

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

Civil
Case No. 19/3355 SC/CIVL

BETWEEN: Nimrod Siosi
Claimant

AND: Air Vanuatu (Operations) Limited
Defendant

Date of Hearing: 19 May 2020
Before: Justice V.M. Trief
In Attendance: Claimant – Mr L.J. Napuati
Defendant – no appearance (Mr E. Nalyal)
Date of Decision: 25 May 2020

RESERVED JUDGMENT

A. Introduction

1. This matter proceeded as a formal proof hearing as the only step taken by the Defendant Air Vanuatu (Operations) Ltd ("Air Vanuatu") was the filing of Mr Nalyal's Notice of Beginning to Act on 11 December 2019. No Response or Defence has been filed.
2. Mr Siosi claims that Air Vanuatu's termination of his employment was unlawful pursuant to subss 50(3) and (4) of the *Employment Act* [CAP. 160] (the 'Act'). He also seeks an order that he be reinstated to his position as Whitegrass Airport Coordinator, and costs.

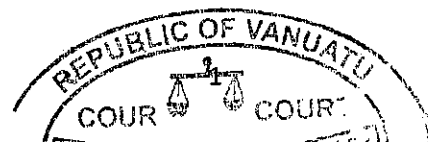
B. The Law

3. Section 50 of the Act, relevantly, provides:

50. (1) *In the case of a serious misconduct by an employee it shall be lawful for the employer to dismiss the employee without notice and without compensation in lieu of notice.*

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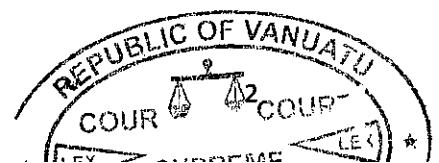
(3) *Dismissal for serious misconduct may take place only in cases where the employer cannot in good faith be expected to take any other course.*



- (4) *No employer shall dismiss an employee on the ground of serious misconduct unless he has given the employee an adequate opportunity to answer any charges made against him and any dismissal in contravention of this subsection shall be deemed to be an unjustified dismissal.*
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C. Evidence

4. Mr Siosi commenced employment with Air Vanuatu on 2 May 2016. On 27 September 2019, he became Whitegrass Airport Coordinator. This was a permanent full-time position on Tanna island. 15 employees directly report to this position.
5. On 28 November 2019, Mr Siosi received a letter from Reynold Boeson, Air Vanuatu's Manager Employee Services suspending his employment and outlining allegations against him. These were Mr Siosi's unauthorised borrowing of VT30,000 cash from sales, discrepancies in the sale of empty drums where the cash received had not been deposited into the bank for almost 8 months, refunding the cash on 27 November 2019, not being a role model for the staff he supervised, and acting in a dishonest and deceitful manner by not being upfront in notifying and cooperating with other managers. The letter refers to a meeting that day attended by Mr Siosi, Mr Boeson, the Manager Revenue Accounting Controller and General Manager Airports. Mr Boeson said he would arrange a full investigation that could take up to one week to complete and requested Mr Siosi's written response by 10am the following day.
6. Mr Boeson concluded his letter with, 'Dependent upon your written response and results of my investigation will determine what disciplinary action, if any, needs to be taken to address this matter...'
7. Mr Siosi responded in writing to Mr Boeson the next day. Mr Siosi stated that due to the pressure and stress from personal loans with three different credit providers, and a refusal from the company to assist him, he decided to borrow VT30,000 from the revenue generated from fuel drum sales. It was not from cash from sales, and he had paid it back. Mr Siosi said the discrepancies in the empty drum sales was easily explainable. Despite his requests, Tanna airport was not provided with petty cash therefore the cash from drum sales was used when needed particularly for payment of disrupted passengers' expenses. Mr Siosi said that the staff shortage at Whitegrass Airport meant the team was busy, which was one reason why he had not made time to sit with the new cashier to set up a procedure for all the revenue from drum sales to be directly deposited into the bank, and to compile a report for management's review. The previous cashier did not do as instructed to deposit all drum sales into the bank therefore the new cashier was facing difficulties in putting together a sales report based on past fuel drum sales.
8. At the formal proof hearing, Mr Siosi reiterated that he had not stolen any money from his employer. He said that he had told the cashier that he would borrow the money and then refund it, and he did so.
9. Mr Siosi had not received any information as to the outcome of the investigation when he was told by friends on Tanna on 4 December 2019 that Air Vanuatu had advertised his position in an Internal Staff Vacancy Notice. He called his manager Wottie Lobu who

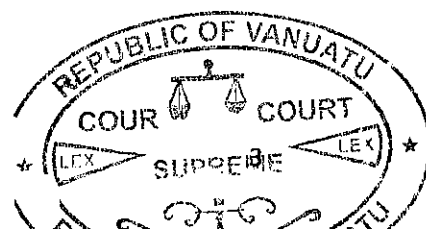


told him that his employment had already been terminated and to collect his termination letter. The letter was from Mr Boeson and dated 2 December 2019.

10. In the letter, Mr Boeson referred to Mr Siosi's use of VT30,000 of company money without authorisation. He stated that there was no lending system within Air Vanuatu and Mr Siosi had abused his position of trust and failed in his role to set the standards when he authorised the cashier to give him the cash for his personal use. Mr Boeson stated that through their internal investigation into the matter, they had concluded that Mr Siosi's conduct and behaviour, without any just cause or reason, was one of serious, gross and wilful misconduct. Therefore his employment was terminated with immediate effect.

D. Discussion

11. It is clear that Air Vanuatu terminated Mr Siosi's employment on the ground of serious misconduct. It may do so with immediate effect, pursuant to subs. 50(1) of the Act.
12. Was Mr Siosi given an adequate opportunity to answer the charges made against him in the letter dated 28 November 2019?
13. The letter dated 28 November 2019 refers to a meeting held that day that was attended by Mr Siosi, Mr Boeson, the Manager Revenue Accounting Controller and General Manager Airports. My reading of the letter is that that meeting was for the purpose of discussing the allegations against Mr Siosi that were subsequently outlined in the letter.
14. As set out above, Mr Siosi was asked to respond to the 28 November 2019 letter by 10am the next day. He did so in writing. Mr Siosi did not dispute whether the time given between the 28 November 2019 letter and his written response before 10am the next day was not an adequate opportunity. At the formal proof hearing, Mr Siosi did not advance any new information in answer to the charges against him not already covered by his written response. I am satisfied that Mr Siosi was given an adequate opportunity to answer the charges made against him as he put everything he wished to say in the 28 November 2019 meeting as well as in his 29 November 2019 written response. The claim under subs. 50(4) of the Act fails.
15. Was this a case where the employer could not in good faith be expected to take any other course?
16. Mr Siosi was employed as the Whitegrass Airport Coordinator. That position has 15 direct reports. It is obviously a senior position and one where he directly supervises 15 other employees. The termination letter states that Mr Siosi's borrowing of company monies was unauthorised and there is no lending system within Air Vanuatu. It is understandable then that Air Vanuatu took the view that Mr Siosi abused his position of trust, as a senior employee, in authorising a loan to himself for personal use and thus failing to act as a role model to the employees under his direct supervision.
17. In the circumstances, Mr Siosi has failed to prove that this was a case where Air Vanuatu could not in good faith be expected to take any other course.



E. Result and Decision

18. Mr Siosi is not entitled to the relief sought. The Claim is dismissed.

19. There is no order as to costs.

**DATED at Port Vila this 25th day of May 2020
BY THE COURT**

V.M. Trief
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V.M. Trief
Judge

