



Ombudsman
TONGA

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

PITA VI

CASE NO. CPR. 16/21

**Whether the Tonga Power Limited had the
authority to cut his 8 coconut trees in January 2016**

27th October 2017

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EXCECUTIVE SUMMARY

- 1 The complainant Pita Vi is the holder of a town allotment at Pangai.
- 2 In January 2016 during the cyclone season, the Tonga Power Limited (“TPL”) workers led by Setaleki Langi initiated a tree cutting exercise in Lifuka for areas close to the power lines. During this exercise the TPL workers cut down 8 coconut trees on the town allotment of the complainant.
- 3 The complainant was at his home during the cutting of the coconut trees but did not stop the work. It was only after he had talked to villagers from other villages where the TPL workers had tried to cut trees, that he had a choice and could have stopped the destruction of his coconut trees. He contacted the TPL office in Ha’apai in February 2016 to claim damages but did not receive a reply.
- 4 Initially the TPL workers claimed that permission had been given by the complainant’s son Siasoi Vi but Siasoi clarified later that the consent he had given related to the cutting of trees at his own town allotment at Pangai and had not given consent for the tree cutting at his father’s property.
- 5 After consideration of the information obtained in the investigation of this complaint, the TPL admitted that the specific consent of the complainant had not been obtained and that there had been miscommunication between the TPL Networker Supervisor at Ha’apai Setaleki Langi and the complainant and his son Siasoi Vi. The TPL apologized to the complainant and discussed compensation.
- 6 So I am recommending three (3) things in this Report pursuant to section 18(3) of the Ombudsman Act 2001-
Firstly – that the TPL regularly review its Customer Service Agreement (“CSA”) and ensure that it complies with it.
Secondly – that TPL commit to creating awareness of its CSA to its staff and customers.
Thirdly – that TPL ensure that all its staff are aware of the TPL Staff Administration Policy Manual, specifically relating to instances when actions during the course of employment result in damages claimed by individuals.
Lastly – that TPL report back to me within 3 months of the date this report is finalised to provide a follow up report on the recommendations.

BACKGROUND

- 7 The complaint was received on the 14th of April 2016.
- 8 I assigned the investigation to my Investigation Team who undertook the investigation and met with the complainant, his son Siasoi Vi and Steven ‘Esau, the Chief Financial Officer of TPL.
- 9 The team requested and received documents from the complainant in addition to documents from TPL.

THE OMBUDSMAN'S ROLE

- 10 Under section 11 of the *Ombudsman Act 2001*, the Ombudsman has the authority to investigate the administrative acts, decision, omissions and recommendations of an officer of an organization in his capacity as an officer of that organization. This applies to TPL which is an organization under the Act. (Section 18(1) and (2) of the *Ombudsman Act 2001*).
- 11 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 TPL, and then form an opinion as to whether the act or the decision and the procedures followed by TPL was reasonable and properly followed.
- 12 My role is to consider the administrative conduct and decisions of TPL and to form an independent opinion on whether that conduct was fair and reasonable.

CYLONE SEASON

- 13 In January 2016 warnings of Tropical Cyclone Winston was broadcasted in the Kingdom. In preparation, TPL began works to cut and trim trees growing near the power lines to reduce the possibility of damage to the power lines during the forecasted bad weather.
- 14 The tree cutting work reached Pangai Ha'apai around the 3rd week of January and on the 20th of January TPL workers led by Setaleki Langi reached the town allotment of the complainant. Eight (8) coconut trees were chopped down by the TPL workers.
- 15 The complainant was at his home during the time his coconut trees were being cut and did not stop the work but asked that the coconuts remain on his property for his pigs.
- 16 After his coconut trees was cut the complainant found out that the village of Holopeka had not given their consent for TPL to cut their trees. He realised then that he had not been asked for his consent nor had he given it.
- 17 Included in the documents provided from TPL in this investigation was their CSA¹ which was effective from the 1st July 2013 and revised in November 2015. Page 10 of the Agreement has the heading "Trees and Power Lines". In that section there is a commitment by TPL to warn home owners if their trees or vegetation is encroaching on the designated power line areas. If the home owner does not cut or trim the trees, TPL will do the work and may charge the customer. There was nothing in the customer agreement regarding the mandatory cutting by TPL of trees during cyclone season.

¹ Tonga Power Limited Customer Service Agreement effective from 1 July 2013, revised 1 November 2015

THE COMPENSATION CLAIM

- 18 On the 10th February 2016 the complainant obtained a valuation from the Ministry of Agriculture at Ha'apai for the loss of the 8 coconut trees². The value is \$11,154.00.
- 19 The complainant lodged a complaint with the TPL office in Ha'apai for the loss of his 8 coconut trees. The TPL did not respond and the complainant lodged a complaint with my Office.

ADMISSIONS AND RESOLUTION

- 20 On receiving the complaint, meetings were held with Steven 'Esau the TPL Chief Financial Officer (CFO). The TPL position was that the workers had obtained permission to cut the complainant's coconut trees. This was the understanding that Setaleki Langi, a TPL employee at Ha'apai had based his understanding on the consent they had received from Siaso Vi the complainant's son.
- 21 Discussions with Siaso Vi in February 2017³ revealed that he had given his consent for only the tree cutting on his property (also a town allotment at Pangai) but not for the trees cut on his father's property. As the complainant was in the United States of America at the time, the agreement was to postpone investigations until he returned. The CFO was the TPL point of contact for this complaint.
- 22 The complainant returned to Tonga in May 2017 and a meeting between the Ombudsman investigators and the CFO was held on the 8th May 2017. The CFO was advised that the complainant was back in Tonga. The CFO advised that he would set up a meeting with the complainant and the relevant officers from Ha'apai. He said that if it turned out that consent had not been given, the TPL employee who had authorised the cutting of the coconut trees would be personally liable as per TPL policy.
- 23 The complainant met with the TPL officers on the 9th of May 2017 including Setaleki Langi, Taufu Vaka (Manager, TPL Ha'apai) and the CFO. At that meeting the TPL employees admitted that they had cut the coconut trees without the complainant's consent. They apologized to the complainant which he accepted and the issue of compensation was discussed⁴.
- 24 During the discussions with the TPL officers, it was admitted that they had not complied with the CSA but contended that there were Electricity By Laws that took precedent over the CSA giving them the authority to cut trees without consent of the owner. The TPL provided the following documents on the 16th of June 2017 –
1. Electrical Wiring By-Laws
 2. Concession Contract II section 17 on Safety (extract)
 3. Customer Service Agreement
 4. TPL Conductor Clearance procedures

² Valuation from the Ministry of Agriculture and Food, Forests and Fisheries dated the 10/2/16 signed by Polata'ane Katoa

³ Email from Siaso Vi to Lepaola Vaea, Ombudsman Officer on the 10th February 2017

⁴ Email from Steven 'Esau dated the 10th May 2017

25 We reviewed the documents provided and concluded that there was no authority to enter private premises and cut down trees and vegetation without the consent of the owner. Evidently TPL hold the same view as we were advised by TPL while this report was being drafted that “Tonga Power is currently preparing legislation that will go before Cabinet to approve the removal of any vegetation including that on private, public or crown land that infringes or has the potential to disrupt supply or threaten the safety of our electricity network, or interfere with any major electrical work. This is to be in line with other Pacific island countries of a 15-30 meters growth limit zone requirement”⁵.

26 On the 12th of May we received a letter from the complainant⁶ advising us that the matter had been resolved. He stated in his letter that Setaleki had come to his home in Pangai while he was travelling and apologized to his wife Seini Vi and he had made clear to Setaleki that he was not complaining about him but about TPL. He also mentioned that he felt that TPL were bringing Setaleki to the forefront because they were related and from the same town. They had discussed compensation and the CFO had given him a figure of \$1,000 possibly more but that this would be received in Ha’apai from Taufu Vaka.

27 On the 7th of May the complainant called my office to advise that he had received a payment of \$1,000 cash from Taufu Vaka the Manager of TPL Ha’apai.

28 We were advised verbally by Taufu Vaka via telephone on the 10th of July that the \$1,000 paid to Pita Vi was from contributions from himself, Sitaleki Langi and the CFO.

OPINIONS

29 That TPL is to be highly commended for the responsiveness to the complaint and for admitting that there had been miscommunication and the complainant’s consent had not been given.

30 That although TPL had issued a comprehensive CSA, it should ensure staff compliance and at the same time ensure that it is regularly reviewed to comply with the law and includes procedures that are necessary for their work and public safety.

31 TPL provided us with a copy of their Staff Administration Policy Manual⁷ as at June 2016. There is no provision that employees are responsible for damages resulting from activities during the course of their employment and this was confirmed by the TPL Chief Executive Officer in meetings with him on the 7th of June 2017 and again on the 24th of October 2017 (see paragraph 36).

32 That TPL should ensure all staff are aware of the provisions of the TPL Staff Administration Policy Manual and staff do not manufacture obligations for the TPL staff beyond that set out in the Staff Administration Policy Manual.

⁵ Email from Sosefina Maileseni, TPL employee to Lepaola Vaea dated the 16th June 2017

⁶ Letter to withdraw complaint from Pita Vi the complainant dated the 12th May 2017

⁷ Email from Sosefina Maileseni to Lepaola Vaea dated the 3rd July 2017

- 33 That TPL is ultimately responsible for the actions of its staff in the course of their employment and the question of compensation should have been considered and actioned by TPL and not initiated and initially borne by the CFO, Sitaleki Langi and Taufa Vaka which impacted on the decision of the complainant to accept the compensation offered.

RECOMMENDATIONS

- 34 Firstly – that the TPL regularly review its Customer Service Agreement and ensure that it complies with it.

Secondly – that TPL commit to creating awareness of its Customer Service Agreement to its staff and customers.

Thirdly – that TPL ensure that all its staff are aware of the TPL Staff Administration Policy Manual, specifically relating to instances when actions during the course of employment result in damages claimed by individuals.

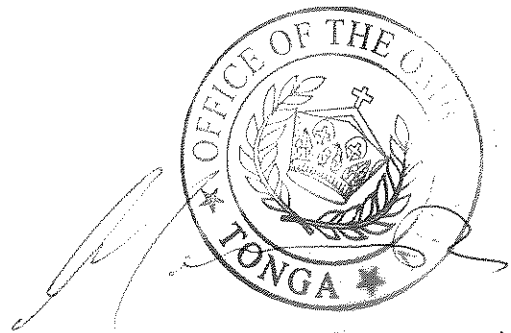
Lastly – that TPL report back to me within 3 months of the date this report is finalised to provide a follow up report on the recommendations.

RESPONSE FROM TPL

- 35 On the 13th of July 2017 I delivered my Provisional Report to TPL setting out my findings, opinions and recommendations. On the 17th July 2017 I received a letter from TPL disagreeing with sections of the report and a meeting was held with TPL on the 18th of August to discuss their response. I respond as follows –

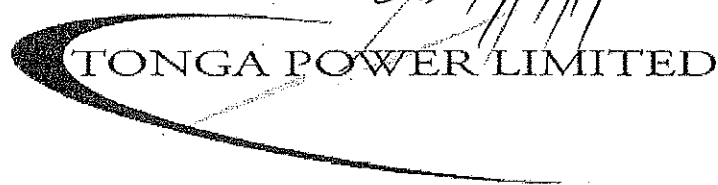
- (a) Regarding the TPL response to paragraph 5 I accept that there was miscommunication between the Ha'apai TPL Network Supervisor and the complainant and his son.
- (b) Regarding the TPL response to paragraphs 22 and 23 I do not agree with the TPL position – paragraphs 22 and 23 reflect the information we gathered during the investigation both from Steven 'Esau and the complainant's account of the meeting which was in his letter to withdraw the complaint dated the 12/5/17.
- (c) Regarding the TPL response to paragraph 24 I do not agree with the TPL comment. TPL has issued their Customer Service Agreement to the public and they have an obligation to comply with it.
- (d) Regarding the TPL concern about compensation issue, it is my statutory role to investigate any administrative decision or act done. Finally, I commend the TPL for paying back to the CFO, Sitaleki Langi and Taufa Vaka the amounts they had given the complainant.

- 36 A further meeting was held with the CFO and Henrietta Lavemai (TPL employee) on the 17th of August 2017 and the CFO confirmed that he, Setaleki and Taufu Vaka had collected money between them to give to the complainant and in a meeting with him and Henrietta Lavemai (TPL employee). The CFO also revealed that TPL had reimbursed himself, Sitaleki and Taufu Vaka for the money they had collected and given to the complainant.
- 37 For the purposes of finalising the report given the information from the CFO in our meeting in August, we met with the TPL CEO on the 24th of October 2017 who expressed his surprise and concern about the way the CFO had dealt with the compensation issue because it is not covered by the Staff Administration Policy Manual that staff are responsible for any damage caused by their actions in the course of their duties. Further that only in instances of gross negligence would there be grounds to initiate disciplinary action against an employee which may result in dismissal and civil court action to recover the losses to the company.
38. A copy of the TPL response is attached pursuant to section 18(5) of the Ombudsman Act 2001.



**'Aisea H. Taumoepeau, SC
Ombudsman**

27th October 2017



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17 July 2017

Mr Aisea Taumoepeau
Chairman of Ombudsman Office
Board of Directors
Retirement Fund Building
Nuku'alofa

Dear Mr Chairman,

Re: Provisional Report under the Ombudsman's Act Complaint from Mr
Pita Vi against Tonga Power Limited
Case No. CPR 16/21

Thank you for your letter dated 13 July 2017 requesting our comments on your draft report and recommendation. I refer to the sections of your letter with the following comments:

5 *After consideration of the information obtained in the investigation of this complaint, the TPL admitted that the consent of the complainant had not been obtained. The TPL apologized to the complainant and discussed compensation.*

Number 5 not quite complete nor correct: TPL has always maintained that as far as the company is concerned, our Ha'apai Network Supervisor at Ha'apai – Mr Sitaleki Langi obtained suitable verbal permission to cut down the trees. Now as it appears from the facts, there were clearly miscommunications between Mr Langi and the Complainant– Mr Pita Vi and his son Mr Semisi VI.

21 *The complainant returned to Tonga in May 2017 and a meeting between the Ombudsman investigators and the CFO was held on the 8th May 2017. The CFO was advised that the complainant was back in Tonga. The CFO advised that he would set up a meeting with the complainant and the relevant officers from Ha'apai. He said that if it turned out that consent had not been given, the TPL employee*

We believe, it was not a matter of not complying with our CSA in so far as number 21 you stated above. Rather it was a miscommunication between our Network Supervisor with Mr Vi and his son. We can easily confirm this with the fact that we did trim all the trees that were overgrown onto our power lines on the main road from Mr Vi's home at Pangai on that same road right through to all town and tax allotments at Holopeka Village. We couldn't have completed this work, had we not requested and obtained permissions from those land owners.

It is very unfortunate what has occurred and I do appreciate the issues raised by the Ombudsman. However, I believe the recommendations stated on the Draft Report, if taken out of context, will only serve to worsen the situation which TPL has already resolved with the Complainants (Mr VI). Hence, we request your Good Office to reconsider the wording in the recommendation and include the fact that TPL through its staff has already reached an amicable settlement with Mr Vi. Your recommendation for TPL to consider some compensation is laying the blame squarely at TPL when this was nothing more than a simple misunderstanding between our Line Supervisor Mr Langi with Mr Vi's son.

Yours sincerely,



Mr Robert Matthews
Chief Executive Officer

Cc Mr Sitaleki Langi (Line Supervisor Ha'apai)

Cc Mr Taufa Kauvaka (TPL Ha'apai Branch Manager)

Cc Mr Steven 'Esau (General Manager – Finance)