

**REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN**

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Port Vila
Vanuatu

**PUBLIC REPORT
ON THE
NON-PAYMENT OF STAFF
OVERTIME ALLOWANCES BY
VNPF MANAGEMENT AND BOARD**

17 December 2003

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SUMMARY

The Ombudsman is issuing this report concerning the unfair treatment the management and Board of VNPF has been giving to its employees. Following a complaint made to the Ombudsman's office, an investigation was made into the non-payment of overtime allowances, although staff have been sacrificing their health and families to work late into the night and also during the weekends.

The Ombudsman found during his investigation that:

- Overtime has been stopped by the former VNPF General Manager, Mr Rangit Kanagasabai, since 01 February 2001
- No overtime was compensated to staff who had worked involuntarily during the weekends, public holidays and also those who had worked in excess of 44 hours during the weekdays. The Management and Board may have been in breach of section 22(1) and 26 of the Employment Act [Cap 160].
- 5 employees of VNPF were terminated for overtime claim related issues.
- VNPF Acting General Manager, Former General Manager together with the Board of VNPF may have breached section 13(1)(a) of the Leadership Code Act in not observing and complying with the Employment Act [Cap 160].
- The Board and Management of VNPF did not get an exemption from the Labour Department for its employees to work on Sundays and Public Holidays as stipulated by section 23(2)(h) of the Employment Act [CAP 160].
- Paragraph 15.10 of the VNPF General Orders is contrary to s.50(4) of the Employment Act.

Following the above findings, the Ombudsman recommends that:

- The Management and Board of VNPF take immediate steps to compensate staff for extra hours worked during weekdays, weekends, and public holidays.
- The Management of VNPF reverses the decision taken by the former General Manager to stop overtime payments on 01 February 2001.
- The Public Prosecutor must decide within 3 months of receiving this report whether there are sufficient grounds to support a prosecution under the Leadership Code or the Employment Act.
- The Management and Board of VNPF must comply with the provisions in the Employment Act regarding overtime payments.
- VNPF General Orders be revised to be in line with the Employment Act.

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1. JURISDICTION

- 1.1 The Constitution, the Ombudsman Act and the Leadership Code Act allow me to look into the conduct of government, related bodies, and Leaders. This includes the senior management of the Vanuatu National Provident Fund (VNPF) and its Board members. I can also look into defects in laws or administrative practices, including the non-payment of staff over-time allowances by the VNPF Management and Board members.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to present my findings as required by the Constitution and the Ombudsman Act.
- 2.2 The scope of this investigation is to establish the facts about unpaid VNPF staff overtime allowances as provided for under the Employment Act [CAP 160] and to determine whether such should be paid as provided by the Act.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and search.

3. RELEVANT LAWS, REGULATIONS AND RULES

- 3.1 Under the Employment Act [CAP 60], section 22(1) provides that no employee shall be required to work more than 44 hours or 6 days in any week or more than 8 hours in any day.
- 3.2 Section 26(1) states that where work is carried out in excess of the normal hours of work mentioned in section 22(1) the employee shall be paid overtime allowances.
- 3.3 Section 23(1) provides that, except where an employee voluntarily undertakes to do so, no employee is required to work on a Sunday or Public Holiday. Sub-section 23(2)(h) further states that sub-section 1 does not apply if a labour officer approves the application of an employer for the purposes of the proper management of an undertaking and the convenience of the public.
- 3.4 Under the VNPF General Orders (Terms and Conditions of Employment), paragraph 12.1.1 states that the normal hours of duty shall be 35.00 hours a week between 7.00 am and 5:30 pm, Monday to Friday.
- 3.5 Paragraph 13.1.1 of the VNPF General Orders states that overtime in excess of the normal 35 hours per week must involve official duties and will be at the direction of the Departmental head and the General Manager.
- 3.6 Under the Leadership Code Act No.2 of 1998, members and chief executive officers (however described) of the boards and statutory bodies are regarded as leaders. VNPF is a statutory body established by section 2 of the VNPF Act [CAP 189]. A leader is required to comply with and observe the law.

The provisions referred to above are reproduced in full as **Appendix J**.

4. OUTLINE OF EVENTS

- 4.1 On February 04 2003, the Ombudsman received a complaint alleging that members of the VNPF staff had been working day and night and also during the weekends without receiving overtime payments.
- 4.2 Between 16 February and 04 March 2003, the Ombudsman sent letters of enquiry to staff of the VNPF and also to the Management seeking to find from individual staff responses on the above allegation.
- 4.3 The Ombudsman received responses to his letter of enquiry from 21 VNPF staff members. They are summarized as follows, however, their names have been removed to preserve their anonymity:

Staff A responded that she does not receive any overtime allowances because she believes there are no funds for such purposes. She stated that the Management does ask them (staff) to work overtime, but she never requested permission to work during weekends or after official working hours (8.00am – 4:30pm). She explained that at the end of each year, the Management makes assessments of each staff member's performance and give them salary increases. For work performed outside of official hours, she stated that staff have time cards that register time given outside of official working hours. The practice of non-payment of overtime allowances began in 1998.

Staff B stated in his response that he does work overtime. Sometimes he was asked by the Management and sometimes he asked (but not always) to work on the weekends and public holidays because of his workload and also to meet deadlines. However, he never sought permission to work after hours during normal working days. He does not receive compensation for overtime although he has a time card that registers these hours. To his understanding (as it has been conveyed to him), payment of overtime or extra-time allowance has been stopped.

Staff C responded that he never requested permission to work after hours but the Management directed them (the employees) to come to work and complete work not completed during working hours. He has never received compensation for work done after hours or during weekends and public holidays. The Management sets up impossible deadlines and the employees have no choice but to work overtime in order to meet those deadlines. If work is incomplete, the General Manager (GM) would threaten them through divisional managers with words like "We are not fit to work in VNPF" or "They should start thinking of finding another job". For staff C, work done during weekends, public holidays and after hours is never on a voluntary basis. He is only paid according to his attendance during normal working hours/days but never for other times. He further stated that the Management claims that these hours are part of staff training. Taking time off for extra hours given was never an option allowed by the Management.

Staff D stated that VNPF does not compensate for hours worked during weekends, public holiday although work was never done on a voluntary basis. Direction to work comes from his manager because a lot of work was needed to be done especially before and after the 1998 Riot. VNPF does not compensate him for working after hours. He is equally unable to take time off for after hours worked. Sometimes he had to sign a document prepared by the Management to work after hours. But he does not receive extra time allowances for time given. He does not keep records for time given after hours.

Staff E acknowledged that it is true that VNPF does not pay extra time allowances for work done during weekends and public holidays and also after normal working hours.

Staff do not prefer to work during weekends/holidays and after hours but they have to because they have work or projects to be completed. Permission was never sought to work extra hours because staff felt that they have to finish their outstanding jobs. He says staff are instructed to complete work, and to him, overtime was not done voluntarily. The management keeps an attendance register for all hours of work given. He does not take time off for extra time given to work as one cannot take time off in VNPF unnecessarily. He further stated that although no overtime is paid, the Management has a "Pay for Performance" system where they assess a staff's performance and consequently an increment in salary is being paid at the end of the year.

Staff F stated that VNPF has never compensated the staff for overtime on work done during the weekends and public holidays since 1998. He stated the reason for this to be that the GM, Mr Rangit Kanagasabai, told them that salaries were too high. Sometimes he worked voluntarily and sometimes the GM or the Divisional Manager asked him to work extra hours in order to meet target dates.

Staff G stated in his response that VNPF employees were and are going through some very unfair treatment. They have always been forced and threatened to work under all odds (i.e during the night and over the weekends and public holidays) but were never compensated for these hours. In addition to the monthly clock in and clock out time cards, the VNPF has an Access System (Human Resource Management System) that records all staff attendance regardless of whether it is official hours or not. He never requested to work after official hours because he knows that he will never be compensated. The executive asks the staff to work after hours and for him it was never on a voluntary basis. He further stated that it has become more and more "compulsory" for staff to work after normal hours and on weekends and holidays. Some times a target date is set which leaves staff with no choice but to finish the work over night or during weekends or public holidays. Ever since he began work with the VNPF, the VNPF Board has asked him to work after hours and during the weekend. VNPF never paid extra time allowances nor allowed him to take leave for hours worked after official hours since July 2001. He was told that he cannot be paid overtime allowances because the Fund is using a PAY FOR PERFORMANCE system. Further still, he is bound by the VNPF Board General Orders having its own rules and regulations.

He added that two VNPF staff members had already been terminated by the Chief Executive, Mr Kanagasabai. One was Tari Kalterikia who was the chairman of a Union established by the VNPF employees and the other one was Ephraim Songi who initiated the request for overtime allowances after staff members stayed up late to assist the Contributor Services department with some arrears of work. Staff members did not want to risk their job again to bring up the issue of overtime allowances with the executive.

Staff H stated in her response that VNPF does not compensate her for working outside the normal working hours as she does it on a voluntary basis. She does not get permission to work on weekends or after hours. She does not keep an attendance register as she does her job on a voluntary basis. She is not forced to work extra hours as she does it only because she wants to upgrade her knowledge of the new technology developed in the Fund. She does not receive any overtime allowances because she knows that her performance will be assessed and paid for at the end of the year. She commented that she was surprised to receive a letter from the Ombudsman's office as VNPF is growing for the good of its members.

Staff I responded that overtime is not applicable to her as she begins work early and finishes early in the afternoon.

Staff J stated in his response that staff members never requested permission to work extra time, during weekends or on public holidays. They have targets to meet and they must work after hours, during the weekend and public holidays to meet them. Most staff work during these times because they are in fear of disciplinary action taken against them by their managers. The extra hours worked can be obtained from each staff members' time cards. There is no compensation for work done outside the normal working hours as the General Manager does not encourage overtime payments. In 2002 one employee was dismissed for raising the issue of overtime. Working extra time is never done voluntarily as sometimes one is directed or forced to work or else leave the Fund. He has been asked all the time to work extra hours or during weekends or public holidays. He is aware of the overtime provisions in the Employment Act [CAP 60] but as long as he works for VNPF, he does not have the right to speak.

Staff K responded to the Ombudsman's letter and stated that he thinks it is not necessary for him to complain for overtime or work during weekends. He believes that senior staff members do their best to help in the process of rebuilding the VNPF after the 1998 Riot. He is happy with the Management.

Staff L stated in his response that the VNPF has what they referred to as "Pay for Performance" policy. This means that an employee of the Fund is assessed annually and his salary is increased every year depending on his or her performance. Permission is not sought for anyone to work during a weekend or on public holidays. Additional work is done voluntarily to achieve the targets set and better increments are given at the end of the year to each department staff. VNPF does not give overtime allowance but if there is, one has to first apply for it. He has just been employed by the Fund and he is yet to apply for his overtime.

Staff M stated that he often asks permission to work during the weekends and public holidays because he wanted to get incomplete work done, and he was told not to build up work arrears. Targets set by managers do not consider whether it is a public holiday or weekend, and his department was under-staffed. The GM told him in meetings that he would be compensated at the end of the year in the form of increments. This depended on his assessed performance and it is largely focussed on his faults and little to his commitments. He was often asked to work extra hours especially at the end of the month when they have to get Santo receipts in the system before the next day. Sometimes staff were provided lunch or dinner for working extra hours without payment. He further stated that he was often asked to work extra hours during the weekend and holidays without asking for overtime because if he did not he would be dismissed from the VNPF. Staff are always reminded that they are well-paid as compared to other civil servants and that they have a better payment system in place compared to other companies.

Staff N stated that he does not ask to work extra hours because he has a lot of work to do. It depends on the workload one has because even if he does not complete what he is expected to complete, he will still expect more to come his way. VNPF does not compensate for extra hours apart from official working hours. Sometimes the Management asked the staff to work extra time. The Management does not even consider giving time off for extra hours done at work. In his mind, the salary he receives may have covered overtime.

Staff O stated in her response that she does not get permission to work after hours, during weekends and public holidays. The work she does during these times is voluntary. After hours are not compensated by VNPF as these hours are not overtime and those hours are to bring her work up to date and also to train herself on the new systems introduced by the Management and also so she could learn other aspects of the Board's work. Her work performance is based on the system "paid for performance" and her performance is assessed annually in order for her to receive increments. This drives her towards better performance. She is never asked to work extra hours. She makes her own decision whether or not she works extra hours. She stated that "there is total freedom of work at the VNPF" and to her knowledge "all staff are happy working for the Fund".

Staff P responded that he does not work outside of official hours because he works outside the Office doing the cleaning up.

Staff Q stated that his work on weekends or public holiday is purely voluntary as he is a position holder in a trust fund. The VNPF has a structure for performance system and staff members have to show that they are capable of the position they are holding. VNPF has given benefits which makes extra time payments irrelevant. His response indicated that the staff are treated properly by the Management.

Staff R stated in his response that he often asks permission to work during the weekends and public holidays because he wants to get incomplete work done. He was told not to build up arrears, and he has targets set to complete a job by his managers and they do not consider whether it is a weekend or not. Overtime is compensated at the end of the year in the form of increments. On other occasions where a memo is issued for the employee to sign to work extra hours, the employees are provided with breakfast, lunch or dinner. Overtime allowances were paid until beginning of 2001 only on projects approved by the GM which are treated as overtime otherwise others not approved as stated in the VNPF General Orders are not paid for. He was often pressurized to work extra hours during weekends and public holidays without asking for overtime. There was an instance that occurred in 2002 where some staff were asked to help another department after working hours. During this time it was raised whether an allowance would be paid. Immediately he along with others were summoned to the GM's office for questioning and were verbally degraded. In his personal opinion, such tough treatment has made him more alert, disciplined, effective and has given him more confidence in his work.

Staff S responded to the Ombudsman's enquiries that for him overtime work is done on a voluntary basis when Members' Statements need to be sent out. VNPF has not paid overtime allowances since 2000 and no time is given off in lieu of overtime. Sometimes he has no choice but to work overtime. These hours can be checked on his time cards.

Staff T stated in her response that she sometimes asks to work after hours voluntarily as she often has big projects to work on. However, sometimes the Management asks her to work overtime. Although staff have time cards that indicate their commitment to work over the weekends and public holidays, no compensation for these times is paid. VNPF does not also allow time to be taken off work for extra hours worked. She stated that perhaps the reason for non-payment for overtime is because of the high salaries that employees get.

Staff U stated in his response that an employee's attendance register is recorded in a system called the 'HRM System' maintained by VNPF administration department. He has never requested permission to work after hours, during weekends and even on public holidays but he is required to work these hours in order to meet target dates set for particular assignments. The VNPF used to compensate its employees for the hours worked outside the normal working hours until a certain date where they were informed by the General Manager that they were to use the system 'pay for performance' in which overtime is no longer required.

He never worked on a voluntary basis outside the normal working hours. However, because he was repeatedly accused by the General Manager as not fit for the job he was doing, he therefore is required to work extra hours to complete any task that is regarded as arrears on his section. He normally seeks permission from the manager responsible for his section and the General Manager to work after hours. Every month a report of late attendance excluding extra hours worked is submitted along with other operational matters to the VNPF Board. VNPF stopped paying overtime allowances since the General Manager informed the staff that there would be no more overtime payment as they were using the 'pay for performance system'. No day off is taken for time worked after hours. Staff members were told by the General Manager that they get high paid salaries and increments every year so overtime payments should not be regarded.

- 4.4 On 21 July 2003, 27 VNPF staff expressed their concern about non-compensation of overtime in a letter to the Acting General Manager, Mr Kelip Sandy. This letter requested overtime payments to be paid by 31 July 2003. A copy of this letter is reproduced as **Appendix A1-A5**. This letter was also copied to the Chairman of the VNPF Board, Mr Jimmy Andeng. Out of this number three (3) have since been terminated by VNPF for raising the overtime issue. As at the date of writing this report no overtime payment has been made.
- 4.5 On 29 July 2003, the officer-in-charge of the Labour Department, Mr Edwin Kalorisu, confirmed in a telephone conversation that VNPF had not applied for an exemption under section 23(1) and (2) of the Employment Act. He added that if VNPF employees worked in excess of 44 hours, the company must pay their overtime. Similarly, if employees worked on public holidays, they are either given a day off on another day or such must be treated as overtime.
- 4.6 On 01 August 2003, 16 VNPF employees again followed up their concern of overtime payments with the Acting General Manager, Mr Kelip Sandy. In that letter, they asked to discuss the matter with the Board members by Tuesday 05 August 2003. A copy of this letter is reproduced as **Appendix B1-B4**. No overtime payment was made.
- 4.7 On 04 August 2003, another letter was submitted by some members of the staff to Mr Sandy to settle all claims of overtime before 07 August 2003. A copy of this letter is reproduced as **Appendix C1-C3**. A copy of a summary of some members of the staff overall overtime totaling to 10,247.15 hours was also attached and is reproduced in **Appendix C4**. No overtime payment was made.
- 4.8 On 04 August 2003, Mr Less John Napuati, Manager-Legal and Compliance, was terminated from VNPF as he was believed to be the officer initiating the overtime claims. On 27 August and 24 September 2003 Messrs Rara Soro and Alfred Bani were terminated. The three officers were signatories to the letters to the Acting General Manager regarding their overtime claims.

- 4.9 On 04 August 2003, information was received by the Ombudsman by three (3) senior staff members that during a staff meeting on 01 February 2001, the former General Manager, Mr Kanagasabai, made a decision "off the record" that as of that date there would be no more overtime payments. Although this was "off the record", it was recorded in one of the Managers' Journal. A copy of the notes from that journal indicating a stop to overtime payments is reproduced as **Appendix D**.

5. RESPONSES BY THOSE WITH COMPLAINTS AGAINST THEM

- 5.1 Before starting this enquiry, the Ombudsman notified all people or bodies complained of and gave them the right to reply. Also a working paper was provided prior to this public report to give another opportunity to respond. Responses were received from the following VNPF staff: A, B, C, E, F G, J, P, and S.

Staff A

Staff A stated that she has already made a statement to the Ombudsman and she has nothing further to add as what she has stated to the Ombudsman earlier is all true.

Staff B

This person stated that two VNPF staff who were part of the VNPF Management Team were fired from office, as the Management believed that they have breached some sort of management level regulation. He stated that this was obviously a side effect of the staff overtime claim.

Staff C

This staff stated in his response that those staff who have stated that they were working voluntarily should not receive any compensation whatsoever for work done after hours. He also stated that regulation 15.10 of the VNPF General Orders is contrary to the Employment Act and thus should be repealed as regulation 15.10 was used to terminate Mr Less Napuati and Mr Rara Soro.

Staff E

Overtime claims were not pushed hard for it during Mr Kanagasabai's term because he was a tough person and also very demanding. Most of the time, he would give instructions from his home for staff to work during the weekends. He would call from his home and ask him (staff E) who is and who is not in the office during the weekends.

He also stated that as a Seventh Day Adventist member (SDA), he was not supposed to have worked on Saturdays. However, on one particular Saturday, the Acting GM, Kelip Sandy picked him up from his home to work with him on a Saturday. On another occasion, he was sick and was given a sick leave to rest. However, he was instructed to come to work and was asked why he did not come to work. In his mind the Management is not respecting the VNPF staff.

He confirmed that the facts stated in the working paper are all true. On another occasion during the earthquake in 2002, there was a construction work done to renovate the VNPF office. The constructors could not work during the day because staff were working so they had to work at night. Because he was supervising the construction, he had to be around up to 12 o'clock at night. He was not told that there was a form to fill up for overtime purposes. His manager did not also take the initiative to tell him that he should fill a form for overtime.

He also conformed that it was true that in 2001, the former General Manager stopped overtime allowances.

Staff F

He stated that Mr Joseph Bani did not sign the staff letter to the VNPF Management for overtime claim and thus should not be included for overtime payments. He also stated that staff members who did not sign the letter have worked voluntarily. He also stated that regulation 15.10 of the VNPF General Orders should be removed as it appears to be contrary to the Employment Act.

Staff G

This person stated that he does not believe that staff who stated that they volunteered to work overtime is true. He believes that they were manipulated by somebody to state to the Ombudsman that they volunteered to work overtime. He is now terminated from the VNPF mainly because of the issue of overtime payments, because he was the one who printed the Summary of Staff Overall Overtime (referred to as **Appendix C4**). This is a record from the Administration and not from the Members' Fund as asserted by the Board, which they have stated it to be a misconduct on his part, and resulted in his termination. He has never touched anything from the Members' Fund. The Administration Dept. was the one who puts the information together, and fortnightly, it is sent to the Accounts Dept. for salary purposes.

He also stated that individual claims are not warranted to the Board because the Board is seen not to be independent. When he was terminated, the Board did not pay his entitlements such as severance and 1 month notice.

The former General Manager (Ranjit Kanagasabai) is still seen to be contacted and manipulating the present Board of VNPF.

Staff J

He confirmed that the contents of the working paper are absolutely correct. The facts given by most staff are reality, which the hard working staff have undergone. He stated that those who have claimed that they have volunteered have been forced by their managers to make such statements.

The current Acting GM and the Board are claiming that the managers and senior officers who fall into salary grade 12 or above are not entitled to overtime allowances as stated in the VNPF General Order section 13.3.3.

He stated that while the General Orders stated this, managers are claiming because the former GM and the Board have used this section to force them to work and do not even allow them to claim for overtime allowance. They have been forced to work overtime by the former GM or be terminated. Sometimes they have been called out from church services on Sundays or during sick leave to go to work. The managers who have claimed deserved to be paid overtime accordingly as it was a forced labour over the last three years.

He stated that to date, four employees were terminated because of the overtime issue, namely, Tari Kalterikia, Ephraim Songi, John Less Napuati and Rara Soro. The current GM and Board are denying this. They are still receiving directives from the former GM, Rangit Kanagasabai, whose contract expired on 20 July 2003. He added that Mr Kanagasabai is deciding on their behalf to terminate these employees.

Staff P

He agreed that the facts stated in the working paper are all true. He stated that the first letter (**Appendix F**) sent to the Ombudsman during the initial enquiry stage is not true. His boss instructed him to respond to the Ombudsman in that manner. In reality, there were times when their boss told them to work late, and sometimes they also worked during the weekends.

Staff S

He agreed with the content of the working paper and the findings made against the Board and Management.

He asked if the Ombudsman could do the following:

- calculate the amount owed to each staff.
- Those who did not claim and did not sign letters claiming overtime would remain as voluntary workers which means that they will not be paid their overtime claim.
- Those who have been terminated for overtime claims must be reinstated.

Responses were also received from the following persons:

Tari Kalterikia

After the VNPF Riot, there were a lot of work to be done, and the staff were instructed by the Management at that time that they were to work hard to fix records etcetera, and if the financial status of the VNPF becomes good, the Management would then pay the staff the extra hours worked. However, this was never done by the Management.

Sometimes they worked until 10 to 12 o'clock at night. There were two certain days that he had worked over 24 hours. Concerning his termination, he was part of those claiming for overtime allowances. His termination originated from overtime claims. Because of the work conditions and overtime claims, the VNPF staff wanted to form a Union within the VNPF to bring to the attention of the Management and board and National Union of Labour their concerns. It was for this reason that he was terminated.

Edwin Kalorisu (Acting Deputy Commissioner of Labour)

In his response Mr Kalorisu stated that it seems that the working paper has overlooked or missed out a particular section of the Employment Act (CAP 160) which also accommodates classes of employees who are not covered from section 22 to 26.

Section 27(c) of the Employment Act as quoted nothing in section 22 to 26 inclusive shall apply to or in relation to persons occupying positions of management or employed in a confidential capacity.

Section 27 clearly spells out that any VNPF employees occupying any management positions are exempted from section 22 to 26 of the Employment Act. Therefore employees on managerial positions are not obliged to claim for overtimes. (This letter is reproduced and can be seen in **Appendix G**).

VNPF Board Members

Although the working paper was sent to individual members of the VNPF Board, they chose to send to the Ombudsman a collective response. They stated as follows:

- (a) The Board of VNPF is a corporate body which has perpetual succession and under common seal may sue and be sued in its corporate name. The Board employs persons including the management and staff.
- (b) Under article 62 of the Constitution and the Ombudsman Act No.14 of 1995 (please notice that this Act has been repealed), the Ombudsman has no jurisdiction to enquire into the actions as an employer of a corporate body. The Ombudsman's enquiry is without jurisdiction and accordingly of no effect.

- (c) Working paper has been derived solely from comments by staff members. These are staff members who allege a claim for overtime allowances. There is no balance in the enquiry as there was no request made to the Board and Management to respond to the enquiry. This denigrates from any validity the enquiry may have.
- (d) The letters referred to in the working paper as Annex A, B and C were responded to. (the responses are attached to the Board's response in the file)
- (e) The practice of non-payment of overtime began in 1998 is not true. – Since 1998, staff were paid overtime allowances. They have records to substantiate this.
- (f) VNPF staff are not going through unfair treatment. Staff are trained to work in a disciplined manner and were not treated unfairly as stated in the report. There were additional benefits introduced to improve the working conditions of the staff. Staff were provided with a staff canteen and also a Staff Benovolent Society to look after the welfare of the staff where the Board contribute 1% of staff salary to the Society. The salary increments received by the staff since the restructuring of the Fund in 1999 was very high compared to other Statutory and Semi Government Organizations.
- (g) Mr Kalterikia was not terminated for overtime claims. Mr Songi was terminated because he was employed by the Board in 2002 and during his probationary period, it was found that he had been involving himself on outside private matters than working for the Fund; hence his termination of employment prior to the expiry of the probationary period of 6 months.
- (h) Mr John Less Napuati was terminated for serious breach of discipline, breach of his contractual obligations with the Board and divulging confidential information. His performance and conduct as a Manager is such that the only course of action is to terminate his employment with the Board.

If there was a full enquiry, they believe that it would properly have been determined that the staff overtime allowances claims have previously been addressed. The current status is for any continuing concerned employee to eloquate their claims to the employer for consideration. This letter is reproduced as **Appendix H**.

5.2 No responses were received from the following:

VNPF staff D, H, I, K, L, M, N, O, Q, R, T, U,
 Mr Ephraim Songi, former VNPF employee
 Ms Alice Garae, Manager Administration, VNPF
 Mr Eric Amos, Acting Branch Manager, VNPF Santo Branch Office
 Mr Ranjit Kanagasabai, Former General Manager, VNPF.

6. FINDINGS

- 6.1 **Finding 1:** **The Ombudsman finds that VNPF Board and Management have breached section 22 (1) and 26 of the Employment Act [CAP 160].**

Section 22(1) of the Employment Act states that no employee shall be required to work in any undertaking more than 44 hours in any week or more than 8 hours in any day exclusive of the time allowed for meals and tea.

It has been revealed by this investigation that VNPF employees have been working late into the night hours, exceeding the 8 hours provided by the above provision.

In the event of exceeding the 8 hours, section 26(1) provides that an employee shall be paid for work on public holidays or Sundays and also for work carried out in excess of the normal weekly hours of work.

VNPF staff have stated to the Ombudsman that their time cards registering when they are attending to work indicate the hours worked after official working hours and also during the weekends and on public holidays.

Nevertheless, VNPF Acting General Manager, Mr Kelip Sandy argued otherwise that timecards are not relevant to those entitlements as they are used for the Board's own administrative purposes only and they do not indicate the type of work done and whether approval was given and if the work was supervised. (Refer to **Appendix I**).

However, VNPF staff have stated to the Ombudsman that they have never requested to work overtime and during weekends and public holidays but have done so at the request of the Management.

- 6.2 Finding 2: The Ombudsman also finds that the VNPF Management and Board have breached section 23 of the Employment Act [CAP 160].**

Section 23(1) stipulates that except where he voluntarily undertakes so to do, no employee shall be required to work on a Sunday or Public Holiday. Sub-section 2(h) further states that ss(1) shall not apply if an employer's application is approved by a Labour Officer for its employees to work as having regard to the proper management of the undertaking. Furthermore, sub-section (3) provides that a person working on a Sunday or public holiday shall be granted an equivalent period of time off work on another day.

The Ombudsman's investigation revealed that VNPF Board and Management did not seek an exemption from the Labour Office for its staff to work during Sundays and on Public holidays. As such, they have breached the above provisions by not paying employees' overtime allowances and also not granting days off to be taken in lieu of extra hours worked.

- 6.3 Finding 3: The Ombudsman finds that the VNPF Management and Board may have compelled female employees to work past 7.00pm contrary to section 35 of the Employment Act [CAP 160].**

Section 35(c) prohibits women from being employed during the night in any undertaking.

On one such occasion a pregnant female who does not hold a responsible position of management within the VNPF had to swim across to her island after 7.00 pm as there was no transport to take her across. This was confirmed by the staff member concerned in a telephone conversation with an officer of the Ombudsman on 10 December 2003.

- 6.4 Finding 4: The Ombudsman finds that the former General Manager of VNPF, Mr Ranjit Kanagasabai may have breached section 26 of the Employment Act [CAP 160].**

Mr Kanagasabai's apparent decision to stop overtime payments for VNPF employees from 01 February 2001 may be in contravention of section 26 of the Employment Act which provides for overtime payments.

- 6.5 **Finding 5:** **The Ombudsman finds that the VNPF Board and Management may have breached the VNPF General Orders by not paying overtime and giving time off in lieu of overtime.**

The normal hours of duty within the VNPF are 35 hours a week, Monday to Friday. Clause 13.1 provides that overtime must involve official duties and be at the direction of the Department Head and the General Manager.

The Ombudsman's enquiries revealed from members of the staff that the General Manager has been directing and instructing them to work overtime, exceeding the normal hours of duty which is 35 hours. Such would have been rewarded with overtime payments as stated in Clause 13.1.

It was also revealed in this investigation that often the General Manager gives instructions directly and indirectly through Departmental Heads for employees to work overtime and yet no compensation for overtime is paid. This may be justified by the letters signed by the staff members to the Acting General Manager asking for overtime claims to be paid. In addition, as provided in Clause 13.2.1, no time off is taken in lieu of overtime.

- 6.6 **Finding 6:** **The Ombudsman finds evidence that the Management's decision to terminate five (5) of its employees for overtime and overtime related issues is unreasonable and may be in conflict with section 26 of the Employment Act.**

It was revealed to the Ombudsman that 5 members of VNPF staff were terminated for reasons that were all linked to overtime claims. These staff members are Mr Tari Kalterikia, Mr Ephraim Songi, Mr Less John Napuati, Mr Rara Soro, and Mr Alfred Bani. Please refer to Appendix E1 and E2 respectively for notes taken from an Official Managers Journal and System Maintenance journal of VNPF.

- 6.7 **Finding 7:** **The former CEO, Acting CEO and Board Members of VNPF may have breached s. 13(1)(a) of the Leadership Code Act.**

The former GM of VNPF, Mr Rangit Kanagasabai, the Acting GM, Mr Kelip Sandy and members of the Board of VNPF may have breached section 13(1)(a) of the Leadership Code Act by failing to comply with and observe the law relating to overtime payments and other provisions of the Employment Act [CAP 160] as stated in this working paper. This is evidenced by the letters written by some VNPF employees to the Acting General Manager on overtime claims reproduced in **Appendices A, B and C.**

- 6.8 **Finding 8:** **Paragraph 15.10 of the VNPF General Orders may be contrary to s. 50(4) of the Employment Act. [CAP 160].**

Paragraph 15.10 of the VNPF General Orders gives the General Manager absolute and uncontrolled discretion to terminate any employee in the best interest of the Board without having to give any reason for termination. The termination of Mr John Less Napuati, Mr Rara Soro and Mr Alfred Bani were based on this special provision by Mr Kelip.

Under s. 50(4) of the Employment Act, dismissal of an employee for serious misconduct allows for the employee an adequate opportunity to answer any charges against him otherwise such dismissals are considered to be unjustified.

7. RECOMMENDATIONS

Following the above findings, the Ombudsman recommends that:

Recommendations 1:

The Management and Board of VNPF take immediate steps to compensate staff for extra hours worked after 4:30 pm during official working days, during the weekends and also Public Holidays beginning from 01 February 2001, as stipulated by the provisions of the Employment Act, and as stated in **Appendix C4** of this report. (emphasis added).

Recommendation 2:

The Management of VNPF reverses the decision taken by the former General Manager to stop overtime payments on 01 February 2001.

Recommendation 3:

VNPF General Orders be revised to be in line with the provisions of the Employment Act. The Management and Board must also observe the practicality of the General Orders regarding overtime.

Recommendation 4:

The Management and Board of VNPF must at all times comply with the provisions in the Employment Act regarding overtime payments.

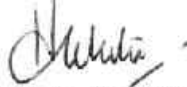
Recommendation 5:

The Management and Board of VNPF apologize to all VNPF officers for not settling their overtime in time and not showing reasonableness to staff who tirelessly worked into late nights, on weekends, and on public holidays and bringing VNPF to the state it now enjoys today.

Recommendation 6:

The Public Prosecutor considers this report and decides within 3 months of receiving this report whether there are sufficient grounds or evidence to support a prosecution under the Leadership Code Act and the Employment Act.

Dated the 17th day of December 2003.



Hannington G. ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

8. INDEX OF APPENDICES

- A** Letter dated 21 July 2003 by VNPF staff to Acting General Manager for overtime claim.
- B** Follow-up letter to Acting General Manager dated 21 August 2003 by VNPF staff for overtime claim.
- C** Letter dated 4 August 2003 to Acting General Manager by VNPF Staff for overtime claim.
- D** Notes from a Manager's Journal dated 01 February 2003.
- E** Notes from two Official VNPF journals on the consequences of bringing up overtime claims dated 20 August 2003.
- F** Response of staff P to the working paper.
- G** Response of Edwin Kalorisu, Acting Deputy Commissioner of Labour.
- H** Collective response of VNPF Board members to the working paper.
- I** Response to request for Time Cards.
- J** Relevant Laws and Regulation.

July 21, 2003

Mr. Kelip. Sandy
Acting General Manager
Vanuatu National Provident Fund
P.O. BOX 420
PORT VILA

Dear Sir

**RE: VNPF STAFF CLAIM OF OVERTIME UNDER SECTION 26 OF THE
EMPLOYMENT ACT [CAP 160]**

We refer to the above subject matter.

We the undersigned wish to express our deep concern over the manner in which we have been requested to work more than the required seven(7) hours during our continuous employment with the Fund, but never at one point in time compensated under the relevant provisions of the Employment Act for the overtime.

With much respect to the outgoing General Manager, Mr. Ranjit Kanagasabai, during the very first few weeks and months when he took over as General Manager of the Fund, we have been working day and night in order to rectify all the discrepancies by the past Management and bring the Fund up to a better and healthier condition for the members. It is undisputed that this goal has been achieved and yet no credit is given to us to this day.

Even during the last four years under his Management, we have been working late into the night and even during weekends and yet little or nothing has been done to compensate us for the over time as provided for under the Law.

As part of the workforce under Mr. Kanagasabai's Management, we believe you cannot deny this request as you yourself including all staff within VNPF is a potential witness against the other in any court of Law.

There are times when even the ladies who are not holding Managerial position must work through out the night contrary to the provisions of the employment Act. On one occasion, one of us [a lady who was going home after work in the night] has to swim across the sea in the night to her own island. This is a nightmare. We cannot detail the numerous comments we [the ladies] receive from our husbands when we continuously work late after hours and vice versa. Even the S.D.A's part of the staff can confirm that they do sometimes violate keeping the Sabbath day holy and this applies to the Sunday goers as well who sometimes have to be called out from their churches to attend to work after normal working hours. If working during the weekend is not overtime then what is then?

Whilst we appreciate the fact that we must work in the best interest of the members we cannot do so at the expense of our health and the future of our family. At least some

form of payment for overtime will greatly boost our morale to continue to work in the best interest of the members especially at this point in time.

We do not deny the hard work done by Mr. Kanagasabai in developing both the Fund and us for the better. However, we are of the view that the increase in salaries as per the current "work by performance system" in place within VNPF is, legally a different concept as opposed to overtime. These two issues are separate. Even at the closing remarks of the first night party with Mr. Kanagasabai, he finally confirmed the obvious[of what is already common knowledge] that VNPF staff salaries are lower than those of most financial institutions in the country.

Further, whilst we appreciate and foresee the future prospects of success and current decision by the outgoing General Manager to build the purpose built Australian High Commission, we are unable to understand why the building was not seriously discussed at the Management level regarding especially the inevitable consequences the Fund will eventually encounter.

With very little foresight, we are unable to understand the underlying reasons as to the necessity of instructing our designers and builders to proceed with the initial stages of the construction of the AHC when we are yet to obtain the consent to transfer title to the land. We would have hoped for the land to be secured first before any other step is taken. The opposite has incurred the Fund and will continue to incur the Fund tremendous expenses and whether this is recoverable against the Government is another issue that must be resolved - again at the expenses of the member's funds.

Before resolving the numerous claims from other creditors as referred to above, we believe that the Fund must first look within at the welfare of its staff who are the very members of the Fund who must work day and night to develop it to this stage and in the days to come. It is only after assisting the staff that we all can then work together to again oppose the obstacles facing the Fund in order to drive the Fund forward to a prosperous future.


With all this we request that our overtime payments be paid by July 31, 2003. Failing which, we the undersigned will take necessarily action in accordance with law to rectify this long outstanding issue after the above due date. Please note that the overtime schedule payment and duration is requested after December 2001. The left over need not be paid.

Any staff member whose signature does not appear on this letter has worked voluntarily and must not be compensated for his/her overtime.

We are happy to discuss this matter with you and any appropriate person in order to have this matter resolved amicably between us and continue to work for the Fund in the best interest of its members.


Yours sincerely

Alice Garae
Manager Administration




Alfred Bani
Manager Contributor Services


Eniel Johnson
Manager-Finance Department




Less John Naputai
Manager-Legal and Compliance




Rara Soro
System Administrator



Sebata Jonas
Compliance Officer



Samson Sawan
Property Officer

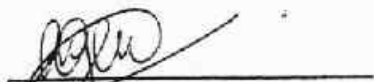


Stephen Daniel
Finance Officer


Tusa Nishai
Employer Services Officer



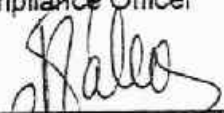
Melten Obed
Member Services Officer



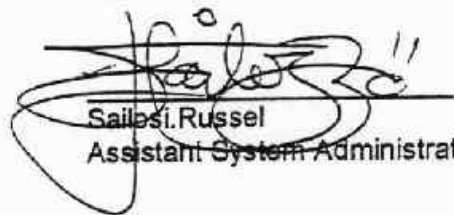
Hannah Liu
Finance Officer



Lessa Jackson
Compliance Officer



Ginette Teleg
Administration Officer



Sailosi Russel
Assistant System Administrator



Linges Dovo
GM's Secretary

Serah Simeon
Receptionist



Jackson Ehpraim
Cleaner




Emilee Alex
Cleaner



Joseph Bani
Finance Officer

Frank Kiri
Finance Officer



Kasiken. Obed
Member Services Officer



Serah Kalsakau
Senior Verification Officer



John. Smith
Employer Services Officer

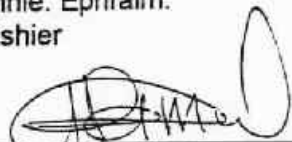


Lynette. Mael
Verification Officer

Annette Calo
Enquiry Officer



Rinnie. Ephraim.
Cashier



Roro Sope
Driver

Cc - Jimmy Andeng
Chairman of VNPF Board

August 1, 2003

Mr. Kelip. Sandy
Acting General Manager
Vanuatu National Provident Fund
P.O. BOX 420
PORT VILA

Dear Sir

**RE: VNPF STAFF CLAIM OF OVERTIME UNDER SECTION 26 OF THE
EMPLOYMENT ACT [CAP 160] AND CLAUSE 13.1 OF THE VNPF GENERAL
ORDERS**

We refer to our letter dated July 21, 2003 in respect of the above matter.

It is now August 1, 2003 and nothing has been done either at the Management level or the Boards level to resolve the above issue. We have not received any response to our letter.

It may be that there are some issues, which must be brought to light once and for all to remove any obscurity in the minds of anyone reading this letter.

Firstly, the reason as to why this claim was not submitted before the former General Manager is very simple and one which all employees working within VNPF are well accustomed to. Every time such a claim is put forward to him [former GM] the result is a dismissal of the person whom he considers to be the instigator of the claim. There are no better examples than that of Tari. Kalterikia and Ephraim. Songi. A better example still, was when the VNPF inspectors had to do inspections of Buses and Taxis during the weekend. Upon requesting just an allowance for the Inspectors [not overtime] on March 1, 2003, which was on a Saturday, Alice Garae [Manager Administration] was instructed to remove the allowance from her memo to the former GM which she did. Inspectors did the inspections that day with no allowance or payment of overtime. Manager Legal and Compliance is a witness and the overall supervising Inspector at that time.

Secondly, Section 26 of the Employment Act Cap 160 [hereafter referred to as the Act] is very clear. A copy of the provision and Section 22 of the same Act is attached for your convenience.

Further, the procedure for approval of overtime under Clause 13.1.1 of the VNPF General Orders states as follows:

"Overtime in excess of normal 35 hours week must involve official duties and be at the direction of the Departmental Head and the General Manager. As a general rule, overtime must be approved in the prescribed form prior to overtime being worked"

It is our firm view that the procedure that overtime form must be filled and approved before payment of overtime is made, is a misinterpretation and has misled many ever since the adoption of the General Orders to be applied within VNPF. We are of the opinion that whenever there is a General Rule, there are exceptions to this rule. Therefore there are exceptions to the General Rule that overtime form must be approved

before overtime payment is made. The only exception provided by Law is designated in Section 26 of the Act and is self-explanatory.

Section 26 of the Act is mandatory and we believe that VNPF has records of time spend by staff members after hours which are surprisingly not brought before the level of the Board in all Operational reports submitted monthly by Managers to the General Manager for the last three years. On the other hand whenever a staff is late, this is strictly dealt with and even reported before the Board. Can someone justify as to why hours spend in VNPF is not brought before the Board but only when a staff is late? Are we trying to cover something up?

Again whilst we appreciate that the General Orders is approved by the Commissioner of Labor before its implementation within VNPF, it does **NOT** prevail over the Act, as it is not an Act of Parliament. Can we have a contrary legal opinion?

Finally, Section 35 of the Act[a copy is attached for your convenience] prohibits women not employed in the Managerial position to work in the night or after 7.00pm in the evening. Records within VNPF have overwhelming evidence that this provision has been violated for the past four years. Again referring to one of us [a lady who was pregnant and had to swim across to her island in the night. This is just one of the numerous examples. Even if there are no records within VNPF then every spouses of employees employed within VNPF is a potential witness that their partners are working late in the night at VNPF. Just when can these hard working ladies be compensated or can someone explain how they are compensated since December 2001 to date?


With much respect Sir, we strongly believe that the only issue here is whether there is overtime within VNPF since December 2001? If there is, then we are of the view that payment be made as per VNPF records of time spend by the undersigned without the necessity of filling in the overtime form.

We take this opportunity to convey our concern over remarks made by the chairman of the Board that we are "Wolves in sheep's skin...greedy..."[English version] We believe in the common saying that the TRUTH HURTS. The truth will prevail. Why are the VNPF staff who are still doing the same work that they used to do and paid overtime but now they are not being paid over time still doing the same Job? Can someone explain?


We trust that this letter serves to clarify some issues, which must be addressed as the legal remedy is being pursued as per our letter of July 22, 2003.

Again we are happy to discuss this unresolved matter with the Board members by Tuesday 5 August 2003 at a time of their convenience to have this matter resolved amicably.

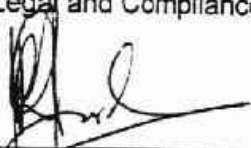
Yours sincerely



Alfred Bani
Manager Contributor Services



Less John Napuati
Manager-Legal and Compliance



Rara Soru
System Administrator



Sebete Jonas
Compliance Officer



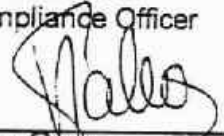
Samson Sawan
Property Officer



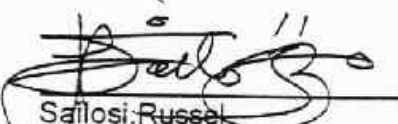
Melten Obed
Member Services Officer



Lessa Jackson
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Serah Kalsakau
Senior Verification Officer



John. Smith
Employer Services Officer



Lynette. Mael
Verification Officer



Rinnie. Ephraim.
Cashier



Roro Sope
Driver

Cc - ALL VNPF BOARD MEMBERS

- Jimmy Andeng
Chairman of VNPF Board

August 4, 2003

Mr. Kelip. Sandy
Acting General Manager
Vanuatu National Provident Fund
P.O. BOX 420
PORT VILA

Dear Sir

**RE: VNPF STAFF CLAIM OF OVERTIME UNDER SECTION 26 OF THE
EMPLOYMENT ACT [CAP 160] AND CLAUSE 13.1 OF THE VNPF GENERAL
ORDERS**

Further to our letter dated August 1, 2003 and our discussion at the Boardroom regarding the above matter. We want to write collectively in response to your letter addressed to each of us.

During our discussion you reiterated that you wish to have every employees claiming overtime claim individually. With due respect Sir, a summary of the claims is submitted herewith stating approximately how much excessive hours each individual staff spent working without being compensated for. Should you need to verify the truthfulness and accuracy of the hours, do let us know. You have until Thursday August 07, 2003 before 4.30pm to settle all claims submitted. Your failure to comply will leave us no option but to take all the necessary means to deal with the matter legally.

We wish to refer to the contents of our second letter, which specifically stated that under the General Orders it is not necessary to have the overtime forms filled by the staff.

Yours sincerely



Alfred Bani
Manager Contributor Services



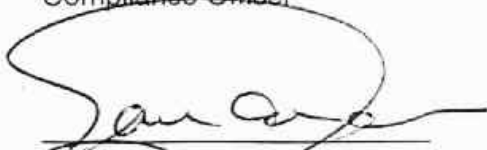
Less John Napuati
Former Manager-Legal and Compliance



Rara Soro
System Administrator




Sepeta Jonas
Compliance Officer



Samson Sawan
Property Officer



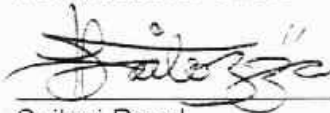
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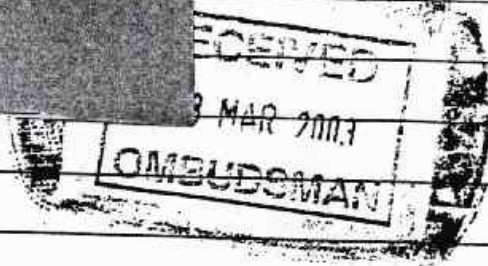
Cc - ALL VNPF BOARD MEMBERS

- Jimmy Andeng
Chairman of VNPF Board
- Sela Molisa
Minister Of Finance

Staff Overall Overtime Summary

Staff Numbe	Sir Name	FirstName	Weekdays Total Hour	Weekend Total Hour	Total Hour
PF04	KEVIN	LYNETTE	127.47	28.80	156.27
PF05	KALSAKAU	SERA	328.83	78.60	407.43
PF08	TALEO	JEANNETTE	244.37	35.33	279.70
PF11	JOHNAS	SEPETA	574.58	178.40	752.98
PF16	SOPE	RORO	506.87	26.67	533.53
PF17	SORO	RARA	626.58	129.63	756.22
PF18	BANI	ALFRED	856.17	346.33	1202.50
PF20	OBED	MELTEN	897.05	201.12	1098.17
PF23	BANI	JOSEPH	369.42	188.58	558.00
PF24	SAWAN	SAMSON	788.62	178.97	967.58
PF25	SIMEON	JOHN	368.95	81.80	450.75
PF28	LESSA	JACKSON	654.95	156.43	811.38
PF30	REZEL	SAILOSI	780.87	251.47	1032.33
PF31	OBED	KASIKEN	435.62	132.87	568.48
PF32	NAPUATI	LESS	698.55	153.27	851.82
Overall Total			8,258.88	2,168.27	10,427.15

12 MARCH 2003



MR. RAYNOLDS T GARAE
NIOR INVESTIGATOR
FOR MR HANNINGTON & ALATOA
OMBUDESMAN OF THE REPUBLIC OF VANUATU
OMBUDESMAN OFFICE
PORT-VILA

DEAR MR. GARAE

TIAKIU LONG LEITA WE YU SENDEM I KAM LONG MI.
MI KAT HONA MO RESPEK BLONG EIPLAEM LEITA BLONG YU WE X
SENDEM LONG MI, MO MI ADAJANEM WANEM YU SIAP ASKER
= HEMIA NOMO MI MI WAN MAN WE MI SKAL SMOL NOMO
MO MI NO SAVE RAETEM LEITA LONG ENGLIS LANWIS SA BAE
MI PUTA ANSA BLONG MI LONG BISLAMA NOMO.
YES MI SIAP WOK LONG V.N.P.F MO MI GAT KAT WE
MI SIAP YUSUM BLONG RICODER TITEM WEMI KAM IN MO
MI KO HOM.

EVERIDEI MI SIAT WOK BITWIN 7:15 AM MO 7:30 AM BLONG
KLINIM OFIS BIFO OFIS I OPEN LONG PAFIK. MI FINIS WOK
LONG 12:00 NOON MO SIAT BAYEKEN LONG 1:30 PM MO FINIS
LONG 4:30 PM. MI NO WOK AFTA LONG OFIS EL HAQA O
WEEKEND FROM SEMI MI WOK ADJASAD UN OFIS NOMO
MI WOK ANDA LONG ADMINISTRACION DIPATMEN
MI TALEM TANWIT LONG ANDASTANDING BLONG YU LONG ANSA
BLONG MI LONG LEITA BLONG YU.

Y
Sincerely

REPUBLIQUE DE VANUATU

SERVICE DU TRAVAIL

Sac Postal Privé 022
PORT VILA

Téléphone : (678) 22610
Fax : (678) 26544



REPUBLIC OF VANUATU

DEPARTMENT OF LABOUR

Private Mail Bag 022
PORT VILA

Telephone : (678) 22610
Fax : (678) 26544

Référence : LAB/HQ/07 (8-1)

Date : 17th September 2003

The Ombudsman,
Office of the Ombudsman,
PMB 9081,
PORT VILA. ✓



Dear Sir,

**Re: Non-Payment of Staff Overtime Allowance by
VNPF Board and Management**

I have read through your report on the above matter to be in line in accordance to the sections of the Current Employment Act (Cap. 160).

However, it seems on your report you have over looked or missed out a particular section of the Employment Act (Cap. 160), which also accommodates classes of employees who are not cover from section 22 to 26.

Section 27 © of the Employment Act (Cap. 160) as quoted nothing in section 22 to 26 inclusive shall apply to or in relation to persons occupying positions of management or employed in a confidential capacity.

Section 27 clearly spelled out that any VNPF employees occupying any management positions are exempted from section 22 to 26 of this Act.

Therefore, in accordance to the employees on managerial positions are not oblige to claims for overtimes.

Thank you for your understanding.

Yours faithfully,

Edwin KALORISU

Ag. Deputy Commissioner of Labour





Vanuatu National Provident Fund

P.O. Box 420, Port Vila, Vanuatu - Telephone : (678) 23808 - Fax : (678) 24673

10 September 2003
A79A/KS/lj

The Ombudsman
Office of the Ombudsman
Pilioko House
PORT VILA

Dear Sir

RE: WORKING PAPER ON THE NON- PAYMENT OF STAFF OVERTIME ALLOWANCES – BY VNPf BOARD AND MANAGEMENT

We are in receipt of your referred draft report.

We are concerned that the report has been made with a fundamental misunderstanding as to jurisdiction.

Vanuatu National Provident Fund (CAP 189) establishes a Board. That Board is a corporate body which has perpetual succession and under common seal may sue and be sued in its corporate name. The Board employs persons including management and staff.

Section 62 of the Constitution together with the Ombudsman's Act No.14 of 1995 provide jurisdiction for enquiries under the functions of the Ombudsman. With respect to the functions of the ombudsman provide no jurisdiction to enquire into the actions as an employer of a corporate body. Your enquiry is without jurisdiction and accordingly of no binding effect. However, in the spirit of cooperation and without prejudice, we are prepared to respond to the allegations made within your working paper.

Firstly, it must be pointed out that the working paper has been derived solely from comments by staff members. These are the staff members who allege a claim for overtime allowances. There is no balance in the enquiry whatsoever as there was no request made to the Board and Management to respond to the enquiry. This denigrates from any validity the enquiry may have.

The letters referred to in the Working paper as Annex A, B and C were responded to. We refer you to Annex A and B attached to this letter. The letters are self explanatory and should draw much light on the issue at hand. Further, we would like to respond to certain issues raised in the Working paper:

- The practice of non payment of overtime allowances began in 1998

Since 1998, staff were paid overtime allowances. We have records to substantiate this.

- VNPF Employees were and are going through some very unfair treatment
Staffs were trained to work in a disciplined manner and were not treated unfairly as stated. There were additional benefits introduced to improve the working conditions of the staff. Staffs were provided with a staff canteen and also a Staff Benevolent Society was set up to look after the welfare of the staff where the Board contribute 1% of the staff salary to the Society. The salary increments received by the staff since the restructuring of the Fund in 1999 was very high compared to other Statutory and Semi Government Organizations.
- Two staff namely: Tari Kalterekia and Ephraim Songi were terminated for initiating the overtime claim
The two staff were terminated not for initiating an overtime claim. Mr. Kalterekia's case was investigated earlier by you and we were of the view that this matter is now closed. We refer you to Annex C for copy of letter from your office in this respect.

As regards, Mr. Ephraim Songi, he was employed by the Board in 2002 and during his probationary period, it was found that he had been involving himself on outside private matters than working for the Fund; hence his termination of employment prior to the expiry of the probationary period of 6 months.

- Termination of Less John Napuati, Manager – Legal & Compliance
Mr. Less John Napuati was terminated for serious breach of discipline, breach of his contractual obligations with the Board and divulging confidential information. His performance and conduct as a Manager is such that the only course of action is to terminate his employment with the Board.

If there have had been full enquiry we believe it would properly have been determined that the staff overtime allowances claims, a between employer and employee, have previously been addressed. The current status is for any continuing concerned employee to eloquate their claims to the employer for consideration.

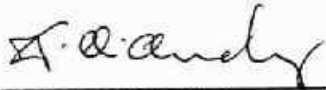
If the matter proceeds as above it will take on the context of a regular employer/employee dispute situation. If the matter is not able to be resolved through normal avenues of dialogue, conciliation and reconciliation it will be open to either party to seek a resolve by court redress.

We trust you accept our comments in the spirit in which they are provided and advise staff persons who have approached you accordingly.

We trust this brings conclusion to the matter as regards involvement from your office.

This response has been issued by the Board as a whole notwithstanding the issue to each Board Member of your letter regarding the working paper on non payment of staff overtime allowances by VNPF Board and Management.

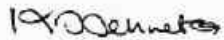
Yours faithfully
VANAUTU NATIONAL PROVIDENT FUND BOARD



JIMMY ANDENG
CHAIRMAN - VNPF BOARD



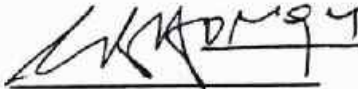
JIM BATTY
VNPF BOARD MEMBER



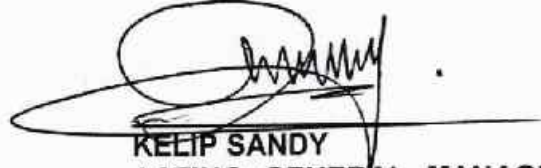
DORESTHY KENNETH
VNPF BOARD MEMBER



BRADLEY KARAE
VNPF BOARD MEMBER



GEORGE BORUGU
VNPF BOARD MEMBER



KELIP SANDY
ACTING GENERAL MANAGER -
EX OFFICIO MEMBER

1 August 2003
PF30/KS/lj

Mr Sailosi Rezel
Assistant System Administrator
VNPF Head Office
PORT VILA

Dear Mr Rezel

RE: OVERTIME CLAIMS

I refer to your letter of 21 July 2003. I note since that the letter was forwarded to me, that a number of signatories have withdrawn their support for the matters set out in that letter.

To the extent that the letter amounts to purported notification of an intention to make a claim for overtime, I am happy to respond to that. However, the letter goes further and purports to take issue with decisions taken by the Board in relation to the investment of members' funds. I fail to see the relevance of the issues you have raised in that regard to the purported claim to overtime. I am concerned also that the statements made in that letter appear to reflect breaches by certain members of the management team of their duty of confidentiality in relation to their knowledge of the affairs of the Board. I will be dealing with that aspect separately.

Returning to the overtime claim, as you are all aware, provision is made in the Board's General Orders for the payment of overtime and the process for having overtime approved.

From January 2002 onwards, a detailed annual activity plan was prepared by the Manager of the Department in consultation with his or her staff for the operations of the whole year. The detailed annual activity plan is in conformity with the job summary of the individual staff of the department. This is a new system of control introduced by the former General Manager. It is the responsibility of the Manager that the daily responsibilities are achieved according to the plan. If, however, a Manager finds that it is difficult to complete a day's activity, he is required to send through the internet a message to the Deputy General Manager indicating the matters not completed as well as the date on which that matter will be completed. Immediate approval is given by the Deputy General Manager for the transfer of the activity. The Manager then slots that activity against the appropriate date.

Your letter does not appear to take into account the requirements of the General Orders. As far as I am concerned, from January 2002 to date, not a single overtime requisition form had been forwarded to the General Manager or the Deputy General Manager requesting for overtime work. Since January 2002 to date, the General Manager or the Deputy General Manager have never received a request for overtime by any Manager

and it has never been brought to the notice of the General Manager by any Manager to request for overtime work. That is where the process involved has been followed and a Department head has requested the person to work overtime, the request is approved, the overtime work has been carried out and overtime allowance has been paid or time off lieu has been agreed.

All staff within the VNPF have worked together very hard over the last few years to put the VNPF back on to a solid foundation. Tasks and responsibilities have been assigned to different managers to be carried out within the normal working day. To the extent, that a manager or a staff member within his/her department considered it necessary to work overtime due to special duties being allocated to the Department and that the special duty could not be achieved within the normal working day, it was open to that person to approach the General Manager or the Department Head as the case maybe for approval as provided for in the General Orders, to work overtime to achieve the objectives. Where persons have not sought approval for any overtime that they have worked in order to achieve those objectives, it has clearly been on the basis that they have accepted the responsibility to achieve those objectives, and it may be that the individual employee has chosen to work additional hours to ensure that those objectives are achieved and that his performance is in line with management expectations. He/She has not been asked to work overtime. Where that has occurred the employees entitlements in line with the General Orders have been respected.

With respect, it is a little late now after the time has been worked to make an ambit claim for overtime. The opportunity to seek approval for working overtime and to be paid for it in each case have well and truly passed.

During the time of finalizing this letter, I note that another letter was presented to me dated 1 August 2003 and copied to all board members. The contents of the letter are noted.

In the meantime, I am happy to consider individual claims, but at this stage the very general nature of the claim and the manner in which it has been advanced does not assist. I am not aware of any outstanding claims in respect of overtime which had been approved but in respect of which payment of the overtime allowance has not been made or alternatively the time off in lieu has not as yet been granted.

Yours sincerely


KELIP SANDY
ACTING GENERAL MANAGER

Cc; Chairman of the Vanuatu National Provident Fund Board

Please acknowledge receipt:

Signature: _____ Date: ____/____/____

7 August 2003
PF30/KS/lj

Mr Sailosi Rezel
C/- VNPF Head Office
P O Box 420
PORT VILA

Dear Mr Rezel

RE: OVERTIME CLAIMS

I refer to your letter of 4 August 2003.

It is clear, that contrary to the Board decision, along with my letter of 1 August 2003 to you and our meeting of same, you have refused to abide by the request to lodge your claims individually. Furthermore, you have sought to impose a deadline and include a threat consequent upon any failure to comply with your demands.

With due respect to the signatories of the letter, the tone of your letter and the breaches of duties associated with the recovery of the "information" relied upon in the schedule attached to your note is of serious concern to me as the Acting General Manager.

Turning to your response, I am disappointed that you have totally refused to acknowledge or address the provisions in the General Orders dealing with overtime claims.

Every employee has been made fully aware of the Board's work practices. As you are all aware, the Board operates on a "pay for performance" basis which includes establishing daily tasks for each employee which they are expected to achieve within normal working hours in line with their level experience, seniority and responsibility. As you will appreciate, the staff salaries have increased significantly since the introduction of this system. Every employee is very much aware that if they feel the responsibilities assigned to them for a particular day are beyond their capabilities for that day, arrangements can be made with their superior either to: -

- a. Postpone the deadline of completing the task; or
- b. Agree to undertaking paid overtime to achieve the task if that was necessary and agreed.

The second option clearly envisages the employee approaching their superior in accordance with the requirements of the General Orders to seek approval for overtime.

Whenever overtime has been sought and the superior has deemed it appropriate, overtime has been approved and paid. If an employee has worked additional hours without being requested to do so and without making any other arrangements, that is a matter of personal choice and does not give rise to a liability on the Board's part.

In summary therefore, unless an individual employee is able to indicate circumstances which would support a contrary view, I am not aware of any instance where overtime benefits are due and have not been paid, as all overtime requests have been considered and dealt with at the appropriate time.

With regard to the table that was attached to your letter, I am particularly concerned by the circumstances by which that information was recovered by Rara Soro. Not only was it in breach of his duties to have accessed the restricted files, and this will be addressed separately with him, he has used the information out of context and have supplied details of individual staff members and given them to believe that they are entitled to a particular sum of money. Not only has this created disruption, it has created a false expectation in the circumstances where you should know better, particularly those in management positions.

With regard to those signatories who are members of the management team, I would draw your attention to Section 27 of the Employment Act which excludes from the entitlements to the benefits of Section 22-26 of the Employment Act which deal with overtime " persons occupying positions of management or employed in a confidential capacity"

In light of all the above, I trust that this will now conclude this unfortunate distraction to the Board's real task. If however, there are individual who still wish to put forward a case for the payment of overtime arising through misunderstanding or a lack of appreciation of particular circumstances, I am authorized by the Board to consider individual claims on a case by case basis. In putting such claims to me, the individuals will need to address the issues I have raised concerning the provisions in the General Orders concerning the arrangements for such overtime to be claimed. They should address in particular why those provisions have not been observed and why, despite the failure to observe those provisions the individual believes he or she is entitled to be paid for overtime in particular circumstances.

Unless and until I receive individual claims along the lines I have requested, I will consider this matter closed.

Yours sincerely

VANUATU NATIONAL PROVIDENT FUND BOARD


KELIP SANDY
ACTING GENERAL MANAGER

Cc: Hon. Minister of Finance
Chairman of the Board
All Board Members



Appendix I

Vanuatu National Provident Fund

P.O. Box 420, Port Vila, Vanuatu - Telephone : (678) 23808 - Fax : (678) 24673

- 22 September 2003

RE: REQUEST FOR ACCESS FOR INDIVIDUAL TIME CARDS FOR FEBRUARY 2001 TO JULY 2003

I refer to your letter of 22 September 2003.

As I have stated in correspondence previously, the General Orders set out the procedures relating to overtime allowance entitlements. Time cards are, with respect, not relevant to those entitlements. They are used for the Board's own administrative purposes only and they do not indicate the type of work done and whether approval was given and if the work was supervised.

I note also, with concern, despite my earlier letter pointing out the provisions in the Employment Act relating to the position of managers that a current manager, Alfred Bani, and two former managers continue to pursue alleged claims to overtime.

I am happy to consider letters from individuals setting out circumstances where they believe they may have been entitled to overtime allowances although they cannot point to formal paperwork authorizing that overtime. The matter however, is simply not as straightforward as you all seem to believe. The claims you say you have do not arise out of the details contained in the time cards. Those claims may only be sustained if the requirements of the General Orders were observed in principal, even if the paperwork did not reflect this, that is overtime work other than for normal work must have been approved and supervised by your Manager.

For those reasons, I am unable to comply with your request and I will only consider individual claims.

Yours sincerely

KELIP SANDY
ACTING GENERAL MANAGER

RELEVANT LAWS AND REGULATIONS

EMPLOYMENT ACT [CAP 160]

DAYS AND HOURS OF WORK

Section 22

(1) Subject to the provisions of this Part no employee shall be required to work in any undertaking more than 44 hours or 6 days in any week or more than 8 hours in any day exclusive of the time allowed for meals and tea.

WORK ON PUBLIC HOLIDAYS

Section 23

(1) Except where he voluntarily undertakes so to do no employee shall be required to work on a Sunday or Public Holiday.

(2) Sub-section (1) shall not apply in relation to persons employed in-

(h) Any other work approved, on the application of an employer, by a labour officer for the purpose of this sub-section, having regard to the requirements of the proper management of the undertaking and the convenience of the public.

(3) An employee working on a Sunday or public holiday in pursuance to sub-section (2) shall be granted an equivalent period of time off work on another day.

WEEKLY DAY OF REST

Section 25

Every employee shall be entitled to a weekly rest of 24 consecutive hours which shall normally fall on a Sunday except where another day has been fixed by agreement between employee and employer or in any trades where it is usual to take another day: provided that in any undertaking where work is continuous and where simultaneous taking of the day or rest by all the staff would be to the prejudice of either the public or the proper working of the undertaking the employer may grant the weekly day of rest by rotation or may divide it into 2 half-days. In any such case the allocation of the weekly day of rest shall be posted up at the place of work.

OVERTIME PAY

Section 26

(1) In respect of work carried out in excess of the normal hours of work mentioned in section 22(1) an employee shall be paid at the following rates-

(a) for work on public holidays or Sundays, at a minimum rate equal to one-and-a-half times the normal hourly rate;

(b) for work carried out in excess of the normal weekly hours of work-

(i) for the first 4 hours: at a minimum rate equal to one-and-a-quarter times the normal weekly rate;

(ii) in excess of 4 hours: at a minimum rate equal to one-and-a-half times the normal weekly rate.

(c) for work (other than work as a night watchman) carried out in the night between 8 p.m. to 4 a.m. in excess of the normal weekly hours of work: a minimum rate equal to one-and-three-quarter times the normal hourly rate.

DUTIES OF A LEADER
Section 13

- (1) A leader must:
- (a) comply with and observe the law;
 - (b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution;
 - (c) comply with and observe the duties obligations and responsibilities established by this Code or any other enactment that affects the leader; and
 - (d) not influence or attempt to influence or exert pressure on or threaten or abuse persons carrying out their lawful duty.

CONSTITUTION OF THE REPUBLIC OF VANUATU

CONDUCT OF LEADERS
Article 66

- (1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to-
- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
 - (b) demean his office or position;
 - (c) allow his integrity to be called into question; or
 - (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.
- (2) In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by sub-article (1).

DEFINITION OF A LEADER
Article 67

For the purposes of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law.

GENERAL ORDERS
(TERMS AND CONDITIONS OF EMPLOYMENT) FOR EMPLOYEES OF THE
VANUATU NATIONAL PROVIDENT FUND

12. HOURS OF DUTY

12.1 Normal hours of duty

- 12.1.1** Normal hours of duty shall be 35.00 hours a week between the hours of 7.00 am to 5.30 pm, Monday to Friday.

13. OVERTIME

13.1 Approval of overtime

- 13.1.1 Overtime in excess of normal 35 hours week must involve official duties and be at the direction of the Department head and the General Manager. As a general rule, overtime must be approved in the prescribed form prior to overtime being worked.

13.2 Payment for overtime

- 13.2.1 Compensation for overtime will normally be through time off in lieu. However, where payment is to be made for overtime worked, the following be observed. For overtime worked during the working week, compensation will be 125% of the hourly rate of pay and for overtime worked on Saturday, Sunday or public holidays, 150% of the normal hourly rate.
- 13.2.2 Overtime pay shall be calculated by reference to the pay of an employee. "Pay" means the total annual salary and higher duties allowance excluding any overtime.

13.3 Calculation of overtime

- 13.3.1 "Time" in relation to the calculation of overtime pay means the hourly rate of pay of the employee calculated to the nearest Vatu according to the formula:

$$\text{Pay} \times \frac{10}{100}$$

- 13.3.2 Payment of overtime shall be calculated to the nearest quarter of an hour of the total claimed for each fortnight.
- 13.3.3 Unless the General Manager determines otherwise for special reasons, overtime pay shall not be paid to an employee who occupies Grade 12 or above.

13.4 Allowance in lieu of overtime

- 13.4.1 An employee whose duty statement provides for payment of allowance in lieu of overtime shall not receive any other overtime payments (Grade 12 to Grade 15).

13.5 Special cases

- 13.5.1 An employee who works outside normal hours of duty is entitled to receive overtime Pay as follows:
- a) for duty performed in excess of 35.00 hours per week, between the hours of 7 am and 5.30 pm, Monday to Friday,

and

- b) for all duty performed before 7.00 am and after 5.30 pm, Monday to Friday, and
- c) for all duty performed on Saturdays, Sundays and public holidays.

13.6 Overtime rates

13.6.1 Current rates of overtime are as follows:

- a) Monday to Friday -
 - the rate shall be time and one quarter (x 1.25).
- b) Saturday, Sunday or gazette Public Holidays
 - the rate shall be time and one half (x 1.5).

13.7 Allowance in lieu of overtime

13.7.1 Where the General Manager believes it expedient to do so, he may determine that an employee shall receive an allowance in lieu of overtime.

15.10 Special Provision

Notwithstanding any provision herein contained in the General Orders, the General Manager may in his absolute and uncontrolled discretion terminate any employee on giving to such employee one (1) months notice in writing where in his opinion he considers termination to be in the best interest of the Board and he may terminate without having to assign any reason therefore. In the event an employee is terminated to this paragraph, such employee shall be entitled to those benefits paid to a retrenched employee.