

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

**Civil**  
**Case No. 21/3889 SC/CIVL**

**BETWEEN: Dorosday Kenneth Watson**  
Claimant

**AND: Public Service Commission**  
Defendant

*Date of Trial:* 29 July 2022 & 18 August 2022

*Before:* Justice V.M. Trief

*In Attendance:* Claimant – Mr M. Hurley  
Defendant – Mr S. Aron

*Date of Decision:* 17 March 2023

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**JUDGMENT**

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A. Introduction

1. The Claimant Dorosday Kenneth Watson alleges unjustified termination of employment by the Public Service Commission (the 'PSC'). By the Claim, she seeks payment of outstanding employment entitlements, a multiplier pursuant to subs. 56(4) of the *Employment Act* [CAP. 160], interest and costs.
2. The Claim is opposed by the PSC on the basis that Ms Watson's employment was terminated on grounds of serious misconduct and that the PSC could not in good faith have been expected to take any other course.
3. This judgment determines the Claim.

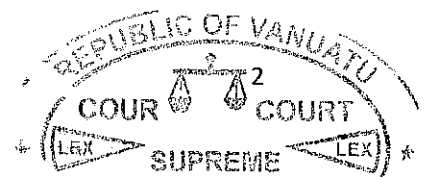
B. Background

4. On 15 November 2018, Ms Watson was appointed by the PSC as the Director General of the Ministry of Justice and Community Services ('MJCS') for a term of 4 years. She had served in the Public Service since 1987 and had previously served as Director of the



Department of Fisheries, as Director of the Department of Agriculture and Rural Development, and as Director of the Department of Women's Affairs ('DWA').

5. Pursuant to that appointment, Ms Watson and the PSC signed a written contract of employment in or about November 2018 (the 'Employment Contract').
6. On 30 July 2020, in his official speech marking the 40<sup>th</sup> anniversary of Vanuatu's Independence, the Prime Minister Bob Loughman Weibur announced that one of the Government's priorities was to create a new Ministry of Fisheries, Ocean and Maritime Affairs.
7. On 15 October 2020 at Lakatoro, Malekula, the Council of Ministers ('COM') made decision number 179 as follows:
  1. COM approve to restructure the Ministry of Justice & Community Services into a Ministry of Fisheries, Ocean & Maritime Affairs;
  2. COM note that the Hon. Prime Minister will appoint a Task Force to work on the restructuring and implementation of this policy direction 17.
8. Ms Watson sought and obtained Orders dated 27 November 2020 in *Watson v Republic of Vanuatu*; Judicial Review Case No. 3369 of 2020 ('JRC 20/3369') (initially numbered 20/1777) staying decision no. 179 pending the final determination of the claim for judicial review in that proceeding (the 'injunction').
9. By letter dated 1 December 2020 from the Hon. Minister of Justice and Community Services, Esmon Esai Saimon to the PSC, the Minister lodged a complaint about Ms Watson setting out the following allegations:
  1. COMPLAINT No. 1. REBELLING and WORKING AGAINST THE GOVERNMENT  
*The State Law advice dated 18 November 2020 is very clear in relation to the COM Decision 0179 and the DG, Justice and Community Services action in not respecting that legal advice and filing a case (Case No. 20/1777 SC/JUDR) against the government is rebellious and is not working in the interest of this current government.*
  2. COMPLAINT No. 2. TREASON  
*The Director General of Justice and Community Services action in actually filing a Case (Case No. 20/1777 SC/JUDR) without letting the Minister of Justice and Community Services, the taskforce and the Government know and with the court actually granting a Stay Order to prevent the implementation of the COM Decision No 0179 whilst working as a Public Servant within Government amounts to treason.*
  3. COMPLAINT No. 3. BREACHES OF PSC Act No 11 of 1998
    - i) *The Director General's action in not respecting and not committing herself towards her functions and duties including the implementation of the Government policies breaches section 20(a) of the PSC Act No 11 of 1998.*
    - ii) *The Director General's action breaches section 20(f) of the PSC Act No 11 of 1998, which relates to complying and observing the rule of law in public affairs.*
    - iii) *The Director General's action breaches section 20(i) of the PSC Act No 11 of 1998, which relates to supporting and achieving the collective interests of the Government.*



iv) *Section 20(d) of the PSC Act No 11 of 1998 is also breached in that she is acting against and not complying with the State Law advice which points out the Constitution and the Government Act forming the basis of the validity of the COM Decision 0179.*

10. By letter dated 3 December 2020, the PSC informed Ms Watson that her employment was suspended on full salary with immediate effect as a result of a letter of complaint to the PSC from Minister Saimon for reasons including that she sought and obtained the injunction. The suspension was made pursuant to Clause 2 of Schedule C of the Employment Contract:

2. *Based on the report of the Secretary, the Employer may immediately suspend the Employee and shall appoint an investigative panel to investigate the allegation.*

11. On 10 December 2020, the PSC appointed an investigative panel.

12. On 14 December 2020, Ms Watson filed the claim for judicial review in JRC 20/3369 seeking a declaration that COM decision no. 179 was made in breach of the provisions of the *Government Act* [CAP. 243] and was *ultra vires*; and a quashing order to quash the decision.

13. The investigative panel carried out its investigation into the allegations made against Ms Watson and produced its Investigation report on findings of the allegations lodged against Ms Watson.

14. On 26 January 2021, the PSC served Ms Watson a copy of the investigation report headed "Confidential Investigation Report" and the supporting material (the 'investigation report') and asked for her response.

15. By letter dated 2 February 2021, Ms Watson responded to the 8 findings against her in the investigation report and included numerous supporting attachments.

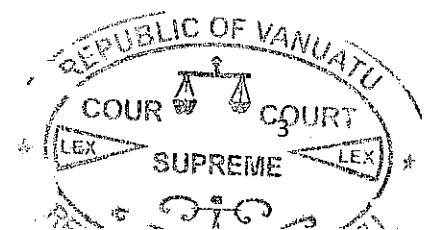
16. On 18 February 2021, the PSC, concluded that the allegations amounted to serious misconduct and that Ms Watson would likely be dismissed for serious misconduct.

17. By letter dated 18 February 2021, the PSC advised Ms Watson that having considered the complaint and the investigation report and her letter dated 2 February 2021:

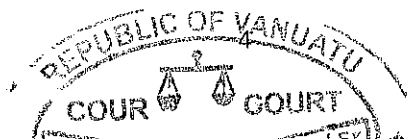
a) by virtue of s. 29(1) of the PS Act, the PSC resolved at its meeting No. 05 of 2021 held on 18 February 2021 to dismiss her from her position of the Director General of the MJCS;

b) however, in accordance with its duty to act as a good employer under s. 15 of the PS Act and noting the principles of natural justice, the PSC was giving her a period of 14 days as an adequate opportunity to give reasons as to why the PSC should not terminate her from service as required by subss 50(3) and (4) of the *Employment Act* [CAP. 160].

18. By letter dated 1 March 2021, Ms Watson responded to the PSC setting out her reasons pursuant to subs. 50(3) of the *Employment Act* why her employment should not be terminated.



19. Also by letter dated 1 March 2021, the PSC advised Ms Watson that at its meeting No. 06 of 2021 on Tuesday 2 March 2021, Decision No. 32, it had endorsed her 2019 Performance Agreement. In reliance on clause 23.4 of her contract, Ms Watson's performance for 2019 was assessed as being "*of very satisfactory performance*" and therefore she was rewarded by way of salary increment, subject to the availability of funding from the MJCS budget.
20. By judgment as to Rule 17.8(3) matters dated 2 March 2021 in JRC 20/3369, this Court held at [10] that for the following reasons, Ms Watson had an arguable case in relation to alleged breaches of subs 13(5) and (6) and 15(1)-(3) of the *Government Act* thus satisfying the requirement in rule 17.8(3)(a) of the *Civil Procedure Rules* ('CPR'):
- a) The Defendant's sworn statements of August Letlet, Arnold Kiel Loughman, Esmon Esai Saimon and Gregoire Nimblik did not contain any evidence that subs. 13(5) of the *Government Act* has been complied with;
  - b) The Defendant's sworn statements did not contain evidence that the first political advisor of the Prime Minister's Office (the Ministry which sponsored the submission or paper for the COM Decision) had approved the submission or paper for the COM Decision – subs. 13(6) of the *Government Act*;
  - c) On the Attorney General Arnold Kiel Loughman's own evidence, subs. 15(1) of the *Government Act* was complied with in that he gave verbal advice to the Council of Ministers, however not subs. 15(3) as his advice was given at the Council's meeting, not *before* the Council met;
  - d) Taking the Director General of the Ministry of Finance and Economic Management ('MFEM') August Letlet's evidence at the highest, he gave verbal advice to the DCO meeting. However, there was no evidence that the Council of Ministers had available to it the Director General's advice before it met – subs 15(2) and (3) of the *Government Act*; and
  - e) The Defendant's sworn statements did not contain evidence that Ms Watson as an affected person, namely the Director General of the MJCS, was informed of the DCO submission prior to 13 October 2020.
21. At [16] of that judgment, I stated as follows:
16. *This matter is concerned only with reviewing the process by which the decision under challenge was made. It is open to the Defendant at any time to revoke the decision for its non-compliance with the requisite process, and make a new decision in accordance with the provisions of the Government Act.*
22. JRC 20/3369 did not proceed to final court determination because on 1 April 2021, the COM revoked the subject decision (COM decision no. 179).
23. In the meantime, the PSC Recruitment Submission Paper dated 17 March 2021 by Mr Melteres, Acting Secretary of the PSC recommended that Ms Watson be transferred to another position within the Public Service at the same salary level to complete the remaining 3 years duration of her contract.
24. By letter dated 18 March 2021, the PSC informed Ms Watson that at the PSC meeting No. 07 of 18 March 2021 the PSC was not satisfied with her responses by letter dated



1 March 2021 and that the PSC had resolved that she had committed serious misconduct due to breaches of paras 20(1)(a), (d) and (i) and s. 34 of the PS Act and cl. 4.1.1 of the Employment Contract and terminated her contract of employment pursuant to para. 17C(a) and subs. 29(1) of the PS Act and clause 24.1 of the Employment Contract. The letter stated as follows:

*... the Commission resolved that you have committed serious misconduct and terminates your contract of employment pursuant to section 29(1) and section 17C(a) of the Public Service Act [CAP 246] and clause 24.1 of your Employment Contract for the following reasons:*

1. *You have breached sections 20(1)(a) (d) and (i) of the Public Service Act [CAP 246] as the Director General of the Ministry of Justice and Community Service when you demonstrated your intention against the implementation of the government policy through COM Decision No. 0179 to restructure the Ministry of Justice and Community Services to the Ministry of Fisheries & Ocean Affairs. This is evident when you filed a Judicial Review Claim Case No. 20/1777 in the Supreme Court against the Republic of Vanuatu even though the State Law Office advice dated 18 November 2020 on this matter, the Attorney General had advised that the COM Decision to restructure the MOJCS is not in breach of the Constitution and falls within the responsibility of the COM as per the Government Act. Your action is a clear breach of Clause 4.1 (4.1.1) of your Contract of Employment which requires you to comply with sections 20 and 34 of the Public Service Act [CAP 246].*

*(my emphasis)*

25. Clauses 4.1.1 and 24.1 of the Employment Contract provide as follows:

4.1 *The Employee must punctually, diligently and to the best of his skill and ability perform, carry out and be responsible for all these duties, functions, responsibilities and powers provided in:*

4.1.1 *Sections 20 and 34 of the Public Service Act [CAP 246] (Amended).*

...

24.1 *The Employer may terminate this Contract on the grounds set out under section 17C of the Public Service Act [CAP 246] (Amended).*

### C. Pleadings and Evidence

26. Ms Watson's case is that the facts, matters and circumstances giving rise to the PSC's decision to terminate Ms Watson's employment are not grounds for the termination of Ms Watson's employment for serious misconduct for the following reasons:

- a) contrary to the PSC's assertion, she did not breach paras 20(1)(a), (d) or (i) of the PS Act by her filing of judicial review claim given that evidence filed in that case demonstrated breaches of the *Government Act* [CAP. 243], found on a *prima facie* basis in this Court's judgment as to rule 17.8(3) matters dated 2 March 2021; and
- b) contrary to the PSC's assertion, Ms Watson did not breach clause 4.1.1 of the Employment Contract.

27. Further, in any event, even if there were grounds for Ms Watson's serious misconduct (which is denied), by reason of subs. 50(3) of the *Employment Act*, the PSC failed to act in



- good faith when it could have and should have taken another course other than to terminate Ms Watson's employment.
28. The relief sought is payment of outstanding employment entitlements, a multiplier pursuant to subs. 56(4) of the *Employment Act* [CAP. 160], interest and costs.
  29. The Claim is opposed by the PSC. It alleges that Ms Watson's employment was terminated on grounds of serious misconduct and that the PSC could not in good faith have been expected to take any other course.
  30. The issues between the parties are as follows:
    - a) Were the grounds for Ms Watson's termination of employment of serious misconduct? [**Issue 1**]
    - b) If yes, whether or not the PSC breached subs. 50(3) of the *Employment Act*? [**Issue 2**]
    - c) If there was unjustified termination of employment, what relief is Ms Watson entitled to? [**Issue 3**]
  31. Each party filed one sworn statement. Ms Watson relied on her sworn statement filed on 12 May 2022 [**Exhibit C1**] and the PSC relied on the Sworn statement of James Melteres, Secretary of the PSC filed on 20 June 2022 [**Exhibit D1**].
  32. Ms Watson gave *viva voce* evidence in chief that she has not worked since she was terminated by the PSC.
  33. In cross-examination, Ms Watson stated that she did not have any issue with the Government policy to restructure the MJCS – her concern was that the process provided by the *Government Act* was not followed in the making of COM decision no. 179. She voiced her concern at the first Task Force meeting on 2 November 2020 including that the Task Force was about to implement a decision which was made without following the process in the *Government Act*. The Attorney General's advice dated 18 November 2020 did not address her concern and she did not seek further advice from the State Law Office as she considered that it had a conflict of interest in relation to the COM decision.
  34. She stated that her belief was that such a major decision as the restructuring of the MJCS should allow for consultation so that the Government is well-informed about citizens' understanding of services that they are currently enjoying and for their participation in the decision to inform Government.
  35. Ms Watson stated that at the meeting on 12 November 2020, she informed the Minister and the First Political Advisor that she would seek legal review in Court as to whether or not the process under the *Government Act* had been complied with. She did not recall the Minister strongly advising her not to pursue any case in court as was set out in the Minister's letter of complaint dated 1 December 2020.
  36. Mr Melteres stated that he became the Secretary of the PSC in February 2022. The Secretary of the PSC does not have the right to vote at a PSC meeting. He will present the



submission papers that have been prepared and put forward the recommendations in the submissions, then the PSC members consider the submissions, deliberate and make the final decision. He presented the PSC submission paper dated 17 March 2021 [**attachment "JM10", Exhibit D1**] to the PSC at its meeting the next day, and the PSC made its unanimous decision on 18 March 2021 having had the benefit of the "**JM10**" submission paper.

37. I considered both Ms Watson and Mr Melteres to be accurate and credible witnesses. I accepted their evidence.
38. The PSC did not file any evidence challenging Ms Watson's evidence of her loss and damages.

D. The Law

39. Section 50 of the *Employment Act* [CAP. 160], relevantly, provides as follows:

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.*

...

(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.*

...

40. Subsection 55(2) of the *Employment Act* provides as follows:

55. ...

(2) *An employee shall not be entitled to severance allowance if he is dismissed for serious misconduct as provided in section 50.*

41. Subsection 56(4) of the *Employment Act* provides as follows:

56. ...

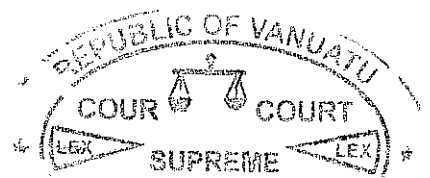
(4) *The court shall, where it finds that the termination of the employment of an employee was unjustified, order that he be paid a sum up to 6 times the amount of severance allowance specified in subsection (2).*

42. Subsections 15(1) and (2) of the PS Act provide as follows:

15. (1) *It shall be the duty of each member of the Commission to ensure that the Commission shall, in the performance of its functions, responsibilities and duties, be a good employer.*

(2) *The Commission shall as a good employer:*

(a) *ensure the fair and proper treatment of employees in all aspects of their employment; and*



- (b) *require the selection of persons for appointments and promotion to be based upon merit; and*
- (c) *promote good and safe working conditions; and*
- (d) *encourage the enhancement of the abilities of individual employees; and*
- (e) *promote and encourage an equal opportunities programme; and*
- (f) *abide by the principles set out in section 4.*

43. Section 17 of the PS Act provides as follows:

17. *All appointments, promotions, disciplinary matters, and terminations in respect of the Public Service must be made in accordance with this Act.*

44. Section 17C of the PS Act provides as follows:

17C. *A director-general may be terminated by the Commission on any of the following grounds:*

- (a) *serious misconduct as defined in the Staff Manual; or*
- (b) *on account of physical or mental incapacity to carry out his or her official duties efficiently; or*
- (c) *incompetence as shown in the performance appraisal carried out by the Commission; or*
- (d) *neglect of duty; or*
- (e) *bankruptcy; or*
- (f) *becomes a member of Parliament, Local Government Council, National Council of Chiefs, Municipal Council, or a member of the Public Service Commission, Police Service Commission or Teaching Service Commission.*

45. Paragraphs 20(1)(a), (d) and (i) of the PS Act provide as follows:

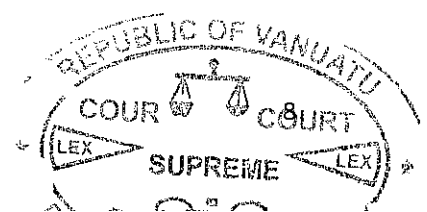
20. *A director-general is to be responsible to the appropriate minister for:*

- (a) *carrying out the functions and duties of the ministry including the implementation of Government policies; and*
- ...
- (d) *complying with obligations under any enactment pertaining to the functions of his or her ministry; and*
- ...
- (i) *supporting and achieving the collective interests of Government.*

46. Section 29 of the PS Act provides as follows:

29. (1) *The Commission may dismiss an employee at any time for serious misconduct or inability but subject to its obligations to act as a good employer.*

(1A) *If the Commission dismisses an employee under subsection (1), the matter is not to be referred to the Board for hearing and determined under section 37.*





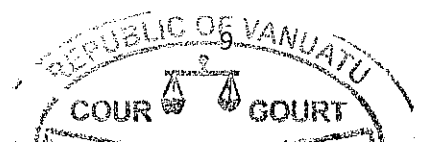
- (2) *The Commission may where the past performance of the employee has been exemplary provide to the employee a redundancy payment as if his or her employment had been terminated under the Employment Act [Cap. 160].*

47. Section 34 of the PS Act provides as follows:

34. (1) *Every employee, director-general, director or senior administrator (as the case may be), must in the course of his or her employment in the Public Service: –*
- (a) *comply with generally accepted behaviour in the conduct of his or her employment; and*
  - (b) *comply with any reasonable direction given by a director-general, director or the Commission; and*
  - (c) *behave honestly and with integrity; and*
  - (d) *act with care and diligence; and*
  - (e) *treat everyone with respect and courtesy and without coercion or harassment of any kind; and*
  - (f) *observe and comply with all applicable laws;*
  - (g) *comply with all lawful and reasonable directions given by someone employed in the ministry for which the employee works and who has authority to give the direction; and*
  - (h) *maintain confidentiality about dealings that the employee has with any minister or members of staff of a ministry; and*
  - (i) *disclose and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with his or her employment; and*
  - (j) *use resources and public money in a lawful and proper manner; and*
  - (k) *not provide false or misleading information in response to a request for information; and*
  - (l) *not make improper use of information or his or her duty, status, power or authority in order to gain or seek to gain a benefit or advantage for himself or herself or for any other person, and*
  - (m) *comply with any other requirements imposed by this or any other Act, regulation or instruction.*

E. Discussion

48. In the case of serious misconduct, the employer may dismiss the employee with immediate effect pursuant to subs. 50(1) of the *Employment Act* and subs. 29(1) of the PS Act.
49. Mr Hurley submitted that this was a straightforward case of unjustified termination of employment for the following reasons:
- a) Ms Watson's principal argument is that contrary to the findings of the PSC, she was not guilty of the serious misconduct charges; and
  - b) Secondly, even if there were grounds for serious misconduct (which is denied), by reason of subs. 50(3) of the *Employment Act*, the PSC failed to act in good



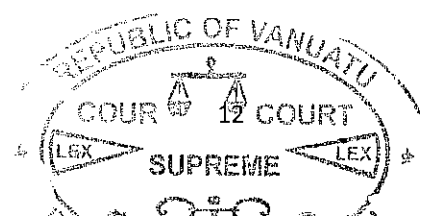
faith when it could have and should have taken another course other than to terminate Ms Watson's employment.

50. The employer PSC bears the onus of proving the allegations of serious misconduct: *Government of Vanuatu v Mathias* [2006] VUCA 7.
51. The PSC's submission was that Ms Watson was required to implement Government policy in the form of COM decision no. 179 (the 'subject decision') hence by filing her judicial review claim, she frustrated the implementation of the Government policy to restructure the MJCS into a Ministry of Fisheries and Ocean Affairs and acted against Government's collective interests. This was submitted to be serious misconduct.
52. Mr Aron also submitted that even though it was a single instance, from the PSC's perspective, it was misbehaviour that affected the whole performance of the Employment Contract hence the PSC's only course was dismissal for serious misconduct.
53. The PSC letter dated 18 March 2021 referred in part to Ms Watson filing the judicial review case even though the Attorney General had given his advice dated 18 November 2020. As Ms Watson correctly pointed out in cross-examination, that advice was not concerned with whether or not the process of making COM decision no. 179 complied with the provisions of the *Government Act*. It was concerned with an entirely different question which the Attorney General answered by advising that the COM decision to restructure the MJCS did not breach of the Constitution and fell within COM's responsibilities as per the *Government Act*. Accordingly, this ground for Ms Watson's termination of employment was not serious misconduct.
54. The balance of the PSC's findings of serious misconduct boil down to the singular ground that by filing JRC 20/3369, Ms Watson demonstrated her intention against the implementation of the Government policy through COM decision no. 179 to restructure the MJCS into a Ministry of Fisheries and Ocean Affairs and breached her principal responsibilities prescribed in paras 20(1)(a), (d) and (i) and s. 34 of the PS Act. This was also stated to constitute breach of clause 4.1.1 of the Employment Contract.
55. COM decision no. 179 was an expression of the Government's policy to restructure the MJCS into a Ministry of Fisheries and Ocean Affairs. This policy had been earlier announced by the Prime Minister in his 40<sup>th</sup> Independence anniversary speech.
56. In JRC 20/3369, Ms Watson sought the following orders:
  - a) A declaration that the Defendant's decision of 15 October 2020 through its COM decision no. 179 regarding the re-structure of the MJCS into a Ministry of Fisheries, Ocean & Maritime Affairs was made in breach of the provisions of the *Government Act* and is *ultra vires*; and
  - b) A quashing order to quash COM decision no. 179.
57. Judicial review proceedings are concerned only with the process by which a decision was made. JRC 20/3369 was brought for the Court to review the process by which COM decision no. 179 was made. If it was found to have been made in accordance with the process set out in the *Government Act*, it would be declared lawful. If not, it would be declared unlawful and quashed.

58. A judicial review case is not concerned with the merits or substance of the decision (here, the Government policy to restructure the MJCS into a Ministry of Fisheries and Ocean Affairs) which is wholly for the Government to decide. All the Court is concerned with is reviewing the process by which the subject decision was made. This is an example of the separation of powers principle in practice.
59. It is open to the decision-maker at any time to remedy errors in the decision-making process by revoking the subject decision and making a new decision (which can be in exactly the same terms as the previous decision) in accordance with the provisions of the *Government Act*.
60. After the claim, defence and sworn statements have been filed in a judicial review case, the Court must call a Rule 17.8 Conference and satisfy itself of the matters set out in Rule 17.8(3) of the CPR. If satisfied, it will list the claim for hearing.
61. In my judgment as to Rule 17.8(3) matters in JRC 20/3369 dated 2 March 2021 at [10], I held that Ms Watson had an arguable case as on the State's own evidence, there was non-compliance with the requirements of the *Government Act*.
62. In addition, the rationale for the various checks and balances prescribed by the *Government Act* can be accepted as being the need to ensure discussion and consultation before the COM deliberates and decides. As Ms Watson stated during cross-examination, the subject matter of the decision dictated that there should be consultation before such an important decision was made by the COM. She was not informed of the submission that would result in COM decision no. 179 prior to the Developmental Committee of Officials meeting on 13 October 2020.
63. Paragraph 81 of the PSC's closing submissions filed on 10 August 2022 stated as follows:
81. ... Whilst it can be accepted that the COM decision was made without prior advice on the financial implication and legal advice from the Attorney General as required under the *Government Act*, however, in applying a reasonable approach such as achieving and supporting the collective interest of the Government [subs. 20(1)(i) of the PS Act], if the Claimant had cooperated with the Honourable Minister to get legal advice from the Attorney General and the advice on the financial implication on the Policy (which she did not) **at a later date** (after the COM decision was made), will not harm the substance of the *Government policy*.
64. Paragraph 81 of the PSC's submissions contains a direct admission of the State's non-compliance with the provisions of the *Government Act* requiring prior legal advice from the Attorney General and prior advice from the MFEM Director General as to the financial implications. It is not a trivial matter that the State now admits that it did not comply with the *Government Act* in the making of COM decision no. 179.
65. It was also submitted in para. 81 of the PSC's submissions that the substance of the Government policy would not be harmed if Ms Watson had cooperated with the Minister to get the Attorney General and the MFEM Director General's advice at a later date (that is, after the COM decision had been made). First, Ms Watson's concern as to the breaches of the *Government Act* did not relate to the substance of the Government policy so there was no question of that being harmed. Secondly, even if the Attorney General and MFEM

Director General's advice were obtained at a later date, that could not remedy the various breaches of the *Government Act* already committed. The submission is devoid of merit.

66. Mr Aron also made submissions to the effect that the non-compliance with the requirements of the *Government Act* was an administrative procedure which could have been resolved internally within the scope of the existing employer and employee relationship. However, once the requirements of the *Government Act* had been breached, nothing that could be done administratively after that could remedy those breaches. Those submissions were also devoid of merit.
67. In addition to the admitted breaches of subss 15(2) and (3) of the *Government Act*, the State's evidence filed in JRC 20/3369 did not show any compliance with subss 13(5) and (6) of the Act.
68. It is a serious matter for the State as a model litigant to disregard the requirements of an Act of Parliament. On its own evidence in JRC 20/3369, the State had not complied with provisions of the *Government Act*. The State now admits that it breached its own legislation in the form of the *Government Act*. Neither is a trivial matter. It is incumbent on the State to comply with the laws of the Republic as it similarly expects the people of the Republic to comply with the law.
69. Soon after the judgment as to Rule 17.8(3) matters, on 1 April 2021, the COM revoked decision no. 179.
70. Mr Hurley submitted that there seems little doubt that if it had not been for Ms Watson's claim for judicial review, COM decision no. 179 would not have been revoked even though the Republic was in breach of numerous provisions of the *Government Act*.
71. Mr Aron candidly stated that the Rule 17.8 judgment led to COM revoking decision no. 179.
72. Mr Aron invited the Court to infer that as the COM had revoked decision no. 179 as a result of JRC 20/3369, that if Ms Watson had told the Minister at their 12 November 2020 meeting of her exact concerns with the decision-making process, that the Minister would have spoken with the Prime Minister and COM would have revoked the decision between 12-27 November 2020 (when the JRC was filed).
73. Mr Aron's submission flew in the face of Ms Watson's evidence in cross-examination which was that at the meeting on 12 November 2020, she informed the Minister and the First Political Advisor that she would seek legal review in Court as to whether or not the process under the *Government Act* had been complied with. Accordingly, there was no evidential basis for the submission.
74. Further, considering that all matters in JRC 20/3369 were denied and contested right up to the Rule 17.8 Conference, such an inference is quite simply unavailable.
75. In the circumstances, I accept that if it had not been for Ms Watson's judicial review claim, COM decision no. 179 would not have been revoked, even though the State was in breach of numerous provisions of the *Government Act*.



76. Ms Watson's concern throughout her claim for judicial review and the PSC investigation that led to the termination of her employment was that the process provided by the *Government Act* was not followed in the making of COM decision no. 179. She repeatedly confirmed this in cross-examination.
77. Unfortunately, on 18 March 2021, the PSC wrongly interpreted Ms Watson's action of bringing the judicial review case as demonstrating her intention against the implementation of government policy through COM decision no. 179.
78. At no time did Ms Watson ever demonstrate such intention. Her concern was that the process provided by the *Government Act* was not followed in the making of COM decision no. 179.
79. Ms Watson made that plain in her letter to the PSC dated 2 February 2021 in response to the findings against her set out in the PSC's investigation report, served on her on 26 January 2021. For example, in response to finding 1 (alleged violations of paras 20(1)(a) and (i) of the PS Act), she stated as follows:

*My intention in seeking the judicial review of the COM Decision No. 0179 was to ensure that the legal processes as stipulated under Government Act in implementing the Government Policy direction has been followed through. The COM Decision No. 0179 to restructure the Ministry of Justice and Community Services to the Ministry of Fisheries and Ocean Affairs did not follow the legal processes of developing a COM paper for the COM decision... [the breaches of the Government Act were then enumerated].*

80. In her same response dated 2 February 2021, responding to finding 5 (alleged violation of s. 34 of the PS Act), Ms Watson stated as follows:

*I disagree with this finding. This finding is similar to finding #1. My intention of seeking the judicial review of the COM decision was to support the Government decision and ensure that the COM decision was in full compliance with the Government Act as pointed under Point 1 of my responses. **It was not my intention to work against the Government.** It is also part of my Principal responsibility under the Public Service Act of 1998 Section 20, subsection (f) and that is to ensure that my responsibility as a DG that I comply with and observe the rule of law in public affairs.*

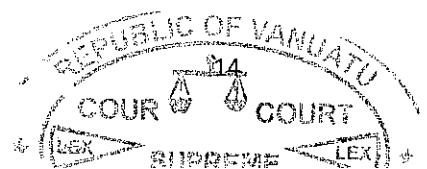
81. Ms Watson had a principal responsibility under para. 20(1)(f) of the PS Act to comply with and observe the rule of law in public affairs. Further, she was obliged under para. 34(1)(f) of the PS Act to observe and comply with all applicable laws.
82. Ms Watson acted in accordance with her obligations as a director-general and a public servant to raise the alarm about breaches of the *Government Act* in the making of COM decision no. 179. She discharged her principal responsibility under para. 20(1)(f) of the PS Act and her obligation under para. 34(1)(f) of the PS Act by filing her claim for judicial review in JRC 20/3369.
83. There was no other remedy besides filing the claim in JRC 20/3369 available to Ms Watson. I had held as much at para. 13 of the judgment as to Rule 17.8(3) matters in JRC 20/3369 dated 2 March 2021:

13. *I am satisfied that there is no other available remedy which resolves the matter fully and directly. I reject Mr Aron's submission that the Task Force appointed pursuant to the COM Decision should be left to complete its task before Ms Watson seeks any remedy from the*

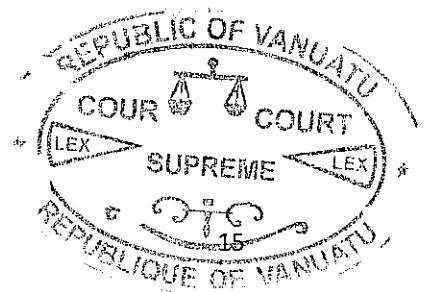


*Court. As I stated in my Minute and Orders dated 27 November 2020, the Task Force was scheduled to meet on 1 December 2020, with a timeframe to complete its task before the Christmas holidays therefore orders were made to maintain the status quo rather than have events occur before the outcome of this matter is known that cannot be later unwound. The Claim alleges breaches of the Act. That is not a matter that the Task Force has been tasked to look into; Ms Watson's only available remedy to resolve that is judicial review.*

84. Now to the provisions of the PS Act that the PSC contended that Ms Watson breached.
85. A director-general's principal responsibilities as set out in s. 20 of the PS Act are owed to the appropriate minister and include to carry out the functions and duties of the ministry including the implementation of Government policies (para. 20(1)(a)).
86. However, it cannot be and it is not the law that a Director General, such as Ms Watson, must implement Government policy if the Government failed to adopt the correct procedures, including under the *Government Act*, to make the subject decision.
87. Additionally, on 18 March 2021, no final court determination had been made in JRC 20/3369 that COM decision no. 179 was lawful. Accordingly, there was not yet any obligation on Ms Watson to implement that decision as its lawfulness had not yet been determined. Further, by the injunction obtained on 27 November 2020, the decision had been stayed pending final determination of the judicial review claim with the same result that there was not yet an obligation on Ms Watson to implement that decision.
88. Another principal responsibility of a director-general is to comply with obligations under any enactment pertaining to the functions of his or her ministry (para. 20(1)(d), PS Act). That responsibility of a director-general includes ensuring compliance with the provisions of the *Government Act* in the making of a decision applicable to his or her ministry.
89. Likewise, a director-general's principal responsibility under para. 20(1)(i) of the PS Act of supporting and achieving the collective interests of Government must include ensuring that the Government complies with legislation including the *Government Act*.
90. The State, like any other person, can err in its decision-making. The responsible thing to do is to fix the error. However, taking the step of penalising the Director General who spoke up to query the error offends the norms of good government and with respect, displayed a fundamental misunderstanding (including by the State's lawyers) by equating concerns about a decision-making process with concerns about the substance of the subject decision.
91. The PSC's actions essentially punished a 'whistle-blower' and its defence in this case in effect asked the Court to condone the State's breaches of the law of the Republic and its actions penalising the senior public servant who had raised concerns about those breaches. It does not behove the State to have run such a case.
92. It took courage for Ms Watson to stand up and file her claim for judicial review for the sole purpose of ensuring that the relevant provisions of the *Government Act* were respected. Ms Watson has paid a high price for her courage, suffering the ignomy of losing her employment notwithstanding that she was a long standing and respected public servant.



93. For the reasons given, I find that the facts, matters and circumstances giving rise to the PSC's decision to terminate Ms Watson's employment were not grounds of serious misconduct and she did not commit any breach of paras 20(1)(a), (d) or (i) or s. 34 of the PS Act or clause 4.1.1. of the Employment Contract.
94. I answer **Issue 1** in the negative.
95. Accordingly, the PSC has failed to discharge its onus to prove that Ms Watson was guilty of serious misconduct.
96. It follows that Ms Watson's termination of employment on the ground of serious misconduct was unjustified. She has proved the Claim on the balance of probabilities.
97. As there was no serious misconduct, **Issue 2** does not arise for consideration.
98. However, if I am wrong on that and there was serious misconduct, on the PSC's own evidence, there was another course open to the PSC as was recommended in its own submission paper dated 17 March 2021 [**attachment "JM10", Exhibit D1**]. That other course was for Ms Watson to be transferred to another position at the same salary level to complete the remaining 3 years duration of her contract. The recommendations in that submission paper did not expressly include termination.
99. There was no evidence that Ms Watson could not be transferred to another position.
100. There was also no evidence from any member of the PSC why they did not consider or why they rejected transfer to another position as an option.
101. In her detailed letter dated 1 March 2021, Ms Watson under 7 sub-headings set out her main reasons why she considered that she should not be dismissed.
102. If I had to give an answer to **Issue 2**, for the reasons given, it would be that, "**Yes**, the PSC breached subs. 50(3) of the *Employment Act* as it failed to act in good faith when it could have and should have taken another course than to terminate Ms Watson's employment".
103. Given the unjustified termination of Ms Watson's employment, I now consider **Issue 3** – what relief she is entitled to.
104. By the Claim, Ms Watson seeks payment of the following outstanding entitlements, a multiplier pursuant to subs. 56(4) of the *Employment Act*, interest and costs:
- a) Remuneration;
  - b) Annual leave;
  - c) Domestic travel;
  - d) Mileage;
  - e) Accommodation;
  - f) Establishment allowance;



- g) Other expenses;
  - h) VNPF contribution; and
  - i) End of contract entitlements.
105. Ms Watson's evidence as to her loss and damages was set out in her sworn statement [**Exhibit C1**]. The PSC has not filed evidence contesting Ms Watson's evidence of her loss and damage.

#### *Remuneration*

106. Ms Watson seeks payment of her remaining salary for 2021 (VT3,673,280) and for 2022 (VT5,235,440) totalling VT8,908,720. This is not contested. I will so order.
107. She also interpreted the PSC's letter dated 1 March 2021 [**pp 163-164 of DKW-2, Exhibit C1**] endorsing her 2019 Performance Agreement that she be given a salary increment of DG 2.2 as being applicable to the starting date of her contract of employment. Mr Hurley invited the Court to adopt the same interpretation and to allow her claim of VT1,422,984.
108. However, the PSC letter does not expressly state that the salary increment will be retrospective. Accordingly, it must be taken to apply from 1 March 2021. Ms Watson is therefore entitled to salary increment of VT14,079 per pay period for 20 pay periods in 2021 (VT281,580) and 22 pay periods in 2022 (VT309,738) totalling VT591,318. I will so order.

#### *Annual leave*

109. Ms Watson's claim for annual leave for 2022 of 21 days in the amount of VT513,450 was accepted at para. 103 of the PSC's submissions. I will so order.

#### *Domestic travel*

110. This aspect of the claim is made pursuant to clause 9 of the Employment Contract which provides as follows:

9.1 *The Employee is entitled to Family Leave and Compassionate Leave at the rate specified in the Manual.*

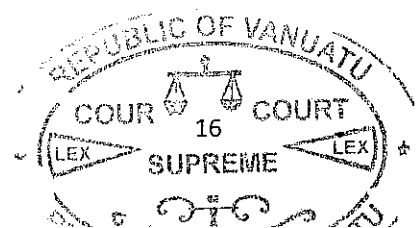
111. Clauses 6.7 and 6.8 of the Public Service Staff Manual ('PSSM') provide as follows:

6.7 **Family leave**

(a) *Upon application using the prescribed form (PSC FORM 4-10), a permanent officer shall be entitled to two days family leave on full salary and a temporary salaried employee and daily rated worker one day's family leave on full salary on the occasion of his or her marriage.*

(b) *Upon application using the prescribed form, a male staff member shall be entitled to one day family leave on full salary on the occasion of the birth of his child.*

6.8 **Compassionate Leave**





- (a) Upon application using the prescribed form (**PSC FORM 4-10**), on the occasion of death of his or her relatives, a permanent officer shall be entitled to Compassionate Leave on full salary for:
- (i) 10 calendar days on the death of parent, child, brother or sister and husband or wife.
  - (ii) 1 calendar day, at the discretion of a Director of Department on the death of other close relatives.
- (b) Upon application using the prescribed form (**PSC FORM 4-10**), temporary salaried employees and daily rated workers shall be entitled to two days Compassionate Leave on full salary following the death of a parent, child, brother or sister and husband or wife of the worker.

112. Clauses 6.7 and 6.8 of the PSSM do not provide for the reimbursement of transport costs in relation to family leave or compassionate leave.

113. Clause 6.1(h) of the PSSM provides as follows:

**6.1 Annual vacation leave**

- (h) A permanent officer taking annual leave shall be entitled to be reimbursed for 75% of the cost for transport for his or her immediate family (with a limit of up to four dependent children once every year to the officer's, or his or her partner's/spouse's home island. (For the purposes of the entitlement, the officer of the VPS must undertake the travel and Home Island is limited to islands of Vanuatu.) (use **PSC FORM 4-11** to claim).

...

*This cost shall not be paid in advance, but only upon the officer's return to work and on the production of the receipts/tickets for the transport.*

114. As 75% reimbursement of transport cost only applies to annual leave pursuant to clause 6.1(h) of the PSSM, this aspect of the claim is misconceived. It is disallowed.

### *Mileage*

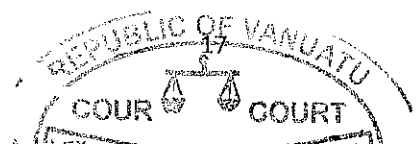
115. This aspect of the claim is made pursuant to clause 10 of the Employment Contract which provides as follows:

- 10.1 *The Employer may allocate a Government vehicle to the Employee to be utilised by the Employee for the duration of this Contract.*
- 10.2 *Where the Government vehicle is damaged by the Employee, the Employee must be wholly responsible for repairing the vehicle. The costs for repairing the Government vehicle will be deducted from the Employee's salary.*

116. There is no provision for mileage allowance in clause 10 or elsewhere in the Employment Contract. The Court is unaware of any provision for mileage allowance in the PSSM. This aspect of the claim is disallowed.

### *Accommodation, Establishment Allowance and VNPF Contributions*

117. Ms Watson seeks payment of housing allowance of VT80,000 per month for 2022 (11.5 months) totalling VT920,000 pursuant to clause 11.1 of the Employment Contract which provides as follows:



- 11.1 *The Employer may provide a reasonably furnished Government house to the Employee.*
- 11.2 *In the event that a Government house is not available, the Employer may pay the Employee a housing allowance of VT80,000 per month.*
118. Further, she seeks payment of her annual establishment allowance for 2021 and 2022 totalling VT40,000 pursuant to clause 14.1 of the Employment Contract which provides as follows:
- 14.1 *The Employee is entitled to an annual allowance of twenty thousand vatu (20,000) payable on 31<sup>st</sup> January each year, for the purpose of assisting the employee with the immediate cost of installation and rental of telephone line and telephone at his or her residence.*
119. Ms Watson also seeks payment of both employee and employer contributions to the Vanuatu National Provident Fund ('VNPf') for the balance of her contract (16 pay periods in 2021 and 22 pay periods in 2022) totalling VT830,202.
120. The only submissions made for the PSC challenging the claims for accommodation, establishment allowance and VNPf contributions are its denial that Ms Watson's termination was unjustified and its contention that it was done in accordance with subs. 50(4) of the *Employment Act*. As I have found against the PSC on those matters, these claims and the calculations for each are allowed. I will so order.

#### *Other Expenses*

121. This aspect of the claim is made pursuant to clause 15.1 of the Employment Contract which provides as follows:
- 15.1 *The Government may reimburse the Employee for all other expenses reasonably incurred by the Employee in the discharge of the Employee's duties, in accordance with prevailing Government policy.*
122. The expenses sought of VT57,407 [supported by receipts at **pp 219-228 of DKW-1, Exhibit C1**] relate to emptying of septic tank, repair and change of water pipes, service of the fridge, change of toilet seat and shower, change of keys and waterblast of verandah of the Government house provided to her by the PSC. The expenses were incurred after Ms Watson's employment was terminated but were incurred for the benefit of the house so as to be left in good repair when Ms Watson vacated it. This aspect of the claim is allowed.

#### *End of Contract Entitlements*

123. Ms Watson's claim for payment in lieu of 3 months' notice in the sum of VT1,051,674 in relation to her previous position as Director of the Department of Women's Affairs is accepted. I will so order.
124. Mr Hurley accepted that there is no entitlement to payment in lieu of 3 months' notice in relation to Ms Watson holding office as Director General of the MJCS.
125. As for severance allowance, clause 19.1 of the Employment Contract provided as follows:



19.1 *The Employee is entitled to severance allowance calculated at the rate of one (1) month remuneration for every year of the performance of this Contract.*

126. Ms Watson seeks severance allowance at the rate of 2 months remuneration per year with retrospective effect to 20 October 2017, relying on a PSC circular dated 2 September 2020 [p. 229 of DKW-2, Exhibit C1]. The PSC circular stated as follows:

*This Memo serves to inform all PSC employees that the Commission at its meeting No. 17 of 15 September 2020 has approved to revoke the previous one (1) month rate of severance allowance to two (2) months per year of service.*

*The effective date for implementation of two (2) months rate of severance is 15 September 2020.*

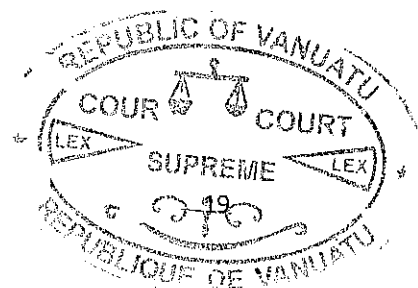
*The Commission further approved in principal that 2 months rate of severance has retrospective effect to 20 October 2017. As such, former employees who had only received a severance of 1-month per year of service since 20 October 2017 are to be paid the additional 1-month severance per year of service.*

*However, due to financial challenges that the country is experiencing with regards to global pandemic and natural disasters, the implementation of decision to backdate payments of 2 months' severance is withheld until such time the Commission determines an implementation date...*

*All heads of ministries and departments will be advised accordingly through a formal instruction from PSC on the implementation date for backdate payments.*

...

127. The PSC circular stated that the effective date for implementation of 2 months rate of severance was 15 September 2020. Ms Watson's employment was terminated on 18 March 2021 therefore she is entitled to severance at the rate of 2 months per year of service since November 2018 when she was appointed as Director General of the MJCS. The amount sought is not contested therefore I will order payment of severance allowance of VT4,237,936.
128. Ms Watson also sought payment of severance allowance in relation to her previous period of service in the Public Service (1987-2017) at the rate of 2 months per year. She has already received severance allowance of one month's salary of each year served so she is seeking the additional one month's salary for every year served with retrospective effect to 20 October 2017.
129. The PSC circular set out that the Commission had "*approved in principal*" [sic] that 2 months rate of severance had retrospective effect to 20 October 2017. However, due to the financial challenges faced by the country, it would issue a formal instruction at a later date as to the implementation date for backdate payments [sic].
130. There is no formal instruction from the PSC "*on the implementation date for backdate payments*" in evidence. Accordingly, the claim for payment of severance allowance in relation to Ms Watson's period of service from 1987-2017 is disallowed.



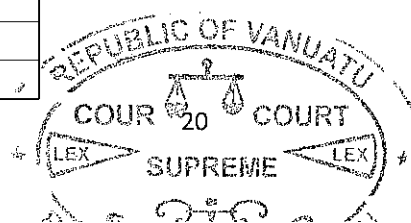
*Multiplier pursuant to subs. 56(4) of the Employment Act.*

131. As this Court has found that Ms Watson's employment was unjustifiably terminated, due to the mandatory wording in subs. 56(4), an order shall be made that she be paid a sum up to 6 times the amount of severance allowance: *Iata v Tanna Coffee Development Co Ltd* [2020] VUCA 12 at [13].
132. Mr Hurley submitted that a multiplier of 2 times Ms Watson's severance entitlements was appropriate, citing *Vanuatu Broadcasting and Television Corporation v Malere* [2008] VUCA 2 and *Republic of Vanuatu v Mele* [2017] VUCA 39 at [61]-[62].
133. Ms Watson's evidence is that she has not worked since she was terminated by the PSC. The unjustified termination removed her from a very significant job in the Public Service in circumstances which it must be inferred affected her future employment prospects. Her loss of future income must inevitably also be significant.
134. In addition, Ms Watson displayed immense courage to stand up and file her claim for judicial review for the sole purpose of ensuring that the relevant provisions of the *Government Act* were complied with. This Court's judgment in JRC 20/3369 as to Rule 17.8(3) matters held that on its own evidence, the State had not complied with provisions of the *Government Act*. The State now admits that it breached its own legislation in the form of the *Government Act*. Ms Watson filed her judicial review claim in the proper discharge of her principal responsibilities as Director General. She has paid a high price for doing so, suffering the ignominy of losing her employment notwithstanding that she was a long standing and respected public servant. The calibre of her service was such that the PSC had commended her for her '*very satisfactory performance*' for 2019 in the same month as it terminated her employment. Ms Watson gave detailed responses to the allegations made against her explaining why she filed her judicial review claim and in relation to subs. 50(3) of the *Employment Act*. Notwithstanding these, the PSC terminated her employment in circumstances which did not constitute serious misconduct.
135. These factors justify an uplift of 4 times the severance allowance (VT4,237,936 x 4 totalling VT16,951,744). I will so order.

F. Result and Decision

136. Judgment is entered for the Claimant.
137. The Claimant is awarded a 4 times ('x4') multiplier of her severance allowance in terms of subs. 56(4) of the *Employment Act*, in the sum of VT16,951,744.
138. The Defendant is to pay to the Claimant the following outstanding entitlements and the x4 multiplier of severance allowance in the total sum of **VT34,102,451** (the 'judgment sum'):

ENTITLEMENTS	TOTAL AMOUNT
Remuneration – remaining salary	VT8,908,720
Remuneration – salary increment	VT591,318
Annual leave	VT513,450
Accommodation	VT920,000
Establishment allowance	VT40,000



VNPF contributions	VT830,202
Other expenses	VT57,407
3 months' notice (Director, DWA)	VT1,051,674
Severance allowance	VT4,237,936
<b>SUB-TOTAL</b>	<b>VT17,150,707</b>
s. 56(4) multiplier x4	VT16,951,744
<b>TOTAL</b>	<b>VT34,102,451</b>

139. Interest is to be paid on the judgment sum at the rate of 5% per annum from 18 March 2021 until fully paid.
140. Costs must follow the event. The Defendant is to pay the Claimant's costs on the standard basis as agreed or taxed by the Master. Once set, the costs are to be paid within 21 days.

G. Enforcement

141. This matter is listed for Conference **at 1.30pm on 14 April 2023**, including by video link to the Luganville Court House, for the Defendant to inform the Court: (i) that it has paid the judgment sum or (ii) to explain how it intends to do so. If there is no satisfactory conclusion, the file will be transferred to the Master for enforcement action.
142. For that purpose, this judgment must be personally served on the Defendant and proof of service filed.

**DATED at Port Vila this 17<sup>th</sup> day of March 2023  
BY THE COURT**

*VM Trief*  
Justice Viran Molisa Trief

