

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

Civil
Case No. 19/2639 SC/CIVL

BETWEEN: Christopher Desonville
Claimant

AND: Port Vila Municipal Council
('PVMC')
Defendant

Date of Trial: 25 November 2020
Before: Justice V.M. Trief
In Attendance: Claimant – Ms J. Kaukare
Defendant – Mr L.J. Napuafi
Date of Decision: 10 December 2020

JUDGMENT

A. Introduction

1. The Claimant Christopher Desonville alleges unjustified dismissal by his employer, the Defendant Port Vila Municipal Council ('PVMC'). The PVMC denies this saying it gave Mr Desonville the opportunity to answer the allegations against him and that the allegations amounted to serious misconduct warranting immediate termination of employment. This judgment determines the Claim.

B. The Law

2. Section 50 of the *Employment Act* [CAP. 160] (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.*
...

(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.

...

3. Subsection 56(4) of the Act provides:

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).*

C. Evidence

4. Mr Desonville commenced employment as a permanent staff of the PVMC in 2012.
5. Mr Desonville worked as the Foreman of the Central Business District ('CBD') of Port Vila. Peter Sakita, Town Clerk of the PVMC evidenced in his Final sworn statement, [**"Exhibit D3"**] that in this position, Mr Desonville was the assistant to his Manager, Rex Aromalo – a very senior position as an employee of the PVMC.
6. By letter dated 5 September 2017, Baltor Ian George, the PVMC Manager Finance and Administration wrote to Michelle Jonas, Acting Town Clerk of the PVMC that Mr Desonville had collected the landfill gate fees for 28 and 29 July and despite request, had not accounted for nor brought the monies to the office. [Attachment "2PS", [**"Exhibit D3"**]].
7. By letter dated 19 September 2017, the Acting Town Clerk wrote to Mr Desonville outlining allegations of the alleged misuse of landfill gate fees for 28 and 29 July 2017 and of insubordination in refusing despite request to bring back the cash plus copies of the receipts. She requested his response by 26 September 2017. [Attachment "3PS", [**"Exhibit D3"**]]
8. Mr Desonville evidenced in cross-examination that he met with Ms Jonas and verbally responded to the allegations against him. There is no documentary evidence confirming this nor is there any evidence to the contrary. Mr Desonville's answers in cross-examination were consistent with the account in his sworn statements. Where new matters were put to him, he responded without hesitation to the questions put to him. In my view, Mr Desonville was a witness of truth and I accept his evidence.
9. Attachment "4PS" in [**"Exhibit D3"**] is a letter dated 25 September 2017, signed on Mr Desonville's behalf, requesting a deduction of salary by the PVMC Accounts Unit for VT35,500 in payment of the landfill gate fees for 28 and 29 July 2017. Mr Desonville denied in cross-examination that he signed that letter. He pointed out that the signature on the letter is not his and that he did not authorise another person to sign on his behalf. He also stated that no deduction was ever made from his salary. As there is no evidence to the contrary as to how the letter came about, nor is there any evidence confirming or denying that any salary deduction was effected, I accept Mr Desonville's evidence as to this. The signature on that letter is markedly different from Mr Desonville's signature on his sworn statements.
10. On 4 May 2018, Mr Desonville was a passenger in a work Hino Crane vehicle registration number 4149 driven by another PVMC employee when an accident occurred.

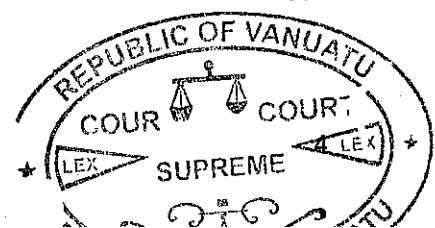


11. By letter dated 25 May 2018 from the Acting Clerk, Mr Desonville was immediately suspended from work [Attachment "5PS", ["Exhibit D3"]]. The letter contained the following allegations and requested Mr Desonville's response before 1 June 2018:
 - a. That the accident on 4 May 2018 occurred during an unauthorised trip to deliver soil to the Ohlen area;
 - b. Misuse of the Cemetary Fund in relation to VT46,060 fees for the burial of the late Mr Samson Toara on 25 March 2017 and VT46,060 fees for the burial of Mr Maraki's son killed on 1 July 2017 at the Saloon bar; and
 - c. Insubordination in that he is continually is not present to supervise those in the CBD unit and attends at the City Waste Unit without his Manager or the PVMC CEO's authorisation.
12. By hand-written letter dated 9 June 2018, Mr Desonville responded to the Acting Clerk [Attachment "6PS", ["Exhibit D3"]]. He stated that his Manager Mr Aromalo had told him to tell Lesly to drive the truck to take soil to Etas, that he had received VT46,060 for the late Mr Toara's burial and handed the money to Mr Aromalo, and that he always let Mr Aromalo know before going somewhere and that he was helping and advising City Waste through his manager Mr Aromalo.
13. Mr Sakita evidenced that having received Mr Desonville's response, the PVMC sought clarification from Mr Aromalo. By letter dated 1 June 2018, Mr Aromalo denied that he authorised Mr Desonville and Lesly Ladrdo to drive vehicle registration #4149 to Ohlen Area on 4 May 2018, that he never received VT46,060 from Mr Desonville in relation to the late Mr Toara's burial nor VT46,060 in relation to the late Mr Maraki's burial [Attachment "7PS", ["Exhibit D3"]]. Attachment "7PS" is a business record and therefore an exception to the hearsay rule. This evidence is uncontradicted.
14. Mr Sakita attached an email dated 15 November 2017 in which an employee of PVMC, Julie, stated that she had spoken with Mr Desonville who said that Mr Aromalo took half of the money for late Mr Toara's burial on 25 March 2017 and he held half. That when Mr Aromalo gave him back half, that he would bring the money to CSU. She confirmed that the CSU had never received the money – VT46,060. She stated that she had also spoken with Mr Desonville about the VT46,060 for the burial of Mr Maraki, he said he would bring the money in to the CSU but that he had never done so. Mr Napuati cross-examined Mr Desonville as to the contents of this email. Mr Desonville confirmed he had kept half of the money for Mr Toara's burial and put the other half into Mr Aromalo's cabinet at Mr Aromalo's request. He was not questioned as to the monies for Mr Maraki's burial.
15. Mr Desonville agreed in cross-examination that if an employee stole PVMC funds that he or she must be suspended, and if true, be dismissed from employment.
16. By letter dated 7 August 2018, the Acting Town Clerk wrote to Mr Desonville terminating his employment for serious misconduct in relation to the unauthorised trip to drop soil at Ohlen resulting in the 4 May 2018 vehicle accident, misuse of the Cemetery Fund of VT46,060 for the late Mr Toara's burial on 25 March 2017 and VT46,060 for the late Mr Maraki's burial, and for insubordination in attending at City Waste without his Manager or the CEO's authorisation. The Acting Clerk said that following Mr Desonville's response

dated 1 June 2018, her Office had carried out investigations and did not accept his responses in that letter. [Attachment "9PS", ["Exhibit D3"]]

D. Discussion

17. The statutory cause of action of unjustified dismissal is established by subs. 50(4) of the Act. A dismissal shall be deemed to be an unjustified dismissal if the employer has dismissed its employee on the ground of serious misconduct where it has not given the employee an adequate opportunity to answer the charges made against him.
18. In the case of serious misconduct, the employer may dismiss the employee with immediate effect pursuant to subs. 50(1) of the Act.
19. Was Mr Desonville given an adequate opportunity to answer the charges made against him in the letter dated 25 May 2018?
20. Mr Desonville was requested to respond by 1 June 2018. He did so by letter dated 1 June 2018. He responded to all three of the allegations put against him in relation to the 4 May 2018 accident, alleged misuse of the Cemetery Fund and insubordination. There is no suggestion that Mr Desonville required more time to provide his response. I accept and find that Mr Desonville was given an adequate opportunity to answer the charges made against him in the letter dated 25 May 2018.
21. Was this a case where the employer could not in good faith be expected to take any other course?
22. I accept Mr Sakita's evidence that Mr Desonville as assistant to his Manager occupied a senior position within the PVMC. Mr Desonville supervised others within the CBD Unit. There had been earlier allegations of misuse of PVMC funds and warnings to Mr Desonville by the letter to him dated 19 September 2017. As I found above, Mr Desonville responded to this verbally. Mr Desonville evidenced that he had kept half of the fees for Mr Toara's burial. The evidence shows that Mr Desonville never brought the VT46,060 for Mr Maraki's burial in to the CSU. In the circumstances, a senior employee of the PVMC had stolen the Council's funds.
23. As to the allegations that Mr Desonville directed an unauthorised trip to deliver soil to the Ohlen area resulting in the 4 May 2018 vehicle accident, Mr Aromalo denied authorising Mr Desonville to do so. That evidence is uncontradicted. Mr Desonville's actions constituted insubordination. I note that by the letter dated 19 September 2017, the Acting Town Clerk had put to Mr Desonville that failure to bring back PVMC cash plus copies of the receipts, despite request, constituted insubordination.
24. Having been warned in the past but choosing to continue to misappropriate the PVMC's funds, I am satisfied that this was a case of serious misconduct and in which the PVMC could not in good faith be expected to take any other course.
25. Given my decision as to unjustified dismissal, I need not determine the overtime claimed.



E. Result and Decision

26. Mr Desonville is not entitled to the relief sought. The Claim is dismissed.
27. Costs should follow the event. The Claimant is to pay the Defendant's costs summarily assessed at VT250,000 within 21 days.

**DATED at Port Vila this 10th day of December 2020
BY THE COURT**

.....
VM Trief
Viran Molisa Trief
Judge

