



Office of the Ombudsman

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**COMMISSIONER'S FINAL REPORT ON THE
COMPLAINT BY
TUKUOFO FALEMAKA MELEKIOLA**

CASE NO. CPR 16/22

**Whether the long delay of the implementation of the
Minister's decision in 2010 regarding the increment of the
complainant by the Ministry of Education & Training was
unfair and unreasonable**

10th January 2017

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EXCECUTIVE SUMMARY

1. The complainant, Mrs. Tukufo Falemaka Melekiola now aged 53 years old from Lapaha was a student at Teachers Training College from 1983 to 1984. After her training, she took up teaching positions with the Catholic School system until 1999 when she applied for and was appointed to a teaching post in the Government Primary School (GPS) at Lapaha. She has remained a teacher in the Government Primary Schools and is currently teaching at the primary school at GPS Mu'a.
2. In 2009, the complainant became aware that there was a salary difference between her and one of the teachers – Siale Moala as both were on the same increment level. On 10th February 2009, complainant wrote to the Ministry of Education and Training (“Ministry”) enquiring about the differences between their salaries. On the 23rd February 2009, the Ministry responded to the complainant requesting proof of her previous teaching experiences before joining the Government structure¹.
3. On 11th March 2009, the complainant responded to the Ministry attaching evidence that she previously taught at two Catholic Schools for seven (7) years from 1985 to 1991 and made mention of the fact that she had provided her work experience when she applied for the Government teaching position in 1999². The Ministry replied on the 15th April 2010³ (more than a year later), informing her that the Public Service Commission (“the Commission”) held no record of her past experience of teaching with the Catholic schools and that they will contact her once confirmed.
4. On the 4th June 2010, the Director of Education wrote and recommended to the Honourable Minister for Education an extra increment for the complainant. This was approved and signed by the Minister on 08th June 2010⁴.
5. On the 10th June 2010⁵, a letter from Director of Education to Secretary for Finance & National Planning, copied to Acting Secretary for the Commission, Head of Finance – Head Office, Accounts Section – Head Office to take action on the complainant’s extra increments in recognition of her 7 years of services with the Catholic schools and that this be calculated and effective as of 1 February 1999.

¹ Letter from Tevita Fakatou for the Director of Education dated the 23rd February 2009 and refers to the complainants letter of the 10th February 2009

² Letter from complainant to Dr. Uili Fukofuka, Director of Education dated the 11th March 2009

³ Letter from Tevita Fakatou for the Director of Education dated the 15th April 2010

⁴ Internal Memo dated the 4th of June 2010

⁵ Savingram from Tevita Fakatou to the Secretary for Finance dated the 10th June 2010

6. Up to the date of this report, the complainant has not received any additional funds in recognition of her increments that she should have received in 1999.
7. I am recommending four things in this Report pursuant to section 18(3) of the Commissioner for Public Relations Act 2001-
 - i) That the Ministry recognise that long periods of inaction and non-responsiveness is unreasonable and unfair and causes hardship to staff.
 - ii) The Ministry be responsible for the prolonged and unreasonable delay in awarding the complainant her increments affecting her income flow and opportunity for further development;
 - iii) That the Ministry should forthwith act upon the Minister's decision of 8th June 2010 and pay the complainant accordingly with market rate interest; and
 - iv) That the Ministry report back to me within **two months** of the date this report is finalised to provide a follow up report on the recommendations.

BACKGROUND

8. The complaint was received on the 2nd of May 2016.
9. I assigned the investigation to my Investigation Team who undertook the investigation and interviewed the complainant.
10. The team requested and received information from the complaint and from both the Ministry and the Commission.

THE COMMISSIONER'S ROLE

11. Under section 11 of the *Commissioner for Public Relations Act 2001*, the Commissioner for Public Relations has the authority to investigate the administrative acts, decision, omissions and recommendations of an officer of an organisation in his capacity as an officer of that organisation. This applies to the Ministry which is an organisation under the Act. (Section 18(1) and (2) of the *Commissioner for Public Relations Act 2001*).
12. 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 Ministry, and then form an opinion as to whether the act or the decision and the procedures followed by Ministry, was properly arrived at and was one that the Ministry could reasonably make.

13. My role is to consider the administrative conduct and decisions of the Ministry and to form an independent opinion on whether that conduct was fair and reasonable.

THE TEACHING HISTORY

14. Set out below is a history of the complainant's teaching career noting that from 1992-1998 she was unemployed and from 2008 to 2010 she was studying at the Tonga Institute of Education for her Diploma in Education -
- i. 1985 to 1988: 'Apifo'ou College;
 - ii. 1989 to 1991: Takuilau College
 - iii. 1999 to 2007: G.P.S Lapaha;
 - iv. 2010 to 2014: G.P.S Talafo'ou; and
 - v. Currently: G.P.S Mu'a.

SALARY DIFFERENCES

15. From 1999 to 2007, the complainant teaches at G.P.S Lapaha with a minimum starting rate of \$2728 per annum for a Senior Assistant Teacher (SAT) Class III. In 2000 the complainant was paid at \$2845 (Point 2) of the salary scale for SAT Class III.
16. On 10th of February 2009, the complainant wrote to the Ministry enquiring about the differences between her salary and one of the teachers named Siale Moala, as she had the same 7 years teaching experience with Mission schools before teaching in the Government structures.
17. On 23rd February 2009, the Ministry responded to the complainant's letter dated 10th Feb 2009 requesting the complainant to provide MET with evidence that she had previously taught at Catholic schools before joining the Government structure.
18. On 11th March 2009, the complainant responded to the Ministry in response to their request attaching evidence that she had taught at Catholic Schools for 7 years before she joined the Government.

THE MINISTRY'S RESPONSE

19. On 15th April 2010, the Ministry wrote to the complainant regarding her complaint in 2009, that the Commission held no record of her past experience of teaching with Catholic schools and they will contact her once this is confirmed.

20. The Ministry took 13 months (April 15, 2010) to inform the complainant that the Commission did not have any records of her teaching experience in the Catholic schools. However, the complainant submitted evidence of her teaching experience in 1999 when she applied for the Government teaching positions.

THE MINISTER'S DECISION

21. On the 4th June 2010, a letter from the Director of Education was submitted to the Minister for Education recommending extra increments for the complainant and this was approved and signed by the Minister on 08th June 2010. On the 10th June 2010, a letter from the Director of Education to the Secretary for Finance & National Planning was copied to the Assistant Secretary for the Commission; Head of Finance; Accounts Section; and School Principal to take action on the complainants - 7 extra increments in recognition of her 7 years of teaching services with Catholic schools and be calculated and effective as of 1 February 1999 as approved by the Minister.

THE OMISSION


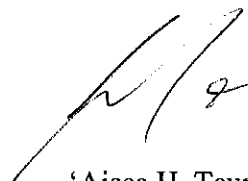
22. The Ministry unreasonably failed to act upon the decision made by the Minister on the 8th June 2010, to take action on the complainant's extra increments in recognition of her 7 years of teaching experience with the Catholic schools before she became a Government teacher.

OPINIONS

23. That the Ministry has unreasonably failed to act upon the decision that was made by the Minister on the 8th June, 2010 to award the complainant her extra increments.
24. The Ministry failed to respond to the Commission to provide salary details and identify available funds since 2010 but has continuously advised the complainant that the delay is from the Commission.
25. That in failing to act upon the Minister's decision in a timely manner, the Ministry has been unreasonable and unfair to the complainant.

RECOMMENDATIONS

26. That the Ministry recognise that long periods of inaction and non-responsiveness is unreasonable and unfair and causes hardship to staff.
27. That the Ministry be responsible for the prolonged and unreasonable delay in awarding the complainant her increments affecting her income flow and opportunity for further development.
28. That the Ministry should forthwith act upon the Minister's decision of the 8th June 2010 and pay the complainant accordingly with market rate interest.
29. That the Ministry report back to me within **two months** of the date this report is finalised to provide a follow up report on the recommendations.



'Aisea H. Taumoepeau, SC
Ombudsman

10th January 2017