



 **ombudsman**

**P.O. Box 847, Cnr of Lelue Road & Mateialona Road, 2<sup>nd</sup> Floor Retirement Fund Building, Nuku'alofa  
Phone : (676) 26 980 / (676) 26984: Free Call 08 00 662**

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

**MR SIMIONE MAILAU**

**CASE NO. CPR17/52**

**Whether the suspension and dismissal of  
Mr Mailau was fair and reasonable?**

**20<sup>th</sup> April 2018**

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## EXECUTIVE SUMMARY

1. The complainant Mr Simione Tufui Mailau, age 45 was employed by Homegas Ltd (“Homegas”) in 2005. He is a qualified Gas Fitter having had short-term trainings with Fiji Gas Ltd in 2008, 2009 and 2010. He was promoted Terminal Supervisor on the 13<sup>th</sup> July 2015. Homegas is the distributor of Liquid Petroleum Gas (“LPG”), and is a subsidiary of Tonga Power Ltd.
2. Mr Michael Lani ‘Ahokava joined Homegas as its new General Manager (“GM”) on 9 January 2017. Within a few months of his appointment as GM, he alleged to have identified significant losses of LPG. He blamed the complainant for the lossess. He believed it was the complainant’s role as Terminal Supervisor to monitor the movement of LPG, and to ensure daily sales are recorded in addition to managing the staff on the LPG platform. The complainant disagreed. A dispute over the complainant’s role ensued between himself and the GM. This issue was not resolved.
3. The GM suspended the complainant on 28 March 2017 for one month without pay for failing to understand and carry out his duties. He was dismissed on 22 April 2017 for poor performance.
4. The disciplinary process and procedures provided in the Homegas Staff Administration & Procedures Manual were not followed by the GM in the disciplinary actions of the complainant.
5. I am recommending three (3) things in this Report pursuant to section 18(3) of Ombudsman Act 2001:

1. That Homegas recognizes that the termination of the complainant’s employment by the General Manager on 22 April 2016 did not follow due process as stipulated under Policies 5.6 and 8.3 of Homegas Staff Manual.

2. That Homegas consider remedial measures which may include compensating the complainant as a way of resolving this complaint and if so to discuss with the complainant a Deed of Release and Indemnity to signify the conclusion of the matter.

3. That the GM report back to me within two (2) months of the date this report is finalised to provide a follow up report on the recommendations.

## BACKGROUND

1. The investigation was launched on 17 May 2017.

2. I assigned the investigation to my Investigation Team who undertook the investigation into the matter.
3. The team requested, received information from Homegas and the complainant to ensure that relevant information was provided to us.

#### **THE ROLE OF THE OMBUDSMAN**

4. 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*).
5. 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 Homegas, and then form an opinion as to whether the act or the decision and the procedures followed by Homegas was properly arrived at and was one that Homegas could reasonably make.

#### **EMPLOYED WITH HOMEGAS LTD**

6. The complainant was employed with Homegas from 2005 until his dismissal by the GM in April 2017. He received training as a Gas Fitter and Troubleshooting Electronic Circuits with Fiji Gas in 2008, 2009 and 2010. He was promoted Terminal Supervisor on 13<sup>th</sup> July 2015.

#### **HOMEGAS LTD**

7. In 2012 Tonga Power Ltd acquired Homegas Ltd from the Government of Tonga and also acquired Tonga Gas Ltd in 2015. Tonga Gas Ltd was the importer of LPG whereas Homegas was the local distributor. Both companies are operated by the same GM and is subject to the Tonga Power Limited Board of Directors.
8. Between 2012 and 2016, Homegas operated under the various General Managers including Mr Ajith, Dr Penisimani Fukofuka, Mr Ringo Fa'oliu, and Sione Taione before Michael 'Ahokava took on the role on 9 January 2017.

#### **ALLEGATIONS OF UNACCOUNTED LPG**

Due to an investigation carried out by the GM, it was discovered on 2 March 2017 that about 300kg of LPG was unaccounted for from the sales of 27 February 2017<sup>1</sup>. The complainant was blamed as Terminal Supervisor for the loss, and this was conveyed from the GM to him.

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<sup>1</sup> Letter, GM to complainant, 2<sup>nd</sup> March 2017

*“For me personally, this is very disappointing as it is your responsibility to ensure all sales are recorded and cylinder movements are reliably counted.”<sup>2</sup>*

Another employee Salevi Ituvai from the accounts section was blamed. The GM ordered the employees to pay the shortfall of \$1,086 within two weeks. Three days later the GM found that the LPG level had evened out, and was now showing excess of some 100kg. The shortfall payment was cancelled, but, the warning remained in force.<sup>3</sup>

9. The complainant was called into the Head Office on 10 March 2017, for a meeting with the GM and newly appointed temporary Operation Manager, Ms Heta Telefoni. The complainant was informed of a second finding by the Homegas Finance Division that 1.8 tons of LPG was unaccounted for from Road Tanker J7323 during the period of July 2016 to January 2017. The complainant and Terminal Manager, Mr Solomon ‘Alipate were blamed although Mr. ‘Alipate was on leave at the time. A written response was requested by 17 March 2017. The complainant asked for an extension of time to allow him and Terminal Manager, who was on leave at the time to respond collectively.<sup>4</sup> There was no response to the request for extension of time.

#### **CONFLICTING VIEWS OVER THE TERMINAL SUPERVISOR’S ROLE**

10. On 9 March 2017 the complainant wrote and asked the GM to reconsider the decision and warning of 2<sup>nd</sup> March 2017. He believed the warning was unfair because the issue was with the Sales and Finance Division and not his area. He requested an opportunity to discuss the warning in the presence of his supervisor to assist with explaining his responsibilities.<sup>5</sup> This request was not afforded by the GM to the complainant. The complainant told the Ombudsman during the hearing on 21 February 2018:

*“I asked that we discuss my role in the presence of my supervisor (technical) Technical Manager Fokololo Mafile ’o so that we have the same understanding of my responsibilities.*

He told the Ombudsman:

*“It was never facilitated, and he (the GM) never contacted me or wanted me to discuss anything during my suspension.”*

The GM maintained his stance in his letter to the complainant on 10 March 2017<sup>6</sup>, *“that it is clear to me now that there are misunderstandings over your role and responsibilities (Terminal Supervisor) at the company.”* The GM also quoted a passage from the complainant’s Job Description that the complainant’s responsibilities included

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<sup>2</sup> Ibid

<sup>3</sup> Ibid

<sup>4</sup> Letter, 2<sup>nd</sup> by the GM to complainant, re: meeting 10<sup>th</sup> March 2017

<sup>5</sup> Letter, 9<sup>th</sup> March 2017 complainant’s appeal the GM’s decision of 2<sup>nd</sup> March 2017

<sup>6</sup> Letter 10<sup>th</sup> March 2017 from GM to the complainant

*“Management: Ensure that all necessary paperwork is done as per policy (vehicle logs, invoices, etc).” In the GM’s view the Job Description supported his view that the complainant was responsible for the stock shortfall “...the basis for the warning, because you weren’t able to respond and/or locate the records regarding the loss on the sales of 27<sup>th</sup> February 2017, or the records to justify why the LPG level was in excess on Thursday 2<sup>nd</sup> March 2017.”<sup>7</sup>*

11. On 10 March 2017, the GM notified the staff that Mr Poli Leger has been tasked with managing the delivery routes, stock movements in and out of Touliki, to liaise and to manage stock level at all outlets (agents, Matatoa, ‘Eua and Ha’apai) and to ensure all related reports are completed, properly checked and reconciled, and as well other matters nominated by the GM and Operation Manager.<sup>8</sup>

On 22 March 2017 in an email, the GM asked the complainant to provide his views of how he sees his role within the company. *“If this is not how you see the role you play within the company, and you still intent or cannot offer the support for the staff and management the position entails, then please submit a letter with your intention by the end of tomorrow, March 23<sup>rd</sup> 2017.”<sup>9</sup>*

The complainant responded to the email and insisted that as Terminal Supervisor he is a technical officer and does not carry out administrative responsibilities. He asked the GM to inquire with the LPG Terminals around the neighbouring Pacific countries regarding the role of Terminal Supervisor. He believed his Job Description provided for technical responsibilities. In the view of the complainant, the GM did not have an understanding of how a LPG terminal operated, *“My role is to ensure the safety of the whole terminal, training and see that staff comply with the proper work procedure of dispensing of LPG, and other equipment within the terminal, and report any damage or broken equipment to the Terminal Manager and/or Technical Adviser be fixed”.*

*“I report to Terminal Manager but when Terminal Manager is absence I report to Technical Adviser, Fokololo Mafile’o. That’s how the channel of communication and reporting at Homegas before Lani came in.*

*“I sometimes report to GM ‘Ahokava when Fokololo is absent”.*<sup>10</sup>

## **THE SUSPENSION**

12. On 24 March 2017 the GM sent a sms text to the complainant advising him that he was suspended for 1 month.

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<sup>7</sup>Ibid

<sup>8</sup>Email, GM to staff, notifications on new responsibilities re: Poli Leger, 10<sup>th</sup> March 2017

<sup>9</sup> Email, GM to complainant, the role of Terminal Supervisor, 22<sup>nd</sup> March 2017

<sup>10</sup> Email, complainant to GM, the role of Terminal Supervisor, 22<sup>nd</sup> March 2017

13. The suspension was formalised in a letter dated 28 March 2017,<sup>11</sup> which read:

*"Your failure to recognize your duties puts Touliki LPG terminal staff at risk. This is without doubt, incomprehensible that Touliki, since 2015, no one was directly supervising the staff.*

*"Because of this, your behavior, reasoning and failure to understand simple facts, is exemplary of incompetency and insubordination. You are therefore suspended from work without pay, effective March 24<sup>th</sup>, 2017. Your suspension is until April 24<sup>th</sup>, 2017.*

*"Please note also, that your role as Terminal Supervisor is now under revision".*

### **THE DISMISSAL**

14. During the suspension, the GM undertook an assessment of the complainant's performance from January to March 2017. The process was not put to the complainant and he was never included in the process. Following this review the GM wrote a letter to the complainant dated the 22 April 2017 dismissing him from Homegas -

*"I have opted to assess your performance myself rather than the Terminal Manager. I will be making changes within this company that requires your role working directly with me ...However, assessing your performance and taking into account my plans for the future of the company, it does not come as a surprise to me that you are not fit to carry on working in your role. And most importantly, we cannot work together".<sup>12</sup>*

15. During the suspension period there was no correspondence or meeting between the GM and the complainant. The GM was summoned to a hearing on 21 February 2018 and it was put to him that the dismissal/disciplinary process in the Homegas Staff Administration & Procedures Manual had not been followed. The GM's response was that .

*"I was aware of the policy, and the required process, however, I thought his failing to understand his role and responsibilities was serious enough and warranted his dismissal."<sup>13</sup>*

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<sup>11</sup> Suspension letter, dated 28<sup>th</sup> March 2017

<sup>12</sup> Dismissal letter, dated 22 April 2017

<sup>13</sup> Hearing of the GM at the Ombudsman Office on 21 February 2018

## EXCERPTS FROM THE HOMEGAS STAFF ADMINISTRATION & PROCEDURES MANUAL (“HOME GAS STAFF MANUAL”)

### **5.6 Performance Reviews**

16. *The company is committed to an open dialogue with you and your development. You will have one (1) formal, documented, annual performance review with your manager or supervisor to assess your performance, determine how the company can better assist you to improve work effectiveness and identify steps you can take to improve. Performance reviews assess your performance along 5 criteria: 1. Performance against objectives (meeting deadlines, completing training, etc); 2. Performance against behavior (behaviours that support the values, positive outlook, involvement, volunteering for extra duty, etc); 3. Skills (developing of abilities to perform the job); 4. Policy (timekeeping, appearance, etc).*<sup>14</sup> *The complainant performance was reviewed on 11 categories*<sup>15</sup>

### **8.3 Dismissal**

17. *Policy 8.3 provides: “Should it become necessary to dismiss you, you will be given sufficient notice or payment in lieu thereof as outlined in the terms of his employment contract.*
18. *Schedule 1 - Standard Terms & Conditions – Termination (being a summary of some important provisions of Employer’s Staff Administration and Procedures Manual) provide that either party may terminate the contract on notice in writing. In this case, the Employee three months for employees with more than three years completed service with the Employer. In the case of the Employee, notice shall be equal to twice the period of notice with the Employer.*<sup>16</sup>
19. *Contract of Employment between Homegas Ltd (“Employer”) and Simone Mailau (“the Employer”) come into effect 10<sup>th</sup> November 2014, that the Employer shall employ the Employee as a Terminal Supervisor, and the Contract shall not be terminated except as set out herein and in accordance with the provisions of the Employer’s Staff Administration and Procedures Manual.*<sup>17</sup>

### **10.1 Disciplinary Guidelines**

20. *The GM did not follow the company’s policy on it’s disciplinary process.*<sup>18</sup>

*Generally, the following are the steps which must be followed in order to effectively solve disciplinary issues:*

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<sup>14</sup> Homegas Ltd Staff Administration & Procedures Manual 5.6 - Performance Reviews - Criteria

<sup>15</sup> Performance Review Jan-March 2017

<sup>16</sup> Schedules Forming Part of this Contract, Termination, p. 4

<sup>17</sup> Contract of Employment, Homegas Ltd and Simone Mailau

<sup>18</sup> Homegas Ltd Policy Manual – Staff Administration & Procedures Manual 10.1 & 10.2, page 26, 27



**Step 1**

*The GM will investigate and discuss the matter with you and in the absence of suitable explanation from you, a verbal or first written warning will be given. The corrective action required will be communicated in addition to the deadline for corrective action.*

**Step 2**

*If no improvement is seen, the GM will again discuss the problem with you and in the absence of a suitable explanation, a second formal written warning will be issued to you outlining the action required of you, the period of time in which the improvement must be made and the consequences of failing to take the appropriate remedial action.*

**Step 3**

*Further persistence of the problem will result in your termination of employment with the company.*

**Policy 10.2 Gross Misconduct**

21. *A list from a to h of what constitute a gross misconduct from insubordination to failure to follow the policy manual, and (i) other acts of gross misconduct will extend to other acts not included on this list that can cause damage and/or exposure to the company in any way; and (j) In such cases the company may summarily dismissed you after a thorough investigation of the facts and having satisfied itself of gross misconduct.*

*In carrying out the investigation the company will ensure:*

- a) Prompt and thorough inquiries into the facts of the case*
- b) You are advised that the matter will be handled fairly, impartially and confidentially*
- c) You will be informed by the company of any changes brought and will be required to attend a disciplinary hearing*
- d) You may have a representative or support person present at the meeting for assistance and advice.*

**OPINIONS**

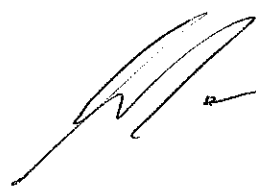
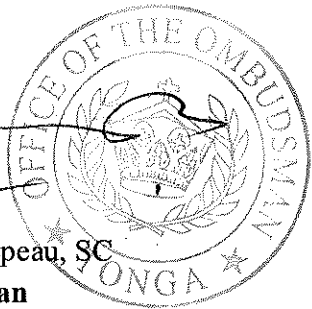
22. That there was a difference of opinion between the GM and the complainant regarding the role of the complainant as set out in his Job Description and the complainant's understanding of his role.
23. That, the GM failed to provide the complainant an opportunity to hear his side of the story relating to his understanding of his Job Description.
24. That the GM failed to give the complainant the opportunity to provide his views on the assessment of his performance prior to making his decision to dismiss the complainant therefore contravening policy 5.6 and 8.3 of the Homegas Staff Manual.

## RECOMMENDATIONS

25. I am recommending three (3) things in this Report pursuant to section 18(3) of *Ombudsman Act 2001*:
1. That Homegas recognizes that the termination of the complainant's employment by the General Manager on 22 April 2016 did not follow due process as stipulated under Policies 5.6 and 8.3 of Homegas Staff Manual.
  2. That Homegas consider remedial measures which may include compensating the complainant as a way of resolving this complaint and if so to discuss with the complainant a Deed of Release and Indemnity to signify the conclusion of the matter.
  3. That the GM report back to me within two (2) months of the date this report is finalised to provide a follow up report on the recommendations.

### HOME GAS RESPONSE 19 APRIL 2018

- 26 On 22 March 2018, I delivered my Provisional Report to Homegas Ltd setting out my findings, opinions and recommendations. On 19 April 2018<sup>19</sup>, I received a response from the General Manager via email accepting the recommendations of this Report and committing to implement the recommendations within 2 months. As required under section 18(5) of the Ombudsman Act 2001, a copy of this email response is attached to this Report as Annex 1.

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

**20th April 2018**

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<sup>19</sup> Email response from GM dated 19 April 2018

## Pilimisolot Tamoua

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**From:** Michael Lani 'Ahokava <ahokavaml@tongapower.to>  
**Sent:** Thursday, 19 April 2018 9:16 a.m.  
**To:** Pilimisolot Tamoua  
**Cc:** lepaolav@ombudsman.to  
**Subject:** Re: Provisional Report on Simione Mailau  
**Attachments:** PastedGraphic-5.tiff

Hi Solo,

I don't have anything to come back on as per our conversation. Pls proceed with the final so we can go ahead and resolve this matter asap.

Malo for all your work.

Kind regards, Lani

Michael Lani 'Ahokava  
General Manager  
Tonga Gas Ltd / Home Gas Ltd  
+676 786 3310 or +676 841 4392  
[ahokavaml@tongapower.to](mailto:ahokavaml@tongapower.to) OR  
[enquiries.gas@tongapower.to](mailto:enquiries.gas@tongapower.to)

On 18/04/2018, at 2:24 PM, Pilimisolot Tamoua <[pilimisolot@ombudsman.to](mailto:pilimisolot@ombudsman.to)> wrote:

Good afternoon Lani

Kataki, ko e toe vakai atu pe hili 'eta talanoa telefoni 'aneuhu pe 'oku toe 'i ai ha'o comment ki he Lipooti Fakaangaanga na'a mau tuku atu dated 22 Ma'asi 2018 re: Simione Mailau, pea ka 'ikai pea te mau hoko atu leva ke finalise e lipooti, kataki.

Malo  
Solo

<image001.png>

### **Pilimisolot Tamo'ua**

**Principal Investigator, Office of the Ombudsman**

Address: Level 2 RFB Building, Crn of Railway and Mateialona Road | PO Box 847

Phone: +676 26980 Ext – 209 Mobile: +676 7702303

Email: [pilimisolot@ombudsman.to](mailto:pilimisolot@ombudsman.to) Website: <http://www.ombudsman.to>

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