



 **Ombudsman**

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OMBUDSMANS FINAL REPORT ON THE COMPLAINT by DR. 'AMONE VAKA'UTA

CASE NO. OMB 17/41

Temporary Transfer vs. Travel Allowance

APRIL 2018

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EXECUTIVE SUMMARY

1. His Majesty, King Tupou VI made a Royal Visit to Niuatoputapu in February 2017. This Royal Visit was scheduled to be from the 18th February 2017 until 27th March 2017.
2. Although the Palace Office did not request a medical officer to be part of the Royal escort team, the Ministry of Health (MOH) deemed it prudent that a doctor be transferred to the Niuatoputapu Likamonu Health Centre for the period covering the Royal Visit. Dr. 'Amone Vaka'uta (the "complainant") was chosen for this task. He was not part of the escort team but was temporarily transferred.
3. The complainant was temporarily transferred from the 15th February 2017 until 29th March 2017, a total of 43 nights. The Ministry of Finance and National Planning (MFNP) at Nuku'alofa authorised 28 nights worth of travel allowance to the complainant before he departed Tongatapu for Niuatoputapu.
4. Five days into the temporary transfer, Her Majesty, the Late Queen Halaevalu Mata'aho Tuku'aho passed away on the 19th February 2017. His Majesty and the escort team travelled back to Tongatapu for the Royal Funeral including the complainant and arrived back to Tongatapu on the 21st February 2017.
5. After the Royal Funeral, His Majesty and his escort returned to Niuatoputapu to continue the Royal Visit from 10th March 2017 until 24th March 2017. The MOH again sent the complainant to cover this period.
6. In total, the complainant spent 20 nights in Niuatoputapu. As he had already received travel allowance for 28 days, the complainant was advised to reimburse 8 nights worth of travel allowance to the MFNP soon after his return.
7. The complainant lodged a complaint with this Office because he held the view that his temporary transfer to Niuatoputapu did not end when he returned to Tongatapu for the Royal Funeral, but it ended upon his second return to Tongatapu. This in turn impacted on the amount of travel allowance the complainant received.
8. Information was received from the MOH, MFNP and the Public Service Commission (PSC) regarding the complaint.
9. I am recommending four (4) things in this Report pursuant to section 18(3) of *Ombudsman Act 2001*-

Firstly - That the MOH designs an internal policy/mechanism to track staff movement and strictly implement PSC Policy Instructions regarding staff movement including staff transfers.

Secondly - That the PSC amend Policy Instructions to specifically define temporary duty to show a more direct relationship between clauses 5B.1 and 5B.2 and to include provisions that make it specific on situations for reimbursement.

Thirdly - The complainant, MOH, PSC and MFNP discuss the complainant's obligations in light of the Policy Instructions and the Treasury Instructions; and

Lastly - That the MOH, PSC and MFNP report back to me within 1 month of the date this report is finalised to provide a follow up report on the recommendations.

BACKGROUND

10. The investigation was launched on 30th March 2017.
11. I assigned the investigation to my Investigation Team who undertook the investigation into the matter.
12. The team requested, received information from the MOH, MFNP and PSC to ensure that relevant information was provided by the relevant Ministry and Agency.

THE OMBUDSMAN ROLE

13. 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*).
14. 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 the MOH, MFNP and PSC, and then form an opinion as to whether the act or the decision and the procedures followed by the MOH, MFNP and PSC, and then form an opinion as to whether the act or the decision was properly arrived at and was one that MOH, MFNP and PSC could reasonably make.
15. My role is to consider the administrative conduct and decisions of MOH, MFNP and PSC to form an independent opinion on whether that conduct was fair and reasonable.

THE TEMPORARY TRANSFER and MOH

16. The MOH learned that His Majesty was to travel to Niuatoputapu from 18th February 2017 until 27th March 2017 and as a precaution, the MOH made arrangements for a medical doctor to be present on the island for the duration of His Majesty's Royal Visit.
17. By internal memo¹, the Health Administrator through the Medical Superintendent nominated the complainant to be temporarily transferred from Vaiola Hospital to Likamonu Health Center to be present at Niuatoputapu whilst His Majesty was on the island. The temporary transfer was effective from the 15th February 2017 to 29th March 2017 which coincided with flight schedules of Real Tonga Airlines.
18. On 14th February 2017, the complainant received his temporary transfer² from MOH and with this transfer was entitled to the following:

“iii. Traveling allowance (full rate) to a maximum of 28 night's plus 1/3 rate up to a maximum of a further 32 days - \$140.00 per night (5 days' pay advance at Tongatapu 15-20/02/17)”.
19. According to the Purchase Order (POR Number: VH1720/16-17), the complainant withdrew 28 nights worth of travel allowance at a rate of \$140.00 per night and totaled \$3,920.00. Notwithstanding that the complainant was temporarily transferred from 15th February 2017 till 29th March 2017 - 43 nights in total.
20. In a meeting on the 12th June 2017, the Chief Executive Officer of the MOH, Dr. Siale 'Akaola acknowledged that it was always communicated to the complainant by MOH that his main task was to be on standby for His Majesty and that this was the basis of the temporary transfer. In effect, the MOH approach to the temporary transfer was as if the complainant was a medical escort. The complainant had the same understanding and it was not communicated otherwise to him.
21. Unfortunately, the passing of the Late Queen Halaevalu Mataaho Tuku'aho on 19th February 2017 meant the Royal Visit was cut short and so they returned to Tongatapu. At this point, the complainant has spent 6 nights on Niuatoputapu.
22. The team and the complainant arrived at Tongatapu on 21st February 2017 and the complainant resumed duty at Vaiola Hospital the following day. According to the complainant, it was communicated to him by the Human Resources division at MOH that he can resume duty as normal but because he was still under temporary transfer to Niuatoputapu, he was not entitled to over time. Dr. 'Akau'ola admitted that he did not know of the complainant's resumption till a later date.
23. Senior Management at MOH did not at any time approach the complainant to question his return to Tongatapu despite being temporarily transferred to Likamonu Health Centre.

¹ Sulieti Topui, Request Approval Temporary transferal to Niuatoputapu for Dr. 'Amone Vaka'uta, 7 February 2017

² Ministry of Health Transfer Certificate, RE: Temporary Transfer: Dr. 'Amone Vaka'uta: Medical Officer, 14 February 2017

It was as if the MOH staff was under the impression that it was suitable for the complainant to return with the Royal party. As far as MOH understood, the temporary transfer was still effective. MOH did not seek to end the temporary transfer or take any further administrative action.

24. Following the Royal Funeral, His Majesty returned to Niuatoputapu on 10th March 2017 till 24th March 2017 to complete his Royal Visit. There were no questions within MOH about the complainant returning to Niuatoputapu as they had a general understanding that the current temporary transfer was still effective.
25. In an undated email, Dr. Sione Latu suggested to change the status of the complainant for this return from a temporary transfer to a medical escort to His Majesty but nothing further eventuated and there was no further action³.
26. Furthermore, in an internal memo⁴, there was a recommendation for the complainant's second return to Niuatoputapu be that of a Medical Officer rather than that of a temporary transfer. But again, no further action.

ISSUES:

27. According to the documentation, the temporary transfer was valid from 15th February 2017 till 29th March 2017 for a total of 43 nights. The complainant received travel allowance for 28 nights.
28. MOH initially approved a request by the complainant to be considered for a travel allowance at the Tongatapu rate from Niuatoputapu during the time they were back in Tongatapu – 21st February to 10th March 2017. This did not eventuate after MOH sought advice from MFNP and PSC⁵.
29. The second return to Niuatoputapu, the MOH did not action a new temporary transfer nor action the proposed medical officer escort status as it considered the original temporary transfer from 15th February 2017 to 29th March 2017 still valid.
30. Dr. Siale 'Akauola stated that the MOH does not have the appropriate systems to monitor staff movement because of the size and the various locations of MOH Offices which are geographically spread out across Tongatapu⁶.

³ Dr. Sione Latu, Re:confirmation of Medical Officer to accompany HM for Royal Visit NTT, to Lisiate Ulufonua.

⁴ Sulieti Topui, Request Approval of travel to Niuatoputapu of Dr. 'Amone Vaka'uta as a Medical Officer escort to His Majesty King Tupou VI, 8 March 2017

⁵ Ibid. Version submitted with MOH response dated 10th May 2017

⁶ Meeting with Dr. Siale 'Akauola, dated 12th June 2017

**PUBLIC SERVICE POLICY INSTRUCTIONS 2010 as of 13th JANUARY 2017 and
PUBLIC SERVICE COMMISSION**

31. Although there is a later version of the Policy Instructions⁷ (PI), the 13 January 2017 version is the applicable PI during this specific period.

Relevant provisions of PI:

32. According to clause 2D.2 *“permanent transfer is a posting within a Ministry to a new station in a substantive capacity (not in an acting or temporary capacity)”*.

33. Clause 5B.1 states that *“a temporary duty shall not exceed 60 (calendar) days in a calendar year, and may be extended for a further 60 days by the authority that has approved the temporary transfer”*.

34. Clause 5B.2 states that *“a travel allowance is one paid for – (a) all night absences which involve travel from one island to another, including islands within the same group”*.

ISSUES:

35. The interpretation of the PI in relation to the current complainant appears to be ambiguous and unfocussed. The PI does not refer to the term ‘temporary transfer’ but rather to ‘temporary duty’.

36. The term temporary duty is referred to throughout the PI and provides for the duration, limit of the transfer, travel allowances payable and the appropriate authority concerned but does not extend to explicitly define when the temporary duty ends.

37. According to clause 2D.2 of the PI, *“a permanent transfer is a posting within a Ministry to a new station in a substantive capacity (not in an acting or temporary capacity)”*. A clear definition of a permanent transfer is provided.

38. The complainant was therefore on a temporary duty to Likamonu Hospital which was a temporary posting within the MoH.

39. The PSC are of the view that the temporary duty ended on the complainant’s first return on 21st February 2017 and therefore the travel allowance of the said amount should be reimbursed to MFNP. PSC are aware that a new temporary duty was not executed upon the complainant return to Niuatoputapu on the 10th March 2017 but believes that the temporary duty and travel allowance should be applied in unison.

⁷ Public Service Policy Instructions 2010 dated 13th January 2017

40. Applying clauses 5B.1 and 5B.2 to the current situation in unison shows no direct relationship between them as 5B.1 defines that the duration of the duty (43 nights) and 5B.2 defines the complainant's entitlement for travel allowance (28 nights paid).

TEMPORARY TRANSFER vs TRAVEL ALLOWANCE

41. The 3 Ministries have different views of when the temporary transfer ended in accordance with their own interpretation of the policy. However, it is important to recognise that these provisions should be read separately from one another but applied together to obtain the intention of the PI and Government policies.

42. MOH views that the temporary transfer was still in effect regardless of the return to Tongatapu on 21st February 2017. PSC's views that the temporary duty ended when the complainant returned to Tongatapu and MFNP supports the PSC's view based on the intention of the PI.

43. A specific definition of the relationship of the temporary duty and the travel allowance is needed to avoid a vague interpretation of both clauses and a definitive clause illustrating situations of when the relationship of clauses 5B.1 and 5B.2 change.

44. A travel allowance is paid in accordance with the TI for costs to cover expenses on the island which you are being temporarily transferred to and its duration.

45. The intention of the relevant clauses of both the PI and TI can be interpreted in a manner to demonstrate both PSC and MFNP's views of reimbursement. However, the intention is not ample enough and an explicit definition should be provided for.

46. The complainant returned to Tongatapu on the 21st February 2017 (and to note this was not on his personal request), which does not amount to mean that the temporary duty ended nor does this return amount to the definition of travel allowance.

47. By applying the clauses separate from one another would mean the intention of the travel allowance to pay for expenses listed in the TI. However, because the complainant returned to his island of origin, he should not qualify for the travel allowance. Note, that the temporary duty document is still valid.

48. The temporary duty is the basis of receiving the temporary allowance. Despite MFNP's early disbursement of the travel allowance – MOH should have acted to cease the temporary duty and arrange for reimbursements accordingly. Upon the return to Niuatoputapu from the 10th March to 24th March 2017, the MOH should have executed a new temporary duty document. However, this never eventuated.

49. The relaxed approach from the MOH towards the complainant, the violation of clause IV.1.2 by MFNP and the ambiguity of 5B.1 and 5B.2 is the basis for my recommendations.

OPINIONS

50. This is a complaint that highlights the importance of policy and administrative unison amongst Ministries regarding travel allowances; its application and compliance.

51. The documentation received from MOH and PSC state that the complainant was on a temporary duty from 15th February 2017 to 28th March 2017. There is no documentation to the contrary or varying that decision even during the complainants' first return.

52. Upon the first return, the MOH should have addressed the temporary transfer and clarified that he was on temporary duty from Vaiola Hospital to Likamonu Health Centre and as such his return to Nuku'alofa ended the duty and arrangements for reimbursement should have been made at this point.

53. It appeared that both MOH and the complainant shared the same understanding that the temporary duty was in a manner such as a Medical escort given the way this assignment was communicated. MOH was too relaxed in their approach towards the complainant and there was no real urgency to address his return.

54. Whilst in Tongatapu he did not attach himself with His Majesty like a Medical escort, but he resumed duty as per normal at Vaiola Hospital. Dr. 'Akau'ola regarded the complainant as being part of the "tour" group of His Majesty and did not raise any queries regarding his return nor assumption of duty.

55. The relationship between clauses 5B.1 and 5B.2 of PI is vague and lacks a clear application to the current complaint. The PI should firstly, define what a temporary duty means stipulating when the duty ends and secondly define situations of when the temporary duty ends and state the terms of reimbursement (if any).

56. That the term temporary transfer be clearly defined if the intention of the PSC is to be distinguished from the term and application of temporary duty. Inconsistent wording is used throughout the documentation.


57. Special attention to processes regarding the proper administration of these relevant policies be appropriately applied or amended (if required).

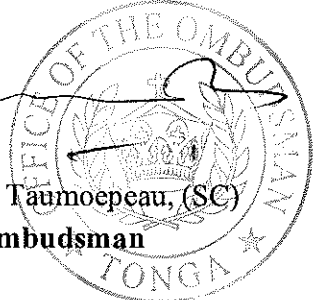
RECOMMENDATIONS

1. That the MOH designs an internal policy/mechanism to track staff movement and strictly implement PSC Policy Instructions regarding staff movement including staff transfers.
2. That the PSC amend Policy Instructions to specifically define temporary duty to show a more direct relationship between clauses 5B.1 and 5B.2 and to include provisions that make it specific on situations for reimbursement.
3. The complainant, MOH, PSC and MFNP discuss the complainant's obligations in light of the Policy Instructions and the Treasury Instructions; and
4. That the MOH, PSC and MFNP report back to me within 1 month of the date this report is finalised to provide a follow up report on the recommendations.

RESPONSE FROM MFNP

58. On 5th December 2017, I delivered my Provisional Report to MOH, PSC AND MFNP setting out the facts, opinions and recommendations. On 15th December 2017, I received a response from MFNP (*the only Ministry to respond to the Provisional Report*). The MFNP expressed their concerns regarding an interpretation of section 45 of the Public Finance Management Act 2002, specifically the authority to amend the Treasury Instructions.
59. A meeting was held on 19 January 2018 between the CEO and relevant officers of MFNP and officers of the Ombudsman Office at MFNP where it was clarified that the power to vary the Treasury Instructions vests in the Minister of Finance and does not require Cabinet approval. The Provisional Report had queried the validity of amendments to the Treasury Instructions regarding advance payments of travelling allowance. The response from the MFNP was accepted and the Final Report reflects this.
60. A copy of the MFNP response is attached pursuant to section 18(5) of the Ombudsman Act 2001.


'Aisea H. Taumoepeau, (SC)
Ombudsman



24th April 2018



MINISTRY OF FINANCE AND NATIONAL PLANNING
Government of Tonga

RECEIVED

APM 18/12/17

Reference No.: 8G/1525

Date: 15/12/2017

Mr 'Aisea H Taumoepeau, SC
Ombudsman
Office of the Ombudsman
NUKU'ALOFA

Roman,
Can you please
see me to
discuss
this
JA
3/1/17

3/1

Dear Sir

**Re: Complaint from Dr. 'Aione Vaka'uta against
Ministry of Finance and national Planning**

We refer to your letter dated 5 December 2017 on the above subject matter.

Kindly note we have reservation on your opinion in not recognising the Circular Savingram issued by the Ministry under the authority and direction of the Hon. Minister for Finance and National Planning to override Part IV Section 7 (17)a. of the Treasury Instructions to abolish the 5 days maximum advancement of travelling allowances.

As such, we would like to seek the view of the Attorney General's Office on "Clause 45 of the Public Finance Management Act 2002" before referring back in this regard.

We also still maintain the view that the complainant should reimburse the travelling allowance for the 8 days.

Yours faithfully

Balwyn Fa'otusia
CEO for Finance and National Planning