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**OMBUDSMAN'S FINAL REPORT ON THE
COMPLAINT BY**

MRS 'ATELAITE TAMO'UA

CASE NO. CPR16/66

**Whether the FISA's decision to dismiss the
complainant was reasonable**

13th March 2018

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EXECUTIVE SUMMARY

1. This is a report regarding a complaint arising from the dismissal of Mrs 'Atelaita Tamo'ua (the complainant") on 29 September 2015 from the Friendly Island Shipping Agency ("FISA"). The complainant was Personal Assistant to Mr Mosese Fakatou, Acting Chief Executive Officer ("Acting CEO") at the time of the complaint and is now the substantive CEO.
2. It was clear that when the Acting CEO first joined FISA in early 2015 that the complainant did not get along well with Ms Seini Fifita, FISA's Financial Controller ("FC") and that there were some in-fighting between them including arguments over a conflicting cruise booking of the MV 'Otuanga'ofa. Both the complainant and the FC were told by Acting CEO to discontinue the resentments, as it will affect the work of FISA.
3. It is alleged that the complainant continued these resentments including a letter stating that the FC was incompetent, questioning the FC calculation of overtime during public holidays. Her behaviour culminated in an email she shared with other employees of FISA on the 23 July 2015 about the overtime calculation where she also made disrespectful remarks about the Acting CEO.
4. The complainant was then suspended without pay for two weeks on 3 August, 2015. The grounds was gross insubordination. The suspension was further extended on 10 September 2015.
5. On 12 August 2015, the complainant responded to the Acting CEO's suspension letter contesting the reasons stated therein.
6. On the 29 September 2015 the complainant was dismissed from FISA.
7. The complainant lodged a complaint with this Office on the 30th of September 2016. She believed her suspension and eventual dismissal was based on her questioning the calculation of overtime.
8. This case has taken longer than expected due to long delays from FISA in providing information relevant to this investigation.

My opinion pursuant to section 18(3) of *Ombudsman Act 2001* is that the procedures followed by FISA in its decision to dismiss the complainant was properly arrived at and was one that FISA reasonably made.

BACKGROUND

9. The investigation was launched on 1st October 2016.

10. I assigned the investigation to my Investigation Team who undertook the investigation into the matter.

11. The team requested, received information from FISA and the complainant to ensure that relevant information was provided by the relevant Agency.

THE ROLE OF THE OMBUDSMAN

12. Under section 11 of the *Ombudsman Act 2001*, the Ombudsman has the authority to make any such investigation either on a complaint made to the Ombudsman by any person or on his own motion relating to a matter of administration by any department or by any officer of any such department. (Section 18(1) and (2) of the *Ombudsman Act 2001*).

13. My investigation is not an appeal process. I would not generally substitute my judgment for that of the decision maker. Rather, I consider the substance of the act or decision and the procedure followed by FISA, and then form an opinion as to whether the act or the decision and the procedures followed by FISA was properly arrived at and was one that FISA could reasonably make.

EMPLOYED AT FISA

14. The complainant began employment at FISA in December of 2012 and she assumed the position of Personal Assistant to FISA's CEO until 2015.

15. When the Acting CEO first joined FISA in early 2015, he noted that there seemed to be issues between the complainant and the FC. He spoke to them both to try and get along.

16. On 15 June 2015 the complainant complained to the Acting CEO about the performance of the FC and that the FC was in her view incompetent for roles she played with FISA¹. The FC was provided an opportunity and to respond to the complaint brought against her on the 19 June 2015.²

17. In response the Acting CEO on 1 July 2015³ concluded that both should reconcile their differences
"it is a fact that we have differences of opinion, but it does not mean we cannot work together...we have to pull together and...make money for FISA...we have to live, so we pull our resources together and march on."

¹ Complainant's letter to Acting CEO dated 15 June 2015 – "Kei taau ke ma'u lakanga 'e ua – Financial Controller & Administration Officer ..."

² FC's written response to allegations brought against her by the complainant, letter dated 19 June 2015

³ Email from the Acting CEO to the complainant and the FC dated the 1 July 2015

18. The confrontation between the complainant and FC moved to issues relating to the complainant not delivering a testimonial letter to the FC⁴ and arguing with the FC over a double booking of the MV 'Otuanga'ofa for a cruise tour which almost got FISA sued⁵.

THE OVERTIME CALCULATION

19. One of the main issues that the complainant and FC had conflicting views related to overtime. On 21 July 2015, the complainant emailed the FC and questioned the formula she used in calculating the overtime on Public Holidays. The FC responded to the complainant explaining the policy and invited her to discuss in person if she still did not understand. The complainant was not satisfied with this so she wrote to the Chairperson of the Board on 22 July 2015 about the overtime. On 23 July 2015, the Chairperson responded via email that he had referred the matter to be dealt with by the Acting CEO. That same day, the complainant forwarded the Chairperson's response to five of her co-workers and not only questioned the ability of the Acting CEO to handle the matter but also used foul disrespectful language against him⁶. On 30 July 2015 the Acting CEO responded to the complainant that the Board confirms the correct formula is that currently used⁷.

THE SUSPENSION AND THE DISMISSAL

20. As a result of the disagreements and actions taken by the complainant, the Acting CEO suspended the complainant in writing on 3rd August 2015 for gross insubordination. In the suspension letter, the Acting CEO referred to five (5) incidents of insubordination from the complainant as the basis of her suspension pursuant to Policy 11.1.3 and Policy 10.8.4 of FISA Policy & Procedures Manual⁸. The five incidents were –

- (i) The complainant had disobeyed the instructions of the Acting CEO to take a letter of reference drafted by the complainant to the FC for a final check before the letter is given to the employee.⁹
- (ii) The complainant had wrongly confronted the FC regarding a group booking for a cruise tour of the Nuku'alofa waterfront on MV 'Otuanga'ofa which resulted in FISA almost being sued¹⁰.
- (iii) The complainant's complaint against the FC (letter 15 June 2015)¹¹ was considered by the Acting CEO to be the complainant continuing to foster bad relations with the FC.

⁴ Letter from Acting CEO re: Tohi Fakamalolo'i Fakataimi (Suspension) of 'Atelaite dated 3 August 2015

⁵ Letter from Acting CEO re: Tohi Fakamalolo'i Fakataimi (Suspension) of 'Atelaite dated 3 August 2015

⁶ Email from complainant to co-workers dated 23 July 2015

⁷ Letter from Acting CEO to complainant dated 30 July 2015

⁸ Letter from Acting CEO re: Tohi Fakamalolo'i Fakataimi (Suspension) of 'Atelaite dated 3 August 2015; FISA Human Resource Policy & Procedures Manual

⁹ Suspension letter dated 3 August 2015

¹⁰ Suspension letter dated 3 August 2015

¹¹ Complainant's letter of complaint against the FC dated 15 June 2015

- (iv) The complainant's questions regarding the calculation of overtime on Public Holiday was considered the fourth insubordination as the Management and Board's position that the current method was correct had been relayed to her and yet she continued to question it.¹²
- (v) The last incident was the email by the complainant, emailed to her co-workers where she made disrespectful comments about the Acting CEO using foul language and threatened to physically inflict injury on the Acting CEO.¹³

21. Policy 11.1.3 Termination for serious misconduct¹⁴

“Notwithstanding any other provisions in this agreement, FISA may terminate employment of an employee without notice for serious misconduct in the part of the employee.

Serious misconduct includes – theft, gross negligence, dishonesty, insubordination...”

Policy 10.8.4 Misuse of Internet/email/phone¹⁵

The content of email or voice mail messages for any file may not contain anything that would reasonably be considered offensive or disruptive to any employee...FISA will not tolerate misuse of the internet and emails and expressly prohibits the following...offensive or harassing statements or language including the disparagement of others based on their race...age..”

22. The complainant responded in writing to the Acting CEO regarding her letter of suspension on 12 August 2015 and disagreed that she was in breach of Policy 11.1.3. She was of the view that she has a right to question the calculation of her overtime on Public Holiday and it wasn't insubordination.¹⁶

23. Upon receiving the complainant's response, the Acting CEO in a letter dated 10 September 2015 extended the complainant's suspension commencing 14 September 2015. This was to enable FISA to consider the complainant's response.¹⁷

¹² Emails from FC to complainant dated 20, 21 July 2015

¹³ Email by the complainant and shared to her co-workers dated 23 July 2015

¹⁴ FISA Human Resource Policy & Procedures Manual

¹⁵ FISA Human Resource Policy & Procedures Manual

¹⁶ Complainant written response to her suspension dated 12 August 2015

¹⁷ Letter from Acting CEO to complainant re: 'Fakaloloa fakamalolo'i ta'evahe koe ...' dated 10 September 2015

24. On 29 September 2015 the Acting CEO having considered the complainant's response which in his view failed to justify her gross insubordination wrote to the complainant with his decision that she was now dismissed from FISA.¹⁸

OPINION

25. That the relationship between the complainant and the FC was not a peaceful one which was reflected in their clashes. The Acting CEO tried to the best of his ability to resolve these issues by speaking to both parties and allowing both to be heard.

26. That there were concerns regarding the overtime but this had been clarified by the Acting CEO as the Board had authorised him to do so.

27. That despite the decision by the Acting CEO regarding the overtime formula, the complainant continued to disagree with the formula and in doing so, sent an email using her FISA email account to fellow co-workers using offensive language against the Acting CEO.

28. That the complainant had access to the Acting CEO and the Chairman of the Board regarding the matters she was concerned about as was evidenced by the emails and correspondence.

29. That the complainant was selective in the information she had provided to this Office regarding her complaint in that she did not provide the information regarding her email containing the offensive statement against the Acting CEO.

30. The Acting CEO had provided the complainant the opportunity to respond and be heard regarding her complaints and her suspension before he made the final decision.

31. That the Acting CEO has the powers to dismiss the complainant for serious misconduct pursuant to policy 11.1.3 of the FISA Human Resource Policy and Procedures Manual.

32. In conclusion, my opinion pursuant to section 18(3) of Ombudsman Act 2001 is that the procedures followed by FISA's in its decision to dismiss the complainant was properly arrived at and was one that FISA reasonably made.

¹⁸ Dismissal letter from Acting CEO to complainant dated 29 September 2015

THE RESPONSE FROM FISA

- 33 On 7 February 2018, I delivered my Provisional Report to FISA setting out my findings, opinions and recommendations. On 28 February 2018¹⁹, an email was received from the Chief Executive Officer of FISA acknowledging receipt of the Provisional Report and that he had no further comments regarding the Report. As required under section 18(5) of the Ombudsman Act 2001, a copy of this email is attached to this Report as Annex 1.



'Aisea H. Taumoepeau, SC
Ombudsman

¹⁹ Email from Mosese Fakatou dated 28 February 2018

lepaolav@ombudsman.to

From: Mosese Fakatou <mfakatou@fisa.to>
Sent: Wednesday, February 28, 2018 3:38 PM
To: lepaolav@ombudsman.to
Subject: Case No. CPR 16/66

Lepaola,

This is to acknowledge receipt of the provisional report on the Case No. CPR 16/66 dated 7th February 2018.
I have no further comments on the said report.

Thanking you for the co-operation offered during the consideration of the case, and look forward to further co-operation from us in future cases.

Malo 'aupito,
Mosese fakatou