



OFFICE OF THE OMBUDSMAN

PUBLIC REPORT

**ON THE UNFAIR DEDUCTION OF
SEVERANCE PAYMENT FOR MS LINDA
GEORGE, FOR PRE-SCHOOL
COORDINATOR FOR MALAMPA**

Date: 19 May 2020



REPUBLIC OF VANUATU

15009/2020/01

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**PUBLIC REPORT ON THE UNFAIR DEDUCTION OF SEVEANCE PAYMENT FOR
MS LINDA GEORGE, PRE-SCHOOL CORDINATOR FOR MALAMPA**

SUMMARY

Mrs George commenced her employment as the Pre-School Coordinator for Malampa Province on 8 February 2006. Until the date of her retirement she had been employed for a total of approximately 8 years.

In a letter dated 18 March 2014, Laurent Rep, Public Service Commission Secretary advised Mrs George that the Commission at its meeting N0.05/2014 of 14 March 2014 approved her retirement with effect from 13 June 2014.

Her severance payment was calculated by Tevear Daniel on 19 June 2014 to the amount of VT1.519, 556 (severance VT1, 487,400 & Annual leave VT42, 156)

Mrs George continued to work approximately 12 months thereafter. This is due to the fact that she did not receive her retirement letter in time and there was no one available to replace her.

The deduction from her severance allowance totalling of VT1, 039,370 to the pay period she worked is unlawful. The deduction is contrary to section 57 of the Employment Act [CAP 160]. She had lawfully earned the severance allowances. The 12 months for which she continued to receive her salary was for official work actually performed beyond her retirement age.

2. JURISDICTION

- 2.1 The Constitution and the Ombudsman Act [CAP 252] and the Leadership Code Act [CAP 240] give jurisdiction to the Ombudsman to enquire into the improper conduct of the former officials at the Department of Education.

3. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 3.1 The purpose of this report is to present the Ombudsman's findings as required by the Constitution and the Ombudsman Act and the Leadership Code Act.

4. ISSUE

- 4.1 The issue arising in the complaint is whether the deduction made to Mrs George severance allowance is lawful deduction _ that is the circumstances surrounding the decision to make the deductions is supported in law

5. RELEVANT LAWS

- 5.1 Relevant parts of the following laws are reproduced in **Appendix 1**

- ✓ Teaching Service Act, Section 5 & 11
- ✓ Employment Act

6. OUTLINE OF EVENTS

- 6.1 On 10 February 2006, Mrs George received her appointment letter from the Public Service Commission as the MALAMPA Provincial Pre- School Coordinator. Her appointment was to be effective from 8 February 2006 (**Appendix 2**)
- 6.2 On 18 March 2014, Laurent Rep, Public Service Commission Secretary wrote and advised Mrs George that the Commission at its meeting N0.05/2014 of 14 March 2014 approved her retirement with effect from 13 June 2014. (**Appendix 3**)
- 6.3 On 10 July 2015, Mrs Judith Melsul, Acting Secretary of Public Service Commission, wrote to Director of Finance, Mr Letlet August, authorising him to pay leave payout entitlements for Mrs George (**Appendix 4**).

- 6.4 On 26 June 2017, Director-General of Education, Mr Jessie Dick, informed Ombudsman that the LPO severance payment to Linda George was for the amount of Vt 1,529,556 but VT1, 039,370 severances was deducted being for pay period 1413 to pay 1510 which is a total of 23 paydays as she was still occupying her post and the amount was deducted back to the date her retirement was effective. **(Appendix 5)**
- 6.5 On 6 June 2018, Director of Finance, Mr Tonny Sewen, provided the breakdown of severance payment as stated in the vendor payment details.**(Appendix 6)**
- 6.6 On 25 January 2019, Acting Director-General of Education, Mr Iati Bergmans, responded to allegations raised. He stated that Mrs George continued working because she was still getting paid. However, severance payment was delayed due to lack of funding. **(Appendix 7).**

7. DISCUSSION

- 7.1 The issue arising in the complaint of Mrs George is that the deduction of her severance allowance is unlawful.

In the outline of events referred to above, a number of things stands out and are worth paying a closer look at them.

First, the letter advising Mrs George of the Commission's approval of her retirement of June 2014 reached her approximately 12 months later (on March 2015). This was a delay of some 12 months. How is Mrs George expected to comply with the decision of the Commission if it was not delivered to her on time? Further, the Ministry of Education and the Public Service Commission could not produce any evidence showing that Mrs George did receive the letter prior to 13 June 2014.

Secondly, the evidence from then, Director- General of Education, Mr Jessie Dick essentially says that the deductions were made because Mrs George continued to work and receive salary after the retirement date (13 June 2014). However, there is no evidence forthcoming from the Ministry of Education that the Ministry did advise the Finance Department to cease paying any salaries to Mrs George from 13 June 2014 onwards.

Thirdly, there is nothing to show from the Ministry of Education and the Commission that they had stopped Mrs George from working on and after 13 June 2014 but that Mrs George did not heed their instructions.

Fourthly, did they inform her in advance that they were going to make the deductions and why? There is no evidence adduced that confirms that the Ministry applied the rules of natural Justice before making the deductions.

Fifth, is the decision of the Ministry of Education to deduct Mrs George severance lawfully earned contrary to law? The relevant law on deductions of severance allowance is the Employment Act. **(Refer to Appendix 1)**

Clearly, the circumstances relating to the deductions of severance allowances of Mrs. George do not fall into any of the circumstances under section 57 reproduced in **Appendix 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 preparation of this public report to give the individuals mentioned in this report another opportunity to respond. No response was given.

8 FINDINGS

8.1 Finding 1: Duty of public service to act as a good employer

8.1.1 The Commission had failed to act as a good employer in dealing with Mrs George severance allowance. Section 15 of the Public Service Act requires the Public Service Commission to act as a good employer in the performance of its functions, responsibilities and duties.

8.1.2 Section 8 (1) (d) clearly states the resolution of employment disputes and discipline of employees in accordance with this Act and Section 15 (2)(a) state that there must be fair and proper treatment of employees in all aspects of their employment. Mrs Linda George had received her retirement letter effective on Friday 13 June 2014. Public Service Commission should have:

- (a) ensured that Mrs George retirement letter reached her in good time;
- (b) appointed an acting Pre- School Coordinator in place before retiring Mrs George.

8.2. Finding 2: Release of cheque for Mrs George severance to PEO Malampa's account was unfair

8.2.1 Mrs George's severance cheque of VT 1,519,556 was deposited into the PEO MALAMPA's account, instead of her personal account. This action is unfair by the Department of Education. The cheque should have been paid into Mrs George's account.

8.3 . Finding 3: The deduction made to Mrs George severance allowance is contrary to the Employment Act.

9. RECOMMENDATIONS.

As a result of the above findings, the Ombudsman makes the following recommendations:

- 9.1 That the Ministry of Education to ensure retired employees receive their retirement letter before retired date lapsed. There will also be clear instructions attached with the retirement letter to stop employee from continuing his/her duty.
- 9.2 That the Ministry of Education advise the Department of Finance (payroll section) the copy of the retirement letter and an instruction to cease the salary as soon as the retirement date laps.
- 9.3 That PEO Malampa, Mr Renjo Samuel to ensure documents pertaining to retirees must dispatched to the person on time before giving out instructions to retired employees. He must make necessary follow ups with the Ministry of Education until payment and ceasing of payment is done.
- 9.4 That the Department of Education liaise with Mrs George to refund all outstanding severances allowances that had been deducted unlawfully. If such attempts are not made, then Mrs George may be at liberty to seek legal advice for further actions.

Dated: 19 May 2020



Hamlison Bulu
Ombudsman

INDEX OF APPENDICES

1. Relevant laws

- 1 Appointment letter from PSC**
- 2 Copy of Age retirement letter from Mr L Rep Public Service Commission**
- 3 Copy of letter from Judith Melsul to Mr Letlet August**
- 4 Copy of letter from Jesse Dick to Ombudsman**
- 5 Copy of letter from Tony Sewen to Ombudsman**
- 6 Copy of letter from Iati Bergman to Ombudsman**

Teaching Service Acts

5. Functions of the Commission

(1) The functions of the Commission are –

(a) to make officers and employees available to the Minister for the performance of educational duties; and

(b) such other functions as are conferred on it by this Act.

(2) Subject to this Act, the Commission shall make available to the Minister for the performance of educational duties such number of officers and employees, possessing such qualifications, as the Minister requires.

11. Appointment of officers

(1) Subject to this section, the Commission may appoint to the Service as officers to perform educational duties such number of persons as the Minister, after receiving a report from the Commission, determines.

(2) A person shall not be appointed as an officer unless –

(a) he has such qualifications as are determined by the Commission;

(b) he is, in the opinion of the Commission, healthy and physically fit; and

(c) he is, in the opinion of the Commission, a fit and proper person to be an officer.

(3) Subject to this Act, officers hold office on such terms and conditions as the Commission from time to time determines.

(4) The Commission shall not determine terms and conditions of employment in respect of transferred officers that are less favourable than the terms and conditions of employment enjoyed by such officers under any Government service at the time of their transfer.

Employment Act

57. Deductions from severance allowances

(1) An employer may deduct from any severance allowance payable –

(a) in the case of an employee who is retired on or after attaining the age of 55 years:

(i) half the amount of any gratuity due at the age of 55 years from any pension fund;

(ii) any gratuity granted at the age of 55 years by the employer;

(iii) 5 times the amount of any annual pension granted at the age of 55 years from any pension fund mentioned in paragraph (a)(i) above;

(iv) 10 times the amount of any annual pension granted at the age of 55 years by the employer;

(b) in any other case –

(i) any gratuity granted by the employer;

(ii) any contribution made to any pension fund mentioned in paragraph (a)(i) above by the employer.

(2) For the purpose of this section "pension" fund means any provident or pension fund or seminal scheme (other than the Vanuatu National Provident Fund established by and under the [Vanuatu National Provident Fund Act](#) [Cap. 189], as amended from time to time) which fund is specifically approved by the Commissioner

GOUVERNEMENT DE LA
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*Toutes correspondances doivent être adressées au SECRETAIRE, Commission de la Fonction Publique.
All correspondences should be addressed to the SECRETARY, Office of the Public Service Commission.*

Educ.83.6

10 February 2006

Private and confidential

Linda George
Education Office
P.O Box 59
MALAPA PROVINCE

Dear Ms George ,

In accordance with S. 23 (1) of the Public Service Act (the Act) I am pleased to inform you that, the Commission at its meeting No.02 of 8th February 2006 Decision No.07 has approved your appointment to the post and on terms and conditions of employment as stated below.

Post title:	Provincial Pre-School Coordinator (Malampa)
Department:	Pre-School, Primary & Special Education
Post No.	54003224
Grade:	P12/13
Effective date of appointment:	8th February 2006

You are hereby requested to submit to the Public Service Commission your registration of birth and a certificate of Medical fitness given by a Medical Practitioner within 28 days from the date of this letter.

You are appointed to the incremental step of P12.1 of the Public Service Salary Scale, equivalent to an annual salary of **Vt.784,656** plus a Cost of Living Allowance of **Vt.51.000** per annum.

The terms and conditions of service applicable to the Public Service are contained in the Staff Manual and will apply to you. You should familiarize yourself with its contents. Such document are available for perusal from your Ministry HRO or are accessible through the MOH website.

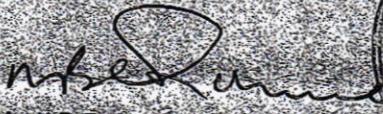
You are also required to comply with the Code of Conduct, included in the Public Service Act, a copy of which is attached for your perusal.

You may be called upon to carry out duties in any places in the Republic.
No accommodation will be provided by the Government, however you will receive a housing allowance if you occupy privately rented house or apartment or are in the process of purchasing your own home.

If you accept this offer with the above conditions, please confirm your acceptance by signing the attached copy of this letter and returning it to the Principal Human Resource Officer, Ministry of Education.

On behalf of the Commission, I congratulate you on this appointment and wish you every success in the role.

Yours sincerely,



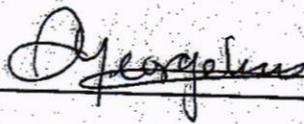
Mark P Bebe
Secretary,
Office of the Public Service Commission



- Copies: Director General - Ministry of Education
HRO - Ministry of Education
Director - Pre-School, Primary & Special Education
Director - Department of Finance - Salary Section
Audit Office
HRIMS - OPSC
HRM File
PF
DF

Linda George
C/- Education Office
P.O Box 59
MALAMPA PROVINCE

I, Linda George do hereby fully accept the offer of appointment
with the above conditions.


(Signature)

17/02/06
(Date)

2

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PRIVATE AND CONFIDENTIAL

moe.11.A.8/14

Date: 18 March 2014

Mrs. Linda GEORGE
C/- Education Services
Ministry of Education

Dear Mrs George,

Annex 3

AGE RETRIEMENT

I am writing to inform you that, the Commission at its meeting No.05/2014 of 14th March 2014 Decision No.32 approved your age retirement with effect from Friday 13th June 2014.

The Commission approved that you served your three (3) months notice commencing from the date of the decision 14th March 2014.

You shall be entitled to a severance payment calculated at the rate of (2) two months for every year of service and pro rata amount of any period of less than twelve months. You shall also be entitled to a cash equivalence of annual vacation leave accrued, if there any.

The Ministry of Education will be able to provide you with the calculations of those benefits.

On behalf of the Government and the people of Vanuatu, I would like to take this opportunity to thank you for the services you rendered since your appointment in the Public Service, and I wish you all the best in your future endeavour and a long healthy retirement.

Yours sincerely,


Laurent Rep
Secretary

Copies: DG - MoE
Director Education Services - MoE
HR - MoE
Director, Finance Department - Salary Section
PF
Chrono

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10th July 2015

Mr Letlet August
Acting Director
Finance Department
Ministry of Finance and Economic Management
Port Vila

Dear Mr. August,

Outstanding Annual Leave Out for Mrs Linda George – ID - 1063298

This letter serves as authorisation to for the Leave payout of Mrs Linda George from the Department of Education, Ministry of Education.

Mrs George has been retired on the 13th June 2014.

Mrs George has an outstanding Annual Leave of 29 days.

Thank you for your co-operation.

A handwritten signature in black ink, appearing to read 'Judith Melsul'.

Judith Melsul
Acting Secretary
Office of the Public Service Commission



Copies: Salary Section – Finance Dept.
HRO, Ministry of Education /
Department of Education
PF / Chrono

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26 June 2017

Ombudsman of the Republic of Vanuatu
Ombudsman Haus
PMB 9081
PORT VILA



Attention: Ms Velma W Karabani
Director General Complaints & Investigation

Dear Ombudsman

**RESPONSE TO UNFAIR DEDUCTION OF SEVERANCE PAYMENT FOR MS LINDA GEORGE,
FORMER PRE-SCHOOL COORDINATOR MALAMPA**

I acknowledge receipt of your letter dated 24 May 2017.

I refer to your letter of request and respond to the mentioned queries as follows;

1. Please explain why such a huge part (Vt1,093,370) of Ms Linda George's severance was deducted unfairly. Provide documents of evidence to support your answer.
 - A LPO being for severance was made payable to Linda George for the amount of Vt1,529,556 (see attached Annexed A).
 - The Finance Department processed break down of severance payment as stated in the Vendor Payment Details (See attached Annexed B).
2. Confirm if Ms George's severance of Vt1, 093,370 was deducted towards her monthly salary after she had retired on 12 June 2014 since still occupying her former position.

An amount of Vt1,039,370 was deducted from her severance being for Pay period 1413 to Pay period 1510 which is a total of 23 paydays.

I confirm the amount was deducted back to the date her retirement was effective.



3. *If yes, does the Department of Education or the PSC have the right to handle her retirement package in such a manner? Explain with evidence.*

After someone cease employment with the Vanuatu Government the Finance Department are required to recover any money owed to the Vanuatu government.

For more clarification on your question please liaise with the Finance Department if an act or policy covers such process or practise.

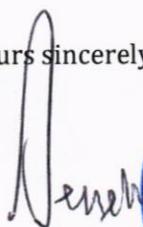
4. *Ms George claimed that the Vt1200, deduct for her maternity ward invoice is unfair as she did not have a baby at the relevant dates. Will she be refunded of these?*

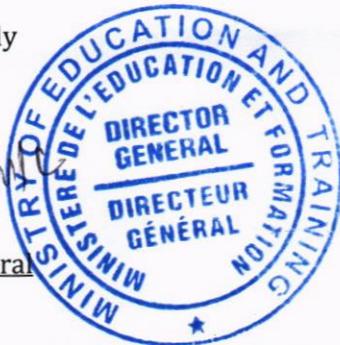
The Finance Department recovers any money owed to the Vanuatu Government from severance pay out to a civil servant.

The maternity ward invoice is under the Health Department therefore the Ministry of Education and Training are unable to respond to your query in regard.

Should you need further clarification please liaise with Gloria Duvu, HR Manager on the above matter.

Yours sincerely


Jesse J Dick
Director General



Copy: Director Education Services
MoET HRM

GOUVERNEMENT DE LA REPUBLIQUE DE VANUATU
MINISTRE DES FINANCES ET DE LA GESTION ÉCONOMIQUE (MFGÉ)

SERVICE DES FINANCES ET DU TRÉSOR
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GOVERNMENT OF THE REPUBLIC OF VANUATU
MINISTRY OF FINANCE AND ECONOMIC MANAGEMENT (MFEM)

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MFEM Building
Private Mail Bag 9031, Port Vila, VANUATU
Tel: (678) 24543 Fax: (678) 25533

Dorah Samuel
Principal Investigator
Ombudsman
PORT VILA

6 June 2018

Dear Dorah



RE: UNFAIR DEDUCTION OF SEVERANCE PAYMENT FOR MRS LINDA GEORGE, FOR PRE-SCHOOL CORDINATOR

We write in respond to your letter, dated 1st June 2018 requesting information and documents related to the above subject matter and hereby declaring the following information. All data are verified by the Smarstream system

Brief History of Severance Payment:

On 19th May 2015 a payment of and amount of One Million Five Hundred Twenty Nine Thousand Five Hundred and Fifty Six (1,529,556) VT was paid to Mrs George. (Annex 1)

However from that above amount mention the amount of One Million Thirty Nine Thousand Three Hundred and Seventy Vatu. (Annex 2)

Annex 2 shows the details of deduction that total up to the above mention amount. You will note that there is an amount of 957,428 that is being deducted for over payment of salary. This is because, according to PSC letter (Annex 3) retirement date is 13th June 2014 however officer have received salary up until 9th May 2015 which is a total of 23 pay days 6 days (see below calculation)

Fortnight Salary = 40,569 x 23 = 933,087
40,569 x 6 /10 =24,341
957,428

Please do not hesitate to contact my office should you have any further queries

Yours sincerely

Tony Sewen
Director
Department of Finance and Treasury



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25 January 2019

Ombudsman of the Republic of Vanuatu
Ombudsman Haus
PMB 9081
PORT VILA

Attention: Ms Dorah L. Samuel
Principal Investigator

Dear Ombudsman

**RESPONSE TO UNFAIR DEDUCTION OF SEVERANCE PAYMENT FOR MS LINDA GEORGE,
FORMER PRE-SCHOOL COORDINATOR MALAMPA**

I acknowledge receipt of your letter dated 15th November 2018.

I refer to your letter and respond to the mentioned queries as follows;

1. *Who authorised Ms George to keep working for almost a year after the date of her retirement?*

No one authorised her to continue working. PEO Malampa confirmed:

- She continued working because she was still getting paid.
- She continued working because there was no one to carrying out her responsibilities
- She stopped coming into office for work as soon as she realised she was no longer getting wages from the Vanuatu Government.

2. *Was she placed on contract to work for another year?*

- There was no contract in place.

3. *Did she give a notice of her retirement to her employer?*

She was given retirement notice by the Public Service Commission.

4. If yes, why didn't your office prepare the calculations of her retirement benefits and have them paid to her accordingly?

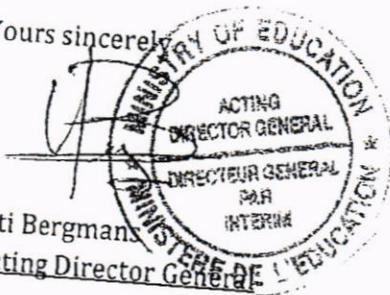
Her calculation and benefits were prepared, however severance payment was delayed due to lack of funding.

5. If no, was she asked to continue working under a contract? N/A

6. Any other information or document you consider relevant to this matter NO

Should you need further clarification please liaise with Gloria Duvu, HR Manager on the above matter.

Yours sincerely



Iati Bergmans
Acting Director General

Copy: MoET HRM