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Judgment - "Police Board"  
09/04/13

IN THE POLICE BOARD  
NUKU'ALOFA

PB Application 10/ 2012

BETWEEN TONGA POLICE  
Applicant  
AND ASP TULU KALANIUVALU  
Respondent

Coram

Chairman

Justice Cato

Members

Lord Tupou

Mr Laki Niu

Mr Kefu for the applicant

The respondent did not appear

RULING OF THE BOARD

[1] The Commissioner of Police on the 19<sup>th</sup> February, 2013, referred this matter to the Board under section 63 (2) of the Tonga Police Act, 2010 for our consideration. Pursuant to his powers under section 79(1) (a) ASP T Kalaniuvalu had been suspended.

[2] The Employment Committee met on Friday 15<sup>th</sup> February 2013 and discussed the investigator's report, considered the circumstances of ASP T Kalanivalu's action and concluded that his actions constituted a serious breach of section 1.4 and 1.5 of the Police Code of conduct. The Committee concluded that the appropriate penalty is termination of appointment in accordance with section 63(1) (c) ( iv) of the Police Act.

[3] The provisions of the Code ASPT Kalanivalu was alleged to have been in breach of are;

Section 1.4 Tonga Police members must not act in a way that is prejudicial to the good order and discipline of the Tonga Police.

Section 1.5 All Tonga Police members need to be aware of and comply with relevant legislation, Tonga Police Policy, general instructions and this code of conduct as they relate to their work, and should seek additional advice from a senior officer whenever in doubt about any matter.

[4] Although notified that the hearing of the Board would be held on the 1<sup>st</sup> March, 2013, ASPT Kalanivalu chose not to appear before us.

[5] The circumstances briefly are that;

1. On the 22<sup>nd</sup> November, 2012, Mataiasi Taufu aged 38 was arrested by Tonga Police for armed robbery.
2. On the 23<sup>rd</sup> November 2012, he was ordered by Magistrate Soakimi to be remanded into Police custody until 26<sup>th</sup> November 2012.

3. On 26<sup>th</sup> November 2012, Magistrate Tu'akalau ordered that Taufu remain in police custody but he was allowed to visit his home under Police supervision.
4. On the 27<sup>th</sup> November, 2012, Magistrate Soakimi ordered that Taufu remain in custody until 28<sup>th</sup> November 2012.
5. He was further ordered to remain in police custody between 28<sup>th</sup> November and 12<sup>th</sup> December 2012.
6. On the 12<sup>th</sup> December 2012, Magistrate Mafi ordered that Taufu remain in police custody at the mental Health Unit at Viola Hospital.
7. On the 31<sup>st</sup> December, 2012, the police were informed by the mental Health staff that Taufu could be taken back into Police custody, and he was taken to the Central Police station.
8. On the 31<sup>st</sup> December 2012, the police again transferred Taufu from the Central Police Station to the Guard House at the police training school.
9. On the 1<sup>st</sup> January 2013, ASP T Kalanivalu picked Taufu up from this location and took him to his home at Ha'ateiho meet his family for the New Year.
10. He then drove Taufu to his home at Ha'ateiho and left him there. He then drove to the airport leaving Taufu unattended at the home.
11. ASP T Kalanivalu then went back to Central police station left the police there and went to the airport in a private car to pick up some one who was arriving.

12. Meanwhile, during this time, Taufu questioned his wife about allegations that she had an affair. The wife denied the allegations. Taufu beat her up and caused serious injuries. Taufu's family stopped the assault on her and she was taken to hospital.

13. Taufu's wife called police and police informed ASPT Kalanivalu who was at the airport about the assault.

14. ASPT Kalanivalu went to the hospital and apologized to the wife. He told her he was trying to help Taufu.

15. On the 2<sup>nd</sup> January, 2013, ASPT Kalanivalu requested Dr Mapa Puloka, the head of the Mental Health Unit, to write a letter to say it was reasonable to take Taufu out to see his family, which Dr Puloka did.

[6] Other information of relevance, is that Taufu had a serious criminal record which included assault, assault causing bodily harm for which he had been imprisoned for 6 months, conspiracy to rob for which he was sentenced in February 2001 to 6 years, with the final year suspended for three years. The Board was also informed by Mr Kefu that he had further convictions for a serious assault on his wife (2 Counts of grievous bodily harm and one of bodily harm) for which he had been sentenced to an additional term of imprisonment of three years with 18 months suspended for three years, - cumulative on his sentence for the conspiracy to rob. This did not appear on his record which we received in the file. We do not know the full circumstances of this offending but the fact the sentence was made cumulative suggests that Taufu had on this occasion also managed to carry out this offending whilst serving a term of imprisonment.

[7] Further, ASPT Kalanivalu had appeared on earlier disciplinary matters; in 2010, he had failed to carry out a Commissioner's order and had possession of a missing exhibit, a guitar. He was directed to pay compensation for this.

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He was also reprimanded for failing to take action on a matter involving a police assault.

[8] We asked Mr Kefu of the charges what was the most serious allegation and he responded that the breach of the bail condition that is failing to comply with relevant legislation namely the Bail Act and orders made under that Act by a Magistrate was a serious breach of section 1.5 of the Code of Conduct. We agree. To willfully disregard an order that a person be remanded in custody is a very serious allegation of misconduct. Further, his conduct was plainly in our view conduct that brought the Tongan police into disrepute and was prejudicial to the good order and discipline of the Tongan police.

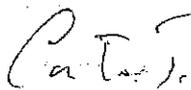
[9] We consider that ASPT Kalanivalu was in very serious dereliction of his duty when he took Taufu, who was a man with a serious criminal background, including a history of serious assault on his wife without any apparent warning to the wife and left him there with her unattended. We do not understand why any police officer with or without the experience of ASPT Kalanivalu, who was a senior officer, would want to assist a criminal in this way, still less a criminal with Taufu's unenviable record. No satisfactory explanation has ever been advanced as to why ASPT Kalanivalu acted in the way he did.

[10] Not only was he in serious breach of the bail condition which required Taufu to be held in custody, but he left him in the house unattended with his wife, a woman whom he had brutally beaten up in the past. This was grossly irresponsible action and it resulted in his wife's further serious injuries. Further his actions appear to have been taken without any consultation with the officer in charge of the most recent robbery charge who should have been consulted before even a court approved bail variation was sought. We do not know whether ASPT Kalanivalu knew of Taufu's previous assault on his wife; however, if he did his actions were diabolical. He placed Taufu's wife in very grave danger.

[11] Afterwards, it appears he used the services of Dr Puloka who had not seen Taufa professionally for some years to endeavour to provide a medical reason to justify his, ASPT Kalanivalu. It is to be noted that in his letter of recommendation written the day after the assault Dr Puloka purported to give a diagnosis of a man he later admitted he had not seen for a long time, and recommended that in order to avoid a relapse of his illness he be given opportunities to visit his home and properties outside the police station. However, Dr Puloka was careful to add under the direct supervision and strict control of a responsible Police officer. Further inquiry revealed that when he wrote the report, Dr Pukola did not know of the assault that had taken place the day before. Plainly, ASPT Kalanivalu was not open with Dr Pukola and that is also unsatisfactory, as was his attempt in any event it seems to compromise Dr Pukola so as to provide him with a reason to justify his own inept and irresponsible conduct.

[22] We emphasize that ASPT Kalanivalu had no authority to unilaterally vary a court order remanding Taufa in custody. That he did so was in itself a serious breach of his duty; however doing so without any consultation with other officers responsible for the current charges Taufa was facing, and leaving Taufa unattended with his wife in our view makes the misconduct even more reprehensible. We agree with Mr Kefu when he was asked if any lesser penalty than termination would be appropriate and he said in his view there could be no lesser penalty. In our view this is a clear case where termination for misconduct is justified, and we approve his termination.

Dated <sup>PK</sup> March, 2013

  
Chairman

  
Lord Tupou

  
Mr Laki Niu