He also made a declaration that the industrial action initiated by the Union that was initially scheduled to occur on 6 June 2024 but was discontinued and then recommenced on 10 August 2024 was not unlawful, as the Commission had alleged. The Judge also awarded indemnity costs against the Commission.

Factual background

3. The background to the present proceedings is that there have been longstanding grievances on the part of teachers about the management of teachers' funds and failures to make payments to which teachers claim they are entitled. A particular concern is that the teachers' funds reside within the Ministry of Education and Training (the Ministry) under the oversight of public service employees, rather than with the Commission. This is seen as a barrier to the resolution of the teachers' grievances.
4. On 29 April 2024, the Secretary-General of the Union wrote to the Director-General of the Ministry and the Acting Chair of the Commission requesting a tripartite discussion about these issues and notifying the Ministry and the Commission of the potential for industrial action if the grievances were not resolved.
5. On 6 May 2024, the Union gave notice to the Ministry and the Commission of intended industrial action commencing 30 days from the date of the notice. The Union gave 30 days' notice because this is a legal requirement under s 33A of the Trade Disputes Act [CAP 162] which we will discuss in greater detail later. The 6 May 2024 notice referred to the fact that the proposed industrial action was "in response to the failure to address the issues raised in our previous correspondence dated April 29, 2024". It referred to the repeated attempts at dialogue to resolve the longstanding grievances of teachers in relation to the management of teachers' funds, which remained unresolved. The letter concluded with a warning that a failure to respond to the notice or to take meaningful steps to address the teachers' grievances within the 30-day period of the notice would leave the Union with no choice but to proceed with the planned industrial action.
6. During the 30-day period after the 6 May 2024 notice, there were meetings involving the Union, the Ministry and the Commission and conciliation meetings involving those parties and the Commissioner of Labour. However, no resolution was reached prior to the end of the notice period on 6 June 2024.



7. On 6 June 2024, the Minister of Internal Affairs (the Minister) issued an Order under s 34 of the Trade Disputes Act, under which the Minister has power in limited circumstances to require the discontinuance or deferral of industrial action for a defined period of up to 60 days. We will discuss s 34 in more detail later. The Order made by the Minister was headed "Discontinuance of Industrial Action Order No 82 of 2024". Clause 2 of the Discontinuance Order was headed "Discontinuance of Industrial Action" and provided that the Union must not:
- (a) Call, organise, procure or finance a strike at any irregular industrial action or threaten to do so; or
 - (b) Institute, carry on, organize, procure or finance a lock out or threaten to do so.
8. The Discontinuance Order was amended on 9 June 2024 by Order No 84 of 2024, which had the effect of substituting a new clause for the original clause 3, providing that the dispute was to be dealt with in accordance with the provisions of the Trade Disputes Act.
9. On 17 June 2024, the Union, the Commission and the Ministry entered into an agreement headed "Undertaking Agreement". This followed an agreement reached at a conciliation meeting held on 14 June 2024. Under this document the parties agreed to engage in dialogue aimed at settling the teachers' grievances through a collective bargaining process with the objective of reaching a binding tripartite agreement between the parties to the Undertaking Agreement. The Undertaking Agreement included the following provision:
- Failure to complete the negotiations and have the [proposed tripartite] agreement signed and executed within the 14 days period, and/or any variation of the execution period under clause 5, will result in VTU reserving its rights without prejudice and recalling the strike action without any 30 days' notice, as it pertains to the same dispute.
10. A three-page schedule to the Undertaking Agreement set out the teachers' grievances, which extended to 29 separate categories of grievance. The attempts to reach settlement during the 60-day period during which the Discontinuance Order was in force were unsuccessful.
11. On 7 August 2024, the Acting Minister of Internal Affairs signed an Order headed "Discontinuance Order No 111", which revoked the Discontinuance Order No 82 as amended by Order No 84. Order No 82 was about to lapse in any event, given that the 60-day period referred to in the Order had concluded.
12. On 9 August 2024, an urgent National Executive Meeting of the Union was held and a decision was made at that meeting to recall (that is, recommence) the industrial action. On 10 August 2024, the Union sent a notice to its Branch Presidents recalling the industrial action, leading to teachers going on strike the next day. The Commission took the view that it was necessary for the Union to give a

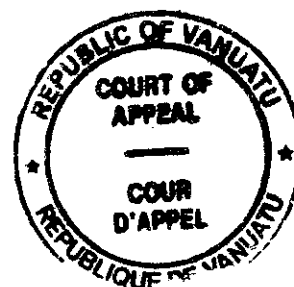


further 30 days' notice of the intended resumed industrial action under s 33A of the Trade Disputes Act and that the failure to do this meant the recalled industrial action was unlawful

13. On 8 August 2024, the Commissioner of Labour sought advice from the Attorney-General on the legality of the resumed industrial action. The request made by the Commissioner of Labour was not in evidence, but the advice given by the Attorney-General was. In the Attorney-General's letter of advice dated 12 August 2024, he recorded that the advice that had been sought by the Commissioner of Labour was as follows:
 1. Whether Vanuatu Teachers Union ("VTU") can invoke the Undertaking Agreement to recall an industrial action without notice contrary to the mandatory requirement of service of 30 days' notice of strike provided for in s 33A of the Trade Disputes Act?
 2. Whether the letter of 7th of August 2024 (the "Letter") issued by the VTU Secretary-General amounts to a valid notice of strike?
14. The Attorney-General advised the Commissioner of Labour that 30 days' notice of the resumption of the industrial action was required under s 33A(1) and, as this had not been given, s 33A(2) applied. Section 33A(2) provides that any person contravening or failing to comply with the requirements of s 33A(1) is guilty of an offence with the proviso that no prosecution can be instituted except with the written consent of the Attorney-General.
15. The Commission then started to suspend teachers who were participating in the industrial action and principals who had encouraged or allowed teachers to do so. The Commission then began disciplinary proceedings against the second respondents. A number of them were dismissed.
16. This action was taken notwithstanding the difference of view between the Union and the Commission, Commissioner of Labour and Ministry about the legality of the resumed industrial action. The primary Judge recorded in his judgment that he had suggested to the parties at an earlier interlocutory stage of the proceedings that an efficient and satisfactory way of resolving the debate over the lawfulness of the resumed industrial action was for the Commission to seek a declaration from the Supreme Court, rather than to proceed with disciplinary proceedings against teachers based on the Commission's own view and the Attorney-General's advice. However, that proposal did not meet with favour and was not adopted. We agree with the primary Judge that that would have been the responsible thing for the Commission to do before instituting disciplinary proceedings which had such draconian consequences for a very significant number of teachers and the consequent effect that has on the children in the schools affected by the suspensions and dismissals of teachers.

Relevant provisions of the Trade Disputes Act

17. Sections 33A and 34 of the Trade Disputes Act relevantly provide:



33A. Notice of strike or other industrial action

- (1) Where any strike or other industrial action is contemplated by a trade union or workers the following procedure shall be followed –
- (a) at least 30 days' notice of the proposed strike or other industrial action shall be given in writing to the Commissioner and to the employer of every worker who may be involved in the action;
 - (b) the notice shall be signed by the person or persons giving it and if given by a trade union, shall specify the name of such trade union and, if not given by a trade union, shall specify the names, addresses and employment of all persons by or on behalf of whom it is given;
 - (c) the notice shall state the date on or after which the strike or other industrial action is contemplated; and
 - (d) the notice shall be delivered by hand or by forwarding the same by registered post.
- (2) Any person contravening or failing to comply with any of the requirements of subsection (1) shall be guilty of an offence:

Provided that no prosecution in respect of such offence shall be instituted except with the written consent of the Attorney General.

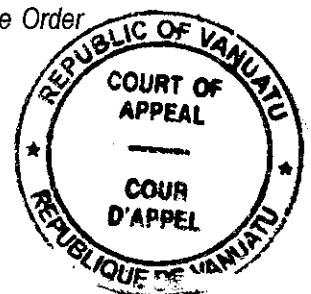
...

34. Minister may order industrial action to be discontinued or deferred

- (1) Where it appears to the Minister –
- (a) that in contemplation or furtherance of a trade dispute, industrial action, consisting in a strike, or irregular industrial action short of a strike, or a lock-out, has begun or is likely to begin; and
 - (b) that the condition stated in subsection (2) is fulfilled; and
 - (c) that it would –
 - (i) be conducive to a settlement of the dispute by conciliation or arbitration under this Act; or
 - (ii) assist in the exercise of its functions by a Commission of Inquiry set up in pursuance of section 38;

if the industrial action were discontinued or deferred;

the Minister may make an Order directing that during the period for which the Order remains in force, no person or a member of a class of persons specified in the Order shall –

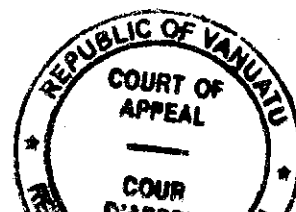


- (i) *call, organise, procure or finance a strike, or any irregular industrial action, or threaten to do so;*
 - (ii) *institute, carry on, organise, procure or finance a lock-out or threaten to do so.*
- (2) *The condition referred to in subsection (1)(b) is that the industrial action in question has caused or would cause an interruption in the supply of goods or in the provision of services of such a nature, or on such a scale, as to be likely –*
- (a) *to be gravely injurious to the national economy, to imperil national security or to create a serious risk of public disorder; or*
 - (b) *to endanger the lives of a substantial number of persons, or expose a substantial number of persons to serious risk of disease or personal injury.*
- (3) *An Order under this section shall specify –*
- (a) *the industry, undertaking (or a part thereof), and the description of workers in respect of which the Order is to have effect, or all or any of these matters;*
 - (b) *the persons or description of persons who are to be bound by the Order;*
 - (c) *the date on which the Order is to take effect and the period, not exceeding 60 days, for which the Order, unless revoked earlier, shall remain in force.*

...

Issues on appeal

18. The Commission submitted that the notice requirement in s 33A(1) applied to the resumed industrial action for two reasons. The first of these was that the industrial action that commenced on 10 August 2024 (the August industrial action) was not a continuation of the industrial action for which notice had been given on 6 May 2024 (the May industrial action). The second was that the effect of the Discontinuance Order was that the May industrial action was brought to a conclusion and therefore the August industrial action was a new industrial action that required notice under s 33A.
19. The first issue to be resolved therefore is whether the August industrial action was a continuation of the May industrial action.
20. The second issue is whether the effect of the Discontinuance Order was the termination of the May industrial action, or whether it merely paused it for the 60-day period during which the Discontinuance Order continued in force.
21. The Commission sought to argue in the Supreme Court that the Union had not complied with its own constitution at the time that it recalled the industrial action in August 2024. However, this was not part of the Commission pleading and the Judge concluded that the evidence was in any event insufficiently cogent to reach any conclusion about non-compliance with the constitution. The

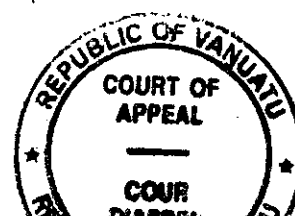


Commission renews its challenge based on the alleged non-compliance with the constitution in this Court.

22. The third issue is, therefore, whether the constitution of the Union was complied with when the decision to recall the industrial action with effect from 10 August 2024 was made and whether, in view of the fact that this was not part of the pleaded case, that matter should be addressed.
23. The primary Judge noted that the Commissioner of Labour did not exhibit the question she asked of the Attorney-General when seeking his advice as to the legality of the recalled industrial action. The Commission wishes to challenge that on appeal. Nothing really turns on this, but we will, for completeness, address it briefly. That is the fourth issue.
24. The primary Judge had suggested at an earlier stage of the proceedings that a declaration be sought from the Supreme Court as to the legality of the industrial action. He noted in his judgment that this had not occurred and that the Commission had proceeded with disciplinary action against teachers despite interlocutory relief being in place. The Commission challenges that observation. Again, we see little turning on this, but will address it briefly. That is the fifth issue.
25. Having made the above observation, the Judge said that it was appropriate to award indemnity costs against the Commission. The Commission challenges the award of indemnity costs. The sixth issue is, therefore, whether indemnity costs should have been awarded.
26. As mentioned earlier, the Judge quashed the decision of the Commission to suspend certain teachers who are the second respondents and made a declaration that the resumed industrial action was lawful. The Commission wishes to argue that the only issue before the Judge was the lawfulness of the resumed industrial action, not the suspensions, and that the order quashing the decision to suspend teachers ought not to have been made. The seventh issue is, therefore, whether the decision to suspend teachers ought to have been quashed by the primary Judge.
27. We will deal with each of these issues in turn.

Did the August industrial action relate to a different dispute from the May industrial action?

28. The Commission argues that the May industrial action related to a dispute about the teachers' contention that the payroll budget for teachers should be administered by the Commission, not the Ministry. It argued that this was the sole grievance referred to in the 6 May 2024 notice. On the other hand, the Commission argued that the resumed industrial action in August 2024 related to a great number of grievances.
29. As noted earlier, the 6 May 2024 notice began by specifying that the proposed industrial action was "in response to the failure to address the issues raised in our previous correspondences dated



April 29, 2024". The letter of 29 April 2024 referred to the Union's contention that teachers' funds should be transferred from the Ministry to the Commission. The 29 April 2024 letter said that the administration of teachers' funds by the Ministry "has led to a situation where teachers are not receiving their rightful benefits in a timely manner". Later in the letter the Union proposed a tripartite meeting between the Commission, the Ministry and the Union, adding "it is imperative that we come together to discuss and resolve grievances raised by the Vanuatu Teachers' Union regarding the management of teachers' funds".

30. It is clear therefore that the question of responsibility for the teachers' funds was an important concern for the Union and the teachers at the time of the 6 May 2024 notice. However, we do not consider it can be said that this was the only matter at issue at the time of the 6 May 2024 notice. Indeed, the notice itself refers to the need to take meaningful steps to address the teachers' grievances during the 30-day period prior to the commencement of the proposed industrial action. This is also illustrated by the fact that, once the industrial action was discontinued in response to the Discontinuance Notice, the Undertaking Agreement between the parties set out a long list of matters in dispute. It appears that the concern about the administration of teachers' funds was because it was seen that the resolution of these wider disputes was being impaired by the Ministry having responsibility of these funds instead of the Commission, which is the employer of the teachers.
31. The resumed industrial in August 2024 appears to have been directed at all of the grievances set out in the schedule to the Undertaking Agreement.
32. While not a decisive point, it is also notable that clause 5 of the Undertaking Agreement, to which both the Commission and Ministry were parties, (set out at paragraph 9 above) specifically provided that, if the parties were unable to reach a settlement during the 14 day period for which that Agreement applied (or any extension) this would result in the Union "reserving its rights without prejudice and recalling the industrial action without any 30-days' notice, as it pertains to *the same dispute*". (our emphasis).
33. In agreement with the primary Judge, we conclude that the dispute at the time of the August industrial action and the dispute at the time of the May industrial action were the same. We reject the Commission's contention that the August industrial action was aimed at a different dispute from the grievances at the time of the 6 May 2024 notice.

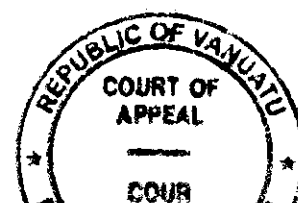
Did the Discontinuance Notice terminate the May industrial action or cause it to be paused for the 60-day period?

34. The Commission argued that the effect of the Discontinuance Notice was to bring to an end the May industrial action, meaning that there was no possibility of resuming that industrial action in August. Rather, the Commission argued, what happened in August was that new industrial action was



commenced, and, because this was not preceded by a 30-day notice as required by s 33A(1), it was unlawful.

35. The Commission emphasised that s 34 provided the Minister with the power to either discontinue industrial action or defer it. The Minister chose to discontinue the industrial action, not defer it. The Commission says that the contrast between these terms is compelling: deferral should be seen as bringing about a temporary pause, whereas discontinuance should be seen as bringing an industrial action to an end.
36. We accept that the terminology "discontinue or defer" provides some support for the Commission's position. However, s 34 does not otherwise differentiate the two terms. The consequences of an order are the same, regardless of whether the order is called a discontinuance order or a deferral order. In addition, there are other indications from the statutory wording that lead us to conclude that a discontinuance is the imposition of an interval or pause in industrial action, rather than its termination.
37. Section 34(1) provides that an Order under s 34 applies "during the period for which the Order remains in force". Section 34(3)(e) requires that the Order specifies "the date on which the Order is to take effect and the period, not exceeding 60 days, for which the Order, unless revoked earlier, shall remain in force".
38. It seems to us that the limited time period for which an Order endures is an indication that the effect of the Order, whether called a discontinuance or a deferral, is not to terminate industrial action but to pause it for the period during which the Order remains in force. It is also notable that s 34(1)(c) requires that the Minister conclude, before issuing an Order, that the Order would "be conducive to a settlement of the dispute by conciliation or arbitration under this Act, or assist the functions of a Commission of Inquiry if one is set up" (this did not occur in this case). It is clear that these objectives can be achieved without bringing about the termination of industrial action. There is nothing in s 34 or elsewhere in the Trade Disputes Act that specifies that the resumption of industrial action after a discontinuance order lapse requires a fresh notice under s 33A.
39. In addition, s 34(2) makes it clear that Parliament saw the power conferred by s 34 as exceptional, given the significant interference it brings about with the rights of employees to take industrial action during industrial disputes. Section 34(2) says that the Minister must be satisfied that the industrial action that is discontinued or deferred by a Discontinuance Order would cause one or more of the very significant consequences outlined in s 34(2)(a) or (b) (quoted above at paragraph 17). It can be expected that such circumstances will arise only in very rare cases and, given the significant interference with rights that an Order brings about, we think it is more likely than not that Parliament intended that the interference with rights should be temporary (that is pausing proposed industrial action) rather than permanent (terminating proposed industrial action). We note as an aside that the Discontinuance Order in this case omits any reference to s 34(2), so we do not know what factors led the Minister to reach the view in this case that industrial action by teachers would cause one or



more of the consequences listed in s 34(2)(a) and (b).

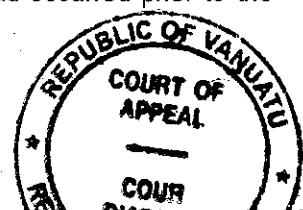
40. All of this leaves open why Parliament used the alternative terms “discontinue” and “defer”. One possible explanation is that s 34 deals with two possibilities, as set out in s 34(1). The first is that industrial action “has begun”. In that case, discontinuance would be necessary, to break the continuity of the industrial action that has already begun for the period the order stays in force. The second is that industrial action “is likely to begin”. In that case, deferral would seem to be more appropriate, so that industrial action is prevented from commencing during the period the Order remains in force. In this case, the order was made at the time the notice of industrial action had just elapsed, so it may have been thought that the industrial action had effectively already begun and needed to be discontinued.
41. We conclude, contrary to the Commission’s submission but in agreement with the primary Judge, that the May industrial action was paused, rather than terminated, by the Discontinuance Order.

Was the resumption of the industrial action in August authorised under the Union’s constitution?

42. The Commission sought to argue in the Supreme Court that the Union had not followed its own internal processes before resolving to give notice to its branches that the industrial action had been recalled. A sworn statement from the former President of the Union (who was President at the material time) provided the basis for this contention. However, this point had not been pleaded as part of the Commission’s defence in the Supreme Court. The primary Judge briefly addressed the issue but found the evidence focused on the authorisation required to affix the common seal of the Union unhelpful, given that there was no relevant document to which that seal had been affixed in the present case. Similarly, the Judge considered that the President’s view that a secret ballot was required before the resumption of industrial action was unhelpful given that it had not been addressed in the pleadings and been addressed in evidence only four weeks before the hearing of the case, and not accompanied by any application to amend the Commission’s pleading.
43. We find ourselves in a similar position in relation to this aspect of the case. We do not consider that the evidence before the Court provides us with a proper basis to resolve the issue and we consider it would be unwise to do so without the benefit of the primary Judge’s view after the testing of evidence before him. We do not, therefore, uphold this aspect of the Commission’s appeal.

The Commissioner of Labour’s letter to the Attorney-General

44. The primary Judge noted that the Commissioner of Labour had exhibited the letter of advice from the Attorney-General (to the effect that the August industrial action was unlawful) but had not exhibited the request for that advice. We do not see any great significance in that observation because, even if it had been clear that the Attorney-General was fully briefed on what had occurred prior to the



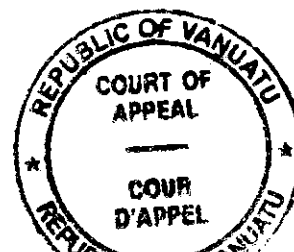
recalling of the industrial action in August 2024, the Attorney-General's advice was an opinion, not an instrument establishing the legal position between the parties. As the primary Judge pointed out, the only way of obtaining certainty about the legality or otherwise of the recalling of the industrial action in August 2024 was to seek a declaration from the Court. As just mentioned, the opinion from the Attorney-General was just that: an opinion. That was not a proper basis for the Commission to embark on a process of suspending hundreds of teachers and terminating the employment of many of those.

Was there interim relief in place at the time teachers were suspended?

45. In paragraph 43 of the primary Judge's judgment, he observed that the Commission had continued disciplinary proceedings against teachers even while interlocutory relief was in place. The Commission wished to contest this on appeal. The Judge's reference to interim relief followed an earlier reference in paragraph 7 of the Supreme Court judgment, where the Judge referred to the Union's judicial review claim being filed on 3 September 2024 and interim relief against the Orders for Suspension following on from that. He noted that the Commission had challenged this interlocutory relief unsuccessfully in the Court of Appeal.
46. We do not see that this has any impact on the present appeal and we do not propose to address it in any detail. We do, however, note the decisions of the Supreme Court reported at [2024] VUSC 391 and [2024] VUSC 392 and that of the Court of Appeal in *Teaching Service Commission v Vanuatu Teachers' Union* [2025] VUCA 7 appear to confirm the Judge's view that interlocutory restraining orders were in place from 28 November 2024. These orders prevented the Commission from suspending or dismissing any teacher for participating in industrial action, but did not prevent the Commission from otherwise conducting disciplinary processes. If the Commission did suspend or dismiss any teacher while the orders were in force, that would have been in breach of the orders. We did not know whether or not that happened and, as already noted, nothing turns on this in terms of the outcome of the present appeal.
47. The Commission also argued that, even if the interlocutory orders were in force, this would not have prevented the Commission from acting in accordance with s 65 of the Teaching Service Act, which provides as follows:

65. *Protection and educational interests of children to be paramount consideration*

- (1) *The protection and educational interests of children is to be the paramount consideration:*
- (a) *in making any decision under this Act; and*
 - (b) *in dealing with any appeal against, or determining any claim arising from or in relation to that decision.*



- (2) *This section has effect despite the provisions of the Trade Disputes Act [CAP 162] or any other Act or law.*

48. We are not sure what to make of that submission. It appeared to be premised on the proposition that a court order would not stop the Commission doing something in breach of the order if it thought its action was needed to meet the requirements of s 65. If that is what was meant by the submission, we reject it. No-one, the Commission included, is above the law. If the Court makes an order, it must be complied with until it lapses or is set aside.

Did the primary Judge err in awarding indemnity costs?

49. After the primary Judge made the observation referred to above, he observed that indemnity costs should be awarded against the Commission whether it succeeded in the Supreme Court or not. The Judge referred to r 15.5(5) of the Civil Procedure Rules which provides as follows:

- (5) *The Court may also order a party's costs be paid on an indemnity basis if:*
- (a) *the other party deliberately or without good cause prolonged a proceeding; or*
 - (b) *the other party brought the proceeding in circumstances or at a time that amounted to a misuse of the litigation processes; or*
 - (c) *the other party otherwise deliberately or without good cause engaged in conduct that resulted in increased costs; or*
 - (d) *in other circumstances (including an offer to settle made and rejected) if the Court thinks it appropriate.*

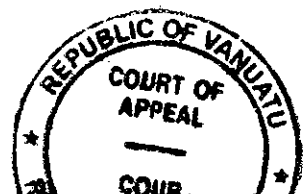
50. The Judge specifically referred to paragraphs (a), (c) and (d) of that Rule.

51. The Commission argued that indemnity costs were not appropriate in the context of the Supreme Court proceeding. We agree with that contention. As we see it, the question as to the effect of the Discontinuance Order and the consequent question as to the legality of the August industrial action were matters that were finely balanced and we see nothing in the arguments advanced by the Commission that could be classed as coming within any of the paragraphs in r 15.5(5).

52. It is true that the Commission argued a substantive point that was not contained in the pleadings, but we do not see that as something that would, without more, justify the awarding of indemnity costs. We consider that the fair result was an award of costs on a standard basis.

Did the primary Judge err in quashing the suspension decisions?

53. As noted above at paragraph 2, the Judge made an order quashing the decision of the Commission to suspend the teachers who were named as applicants in the Supreme Court proceeding. The



Commission argued before this Court that this was inappropriate because the only matter at issue in the Supreme Court trial was the lawfulness of the August industrial action, and not the issue of suspension.

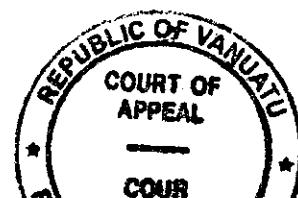
54. We see nothing in this point. It is clear that the Union's amended judicial review claim filed on 29 January 2025 specifically sought (among other things) the quashing of the decision to suspend the teachers who were named as applicants in the Supreme Court proceedings.
55. At the commencement of the Supreme Court trial, the lawyers for the parties filed a memorandum in which they agreed that the fact of the suspension or dismissal of teachers was not in issue. The primary issue was said to be the lawfulness of the industrial action. We do not consider that this memorandum signalled an abandonment by the Union of its claim for the quashing of the suspensions: rather, the object appears to have been to ensure that the Court did not need to address the individual circumstances of every teacher who had been suspended, but could make a ruling based on its consideration of the generic issue as to the legality of the industrial action. As the suspensions were founded only upon the participation of the relevant applicants in the industrial action, it was obvious that the suspensions that were based on the wrong assumption about the legality of the industrial action needed to be addressed. That is particularly the case given that the interim orders made by the Supreme Court and upheld by this Court had stayed suspensions and prevented any further suspensions taking place.
56. We do not consider there was any error on the part of the Judge in quashing the suspensions when it was clear that the legal basis on which they occurred was incorrect.
57. The Commission also argued that the suspension should not have been set aside because of s 65 of the Teaching Service Act (quoted above at paragraph 47). We disagree. In effect, the Commission seems to be suggesting that teachers should remain suspended for their participation in industrial action even though what they did was lawful and consistent with their employment contract. That is untenable.

Result

58. None of the grounds of appeal is made out, other than the challenge to the award of indemnity costs in the Supreme Court. The appeal is therefore dismissed, save that the appeal against the award of indemnity costs in the Supreme Court is upheld. An award of standard costs to be assessed or taxed is substituted for the award made in the Supreme Court.

Consequential orders?

59. At the end of the hearing, we asked counsel to advise whether any orders were required in addition



to merely dismissing the appeal (and thereby leaving in place the Supreme Court orders quashing the suspensions and declaring the resumed industrial action to be lawful). Counsel were to file an agreed memorandum, or separate memoranda if agreement could not be reached. Separate memoranda were filed. Unfortunately, the memoranda we received from counsel did not provide us with any real assistance on these issues and we therefore do not propose to take that any further or to make any consequential orders.

Costs

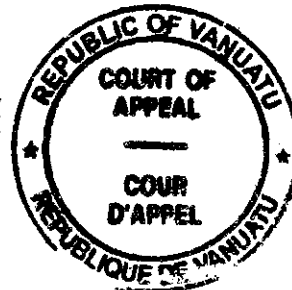
60. The Union is entitled to costs, which we fix at VT150,000. These costs must be paid by the Commission within 28 days.

DATED at Port Vila, this 14th day of August 2025

BY THE COURT



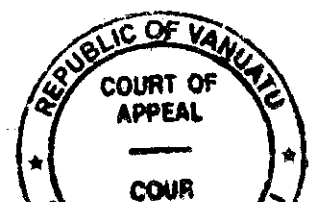
Hon Chief Justice Vincent Lunabek



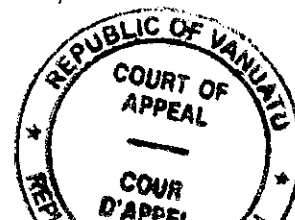
Schedule

Second Respondents

Norah Naviti Wells, Leiwia Caroline James Pakoa, Fred Ottiman, Serah Henry, Walter Bong, Jean Marie Virelala, Timothy Mahit, Daniel Steel, John Noel Alick, Rhonda Natapei, Kalo Tasso, Fitu Natouivi, Bryent Forau, Sigal Iaruel, Paul Sam, Jessynta Saribo Buleman, Honore Enock, John Graham Frezher, George Kalman, Molley Alice Avok, Jack Morris Reuben, Alice Tom, Arianne Cyriaque, Eva Melteres, Felix Nirua, Gina Bouleuru, Jean Gabriel Yamak, Jeremiah Joseph Hosea, Lisa Paniel, Marie France Batick Tiomai, Mnnietoto Sileye, Seraphine Meranie, Trinita Jelpao, Annie Patrick, Korah Robson Vakoumali, Alick Thomas Willie, Geraldine Niptir, Sabrina Lisa Tevanu, Anniely Kaitip, Livan Jack Phillip, Winnie Marie Joe, Godwin Ryain Joe, Claudie Bule, Dick Taigo, Francois Sakama, George Yalimyao, Sylvie Lamoureux, Urbain Dametesso, Calros Luan, Catherine Leinasei Kalo, Celine Kombe, Christelle Tavi, Christiane Armstrong, Delphine Gihiala, Eline Malili, Eugenie Titi, Fabrice Tari, George Lingtamat, Grelinda Qwevira Garae, Lilian Kolomule Majilole, Marie Lea Iapatu, Sylvie Gihiala, Evelyn Yaviong, Endis Claudine Kalsrap, Anne Josephine Amos, Olivia Malsangwul, Rayline Tari, Sussan Naris Kassou, Veronica Temar, Robsen Abel, Julie Natou, Veriri Touwata Andrew, Janette Vevira Korah, Dominiqu Niali, Kalotap Marae, Madlen Morsen, Angela Lessica Tokio, Anika Nari, Calo Regina, Erima Borau Moses, Florence Olul, Fred Amos Bosbos Alvea, Jessica Kalkandi, Louisa Yelliah, Melten Jack Nasse, Nettie Masseng Mahit, Philip Nasse, Shane Francois Viranamangu, Daniel Lalau Tavoia, Alex Suvoli Jacques, Jayline Mary Roban Gesa Morris, Netty Goh Kalworai, Roserlina Kuta Betsesai, Ernest Alexandre Rai, Macklen Tubena Hakebihiu, Angelina Nahan, Berthier Bongnebou, Ciriague Tabiguru, Delphino Baticklamap, Freddy Clarence Anis, Gedeon Sawan, Harrison Solomon Kaloran, Jean Willie Manwo, Johnny Tevanu, Julien Floyted Signo, Luan Christelle, Mhedy Lessy, Pita Kuse, Thierry Worwor, Yosina Bororoa, Yves Sizai, Boe Barry Patrick, Lyn Marou, Robert George, Sheena Maria Mala, Belinda Wogis Kaloris, Betty Taripu, Evelyne Karl Joel, Ireene Gaviga, Juliette Naviti, Klinder Toi, Tony Raymond, Paul Joe Stephen, Herve Nako, Joseph Stevens Bongnembu, Kensy Bilnet, Lydie Maltapie, Lyn Siba Samana, Payato Jimmy, Rose Erevoke, Tony Bule Bebe, Wema Matavussi, Johnny Kalomor, Alick Kaspas, Alick Jimmy, Tasso Mowa, John Jav Kenneth, Clotilde Hivird, Ella Peter Dajoe, George Reuben Songi, Joeme Peter, John Roy Umou, Lise Tamath, Marie Eugenie Bebe, Marie Laure Vira, Rosine Sarafina Ariki, Abdon Terong, Doroline Maleb, Ernestine Lingsarey, Lilone Rosalee Peter, Marius Tevanu, Ruth Lamun, Urbain Damassing, Ernest Mera, Carmina Hakebihiu Niowenmal, Esther Benamie, Graem Carl Tarivuge, Magret Rose Aru Avock, Naileen Tavi, Naime Sawan, Regina Bumseng, Rosina Tubi, Jenny Malessy, Armelle Leymang, Carine Sese, Marie Patrick Massi Ragui, Masden Garaebiti, Albertine Lingban, Claudine Belbong, Diana Maleb, Elisabeth Kuras, Jean Yves Valivu, Letitia Manwo Kaloran, Marcelina Bathelemy, Marily Metmetsan, Marylene Therese Raupepe, Maryse Signo, Mireille Mestan, Myriam Lop, Pascaline Aham, Rene Tevanu, Rory Agnes, Vivian Rouvouna, Eugenie Nafiau Kuau, Alice Sanderson Tari, Apelle William, Astride Jacques, Bethel Banza Wells, Charley Tari, Dyren Arukelana, Elton Aru, Frisco Sebastien Lini, Helen Morea Garoleo, Jenny Wilson, Loise Bule Mabon Melve, Paute Nimissa, Robsen Mana, Shirofanua Floyed, Stuart Mario Williau, Yonel Nimbwen Yonel, Paul Poita, Samuel Sandy, Keith Silona, Donald Tom, Leiman Willie, Fince Benedick Mata, Morrison Avusa Segken, Stephanie James, Benson Talagh Raptgh, Hanson Mata Aru, Helen Daniel,



Jeannot Aptin Ankey, Maki Reuben, Noella Yona, Kalo Yona, Royson Yona, Marcie Eric, Moli Ben, Lina Naouga, Lency Yona, Willie Alick, Sabrina Turere, Jimmy Yona, Gideon Ben, Pita Keliu, Tom Jack, Henry Orah, Samson Kenneth, Barbra Noelline Thomas, Serona Roy, Charley Pakoa Carolyn, Norah Bouas, Joseph Kalo, Ronolea Benjame, Miguel Tarisup, Catherine Niowenmal, Fatima Buroro, Paul Ben, Edmond James Vurobaravu, Emory William, Fiona Ngwele, Ivana Tamata, John Konali, Joshua Moveth, Josianne Claire Woi Vire T, Markward Natu, Morine Lapsae, Charity Faith Ihu, Glenna Moli, Victoria Sandy Roslyn, Raella Malisa Raaia Sela. S., Roline Bihu, Rose Hinge, Vokarai Vanua, Kleton Albert Navat, Branson Garae, Dominique Mahuri Bruce, Keithson Fraser Tete, Kaloman George, Rayleen Joy Botleng, David Willie Tien, Sylveo Lamoukli, Jean Dominique, Rex Takatevi, Alison Paul, Patrick Gilu, Lauri Boe, Leonard Tari, Frederic Maeto, Joel Tabi, Paul Vuhu, Victor Novataliawke Korisa, Alex Jill Mala, Marie Omeliu Nasere, Melody Avock, Naser Tevanu, Graham Miller, Branson Gideon, Diallo Wabbak, Julianne Nevy, Arnaud Massingkon, Sylviane Paululum, Jessica Liwuslili, Laura Viraki, Eugenie Kavick, Germain Sam, Marie Antoineth, Voilet Joel, Fiona Mangue, Gertrude Ngwele Tugu, Alphine Jimmy, Theresina Maltaus, Pierrot Lesteour, Peter Jack, Asal Tino Buleban, Francois Tarivondo, Jerome Siom, Florence Kalpukai, Lysiane Meltetake, Francky Rouvone, Vorakes Baniuri, Judyson Ngwele, Joseph Kemuel, Delina Bosara, Jessica Patrice, Donna Bangtor, Lewia Waspre, Leinase Karpus, Shirley Bangtor, Lidia Maso, Jineth Homal, Klera Edwin, Judith Toa, Sonia Wilson, Linda Garae, Cassandra Dono, Salome Andrew, Kre William, Mary Ala, Elena Ulas, Luisa Paul, Leo Tasso, Cinderella Toa, Rodcheleen Morsen, Nadia Ameliu, Ludvine Marvir Lani, Leonie Bong, Rolline Enrel, Melinda Elton, Gratien Melteck, Betty Buleuru, Ernest Mera, Rodney Mansale, Silas Sese, Elsie Sese, Knox Tugu, Kamuel Diniwok, Joel Daniel, John Ken Hopkins, Fiona Grimound, Tapsi Ngwele Maeto, Emosi Pakoro, Yuen Vatu, Roselyn Fox Gaihala, Marie Tavirusimoli, Leonie Vuti, Patrick Ravo, Massosoh Lenny, Vatu Sandrine, Rite Ninie, Waback Florina, Molvido Christophe, Bomwel Niva, Kylie Helen Steplon, Janet Livo, Julie Johnny, Gloria Paul, Vombani Viramata, Valentine Teguebou, Esther Tal, Selvin Talo, Prescilla Ben, Lyly Jacob, Severine Micheal, Salome Garavi, Elisa Molirong, Simrai Shirley, Sabrina Taikwary, Leitora Jacob, Violette Edgar, Cedella Lesah Henry, Julie Walla Bematakasi, Fiona Nevy, Diana Kency, Anna Mabon Sue, Danella Tari, Susanna Palaud, Christian Lessa, Sandra George, Veronique Billy, Soksok Melucine, Cecile Matansus Kawol, Hubert Karu, Joyce Asero Nial, Jenifer Unity Lokai, Kathie George Morsel Kaot, Sale Baniuri, Joana Sumbeto, Rosana Rosbong, Marius Nelrove, Nelly Niala, Susan Varu, Sophie Seri, Jean Paul Vavaharu, Valerie Butacol, Rachel Naru, Michelline Arabela, Emelyn Manhe, Adline Nial, Besivon Hinge, Catsilenda Tomua, Michael Bebe Rob, Augustine Garavi, Joy Womak, Tom Willy Lae, Stephanie Karae, Evelyne Karae, Herve Kavick, Mauela Bong, Madalaine Livoholo, Madleine Zonarzuru, Noel Ruruely, Rose Olovela, Michael Lirohou, Zaza Guy, Annie Tanavusi, Marie Maliu, Maylin Wilson, Ronal Sava Levu, Lorres Ninisa, Merry Newman, Rebbecca Imbert, Judah Karae Voyamere, Sophia Sumbertori, Kylene Hinge, Clarissa Erevoke, Francis Reginalds Mera Aru, Benjamin Kombe, Didier Bila, Johnny Shem, Rebeake Tasi Paul, Gloria Luss, Denise Pisroi, Jinnifer Andrew Sewen, Roy Amon Kon, Raynold Vira, Leah Muhango Toa, Jean Daniel Matan, Mark Toanaure, Christophe Nauta, Gelinda Matan, Floyd Ravo, Valory Vogol, Tiffany Garae, Liviana Ligo, Lora Ser, Jean Alrua, Willien Sariseths, Sylvano Makali S, Lorin Tawi, Rex Tavi, Peter Kams Kaiar, Jean Marie Malvaru, Martha Hampel, Fabiola Nguen, Richard Samson Malsale, Jean Patrice Niowennmal, Nathan Daniel



Kali, Fathley Aleres, Leo Mermer, Auken Romassing, Frank Kenneth, Renesi Stephen, Nicholsen Garae Kapdum, Revanna Keke, Derickson Jacob, Timothy Mahit, Paveliani Malvirlani, Vinabit Paolo, Algiane Massingman, Anthony Tulili, Claire Marie Nalet, Cosette Arcknaveth, Dephine Kilteir, Edrico Malterong, Francois Sizai, Jean Baptiste Litenmai, Marietta Viteptir Lingsare, Obed Slee Albert, Rory Renie, Ruth Boas Noube, Slee Obed Francois, Sylvia Matansangul Malres, Wilson Willow Nguen, Marie Laure Marie Sagan, Claire Sewere, Albert Raptih, Estelio Bae, Firmin Namol, Francky Wollaerang, Geofroy Vianey, Jackson Hosea Josen, Jean Luk Sewere, Josiane Wari, Nathalie Nale, Willy Naguy, John K Kampai, Batick Bertrand, James Lose Laus, Hencely Kaum Tiwor, Melisa Terenabit, Joseph Joe Numaimemei, Richard Vakas, Caroline Sailas, Cynthia Bule, Lindong Amet, Claubert Emile Melteroh, George Nial Maltera, Darius Betsesai, Johnsey Rambey, Honore Enock, Elson Johnwell Jack Vakas, Emelyn Maltaus, Tamat Niptick, Etienne Maltaus, Nadine Bani, Laurent Donts Hugaisive, Giselda Basilio, Jack Lawac, Maria Molwait, Marie Louise Mirene Maltaus, Wilfred Tomo, Jemnion Johnny Antoine, Igrind Hirvir, Albert Laldam Bule, Olivier Bule, Daison Nari, Myriam Ware Williams, Clifford Siro, Stelin Leo, Jean Pierre Olul, Moses Sali Patrick, August Veronkes Louis, Erman Kaenbo, Louis Marie Sumptoh, Lucien Molves, Joseph Kalo, Norah Bus, Charley Pakoa Carolyne, Samuel Liben, Jonah Kerry, Guilain Harry, Diana Kota, Yan Manu, Aristide Malone, Celestine Tau Niere, Tom Brown Saute, Caroline Kasso, Namaha Takifu, Jelson Tawea, Moise Anita, Alexis Kapalu, Figo Loughman, Sawia Luk Stephen, Timothy Kawia, Mary Vira Iati, Ginette Yanimul, Harry Nakek Mulek, David Bill, Makoya Niagarum Ben, Samson Hiwa, Bob Sanga, Sergio Poita, Ian Iaruel, Jim Riando Iaukawai Kalua, Joel Nirua, Roger Hiwa Nalau, Sebastian Iarapia, Charley Kautea, John Selwin Garae, Blandine Lop, Lavinia Ligo, Lorah Ser, Harry Jimmy Moju, Marie Claire Voyate, Frida Velovu Raphael, Josiane Mauri Tieya, Lavinia Loveliu, Tari Pierre, Elina Vetavul Valivu, Dennis Livingston, Kalistar Pantutun, Lancelot Wotiemaro, Rayclerence Norvaglea W, Winistone Alice Vovei, Judith Meta Mol, Kensley Noah Bolengam Sophia Rodaraban Ray, Wilson Talo, John Fox Webas, Elsion Toswel Fred, Frazer Tuse Malcom, Esther Mera, Charles Vanler, Marie Hanson Towbah, Jean Marie Woleg, Louis John, Alice Savoa

