

POLICE BOARD

NUKU'ALOFA

2 of 2015

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09/04/15

BETWEEN: 1. SPC LONGOSAI TAUFE'ULUNGAKI
2. PC TAUKATELATA VAKALAHU

Applicants

AND: TONGA POLICE

Respondent

POLICE BOARD APPLICATION FOR REVIEW

- [1] This application for review of the Police Employment Committees' decision on the 14th August 2014 for the appointment of Kaliopasi Vaikona for the role of Logistics' officer .
- [2] The Applicant SPC Taufe'ulungaki did not appear at the hearing and we were informed he had been advised of the date of this. Accordingly we dismiss his application.
- [3] PC Taukatelata Vakalahi did appear and made competent submissions to us. Essentially, he made several points. He objected to the selection on the basis, he argued, it was lacking in merit, he contended that he was as well qualified for the appointment himself,

and that there was a risk of bias because in the case of the successful applicant, it appears that two members of the panel worked with him in the corporate services Division, and one was a referee for him. The Applicant further contended that he felt one of the members in her questioning of him had indicated a lack of partiality.

[4] Further review of the file, however, indicated that the Applicant also had nominated a referee who was on the Board.

[5] We have reviewed the file and we see no basis for any criticism of the methods used in selection. It is, not our role to substitute our view for the decision of the Committee or selection panel. We are not in that respect acting as an appeal body, but we are empowered to ensure that decisions that are made are procedurally fairly arrived at, are based on merit, and are reasonable. The fact that the Applicant may have believed that he was the better Applicant does not as Scott CJ observed in Fifita v the Police Board AM 16/2012 mean that the Committee erred in choosing the candidate it did. The successful candidate plainly appears to have had experience in logistics.

[6] In this case, we have reviewed the reasons and assessment made by the selection committee, and we do not in the case of the Applicant consider there is any reason to intervene. A further review of the points system used by the Panel reveal that he was a distant third in the selection process. When advised of this, the Applicant candidly appeared to accept that he would not have made the application had he appreciated this.

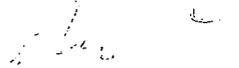
[7] That said, there is one aspect of this review that did trouble the Board. The Applicant's complaint of bias arising out of the fact that the successful candidate had one referee on the Selection Panel which recommended the appointment concerned us. The Applicant also had a referee amongst the members of the Panel. The Applicant's nominated referee on the Panel did not mark the Applicant highly. As we have said, the Applicant fell well below the level of either the first or second candidates, in the marking approach taken after individual assessment. In these circumstances, we do not think that any possible risk of an absence of impartiality affected the legitimacy of the selection process in so far as this Applicant was concerned.

[8] However, we were concerned that unless procedures were taken to avoid the appointment of referees in the selection process, the process could be successfully challenged by a disappointed candidate for appointment for lack of impartiality. Lord Tupou, with whom the Board agrees, suggested that Selection Panel should not be appointed until after applications for appointments had all been received when it could be ascertained who the referees were, so that the Selection panel could be appointed without any candidate's referee being involved in the selection process.

[9] As we have said, we consider that in this case, there is nothing to suggest that the Selection Panel and the Police Employment Committee did not consider the applicant's case properly and nor was

the decision unreasonable and for these reasons we dismiss the application and uphold the appointment.

Justice Cato
Chairman



Lord Tupou



Mr Niu SC

DATED: MARCH 2015