

IN THE POLICE BOARD

NUKUÁLOFA

SB 04/2021

ATTORNEY GENERAL'S OFFICE	
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BETWEEN

TONGA POLICE

APPLICANT

AND

Constable Tevita Pohiva
RESPONDENT

JUDGMENT OF THE POLICE BOARD

IN THE MATTER OF THE REFERRAL of Probation Constable TEVITA POHIVA,
TO THE POLICE BOARD FOR TERMINATION OF EMPLOYMENT.

Preliminary

1. The Police Employment Committee has referred *Constable Tevita Pohiva*,
TO THE POLICE BOARD, UNDER SECTION 74(2), of the *Tonga Police Act 2010* (TPA)
WITH RECOMMENDATION TO, TERMINATE HIS EMPLOYMENT under section 63(1)(iv) TPA
2. The grounds for referral :
 - (i) The Respondent has committed a serious breach of discipline by failing to comply with section 100(1) of the Tonga Police Act 2010 and codes 7.1,7.2, 7.3 and 8.1 of the Tonga Police Code of Conduct.
 - (ii) The Respondent was found guilty of one charge of bodily harm, and convicted by Magistrate Mafi and ordered to pay \$1,000 compensation within 1 month and in default of payment, he is to serve 3 months imprisonment with 12 months probation on the condition that does not commit any further offending.

3. Hearing

The matter was heard by the Police Board on the 8 December 2021. Ms Bernadette Utaátu , of the Attorney General's Office appeared for the Applicant, and the Respondent appeared in person.

Summary of Facts

4. A summary of the relevant facts, are;

The Respondent, Pohiva was on duty on 29 October 2017 on patrol duties at Vuna Road. Pohiva in the course of his duties, had tried to apprehend the Complainant, (Mr Litili) who was running away from a vehicle, stopped by the Police. Mr Litili was a passenger in the stopped vehicle.

Pohiva caught the Complainant, punched and kicked the Complainant's face and side of his stomach. After handcuffing the Complainant and taking him to the police station, Pohiva continued to punch the complainant's jaw repeatedly outside the police station. The Complainant did not pose a threat to Pohiva at any time, especially after being handcuffed.

The Police Employment Committee concluded that Pohiva used unnecessary and excessive force on the Complainant.

The Respondent was, found guilty of one charge of bodily harm, convicted by Magistrate Mafi and ordered to pay \$1,000 compensation within 1 month and in default of payment, he is to serve 3 months imprisonment with 12 months probation on the condition that he does not reoffend.

According to the Attorney General, dated 18 June 2019, Magistrate Mafi gave the following reasons for his sentence -

1. The victim had made full recovery from the injury sustained as a result of the offending; and
2. The Accused was a young Police Officer, 21 years old, who relatively new to the Police Force. The Magistrate wished to give him a chance to do better. He was warned that he would be subjected to a much harsher sentence if he continued to show such behavior in the future.

Conclusion

If compensation ordered by the Court has been paid, it is mitigating factor, also noting the reasons given by the Magistrate Court for its decision. (Check)

Pohiva, is remorseful and seeks a second chance.

RULING

THE POLICE BOARD, ON 8 December 2021, considered the application by the Tonga Police after hearing Crown Counsel for THE APPLICANT; and the Respondent, Tevita Pohiva, in person: AND ORDERS, that Constable Tevita Pohiva'S EMPLOYMENT be terminated effective from the date of this decision.

DATED this ¹⁴.....day of December 2021.




MR STEVENSON


Rt.Hon LORD Dalgety KC


MRS TAUMOPEAU KC