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Public Service Tribunal

PST Appeal No. 4 of 2018

Mrs. Eileen Elizabeth Fonua **Appellant**

Public Service Commission **Respondent**

PUBLIC SERVICE TRIBUNAL:

Mr. 'Aisea Taumoepeau, SC **Chairman**

Mr. Timote Katoanga **Member**

Mrs. Lepolo Taunisila **Member**

REPRESENTATION:

Appellant : Mrs. Petunia Tupou Counsel for the Appellant
 Mrs. Eileen Elizabeth Fonua In Attendance

Respondent: Mr. Sione Sisifa Solicitor General
 Ms. Mokaleini Fifita Public Service Commission

Date of Hearing: 21 May 2019

Date of Ruling: 18 June 2019

Mrs. Eileen Elizabeth Fonua (Appellant) v Public Service Commission (Respondent)

PST Appeal No. 4 of 2018

1. The Appellant is appealing against a decision of the Public Service Commission (PSC), which was PSC Decision No. 567 of 17 November 2017. That decision reads as follows:

“That Mrs Eileen Elizabeth Fonua, be appointed to the position of Principal Fisheries Officer, Ministry of Fisheries and that she be paid at the minimum point (i.e. \$30,240) of Band I with a salary range of \$30,240 to \$45,360 with effect from the date of assumption of duty.”

2. The Appellant is seeking the following decisions from the Tribunal:
 - (a) That the Appellant’s salary entry point be that recommended by the Remuneration Authority report of 1 July 2016 at page 74 with a basic salary of \$37,806 being the closest entry point to the Appellant’s current salary on entry and be set at the recommended TRP of \$41,587.
 - (b) Costs.
3. The Appellant relied on the following grounds, namely:
 - (a) The PSC Decision on 17 November 2017 was flawed in that it rigidly applied the relevant policy so as to exclude the merits of the Appellant’s case.
 - (b) The PSC Decision failed to have regard to relevant matters that should have been taken into account to assess the merits of the Appellant’s individual case.
 - (c) The PSC Decision was unreasonable in terms of granting the Appellant the minimum entry point of the relevant Band despite her qualification, experience and salary at the time of entry.

BACKGROUND

4. The Appellant joined the public service on 01 February 1997 as a Trained Uncertificated Teacher at the Ministry of Education and Training.
5. In 2012 the Appellant resigned from the public service at a position of Assistant Teacher Graduate.

6. From September 2012 to December 2014, the Appellant was employed as a Project Coordinator at the Ministry of Lands, Environment, Climate Change and Natural Resources.
7. From January 2015 to December 2017, the Appellant worked for the Ministry of Energy, Information, Disaster Management, Environment, Climate Change and Communications (MEIDECC) in a project called Management of Marine and Coastal Biodiversity (MACBIO) as a National Coordinator.
8. The position of Principal Fisheries Officer was advertised from 23 July 2017 to 11 August 2017 and the Appellant applied to the post.
9. The minimum requirements for the post were:

“

– *Bachelor Degree in Fisheries/Marine Science/Aquaculture, Biological and Environmental Sciences or any relevant field from a recognized institution with at least five (5) years of relevant working experience at senior management level in Government or Private Sectors*

OR

– *Masters and/or higher qualification degree in Fisheries/Marine Science/Aquaculture, Biological and Environment Sciences from recognized institution with at least three (3) years of relevant working experience at senior management level in Government or Private Sectors.*

Desirable

- *Specialized training (aquaculture training and training activities, hatchery, marine species identification skills)*
- *SCUBA diving certificate*
- *Advance tertiary course in Aquaculture Fisheries and Business Management*
- *Aquaculture skills (professional) – Marine and fresh water species*
- *Good background and Biology research”*

10. The Appellant’s academic qualifications are:

- Diploma in Education (1996)
- Bachelor of Arts (Geography and Education) (2005)
- Postgraduate Diploma in Environmental Studies (2007)
- Postgraduate Diploma in Business Administration (Human Resource) (2015)
- Postgraduate Diploma in Business Administration (General Manager) (2016)
- Master in Business Administration (2017)

11. After going through the interviewing process on 28 September 2017, the Respondent approved on 17 November 2017 to re-appoint the Appellant to the position of Principal Fisheries Officer with the Ministry of Fisheries.

12. The Appellant commenced working at the Ministry of Fisheries on 13 December 2017.

13. As soon as the Appellant took office, she raised with the Chief Executive Officer (CEO) of the Ministry of Fisheries that she was not happy with her starting salary at Band I considering her experiences and qualifications.
14. According to the Appellant, her salary at her last job, as a MACBIO National Coordinator, was T\$37,840.
15. Despite several email correspondences between the Appellant and the PSC Office, the PSC Office still insisted that the right entry point for the Appellant was the minimum point of Band I.
16. Therefore, the Appellant submitted her appeal to the Tribunal on 07 November 2018.

PSC ACTION AND DECISION

17. On 16 May 2017, the CEO for PSC sent a Savingram to the Acting CEO of the Ministry of Fisheries to advise the endorsement of the minimum requirements for the positions of Principal Fisheries Officer and Fisheries Trainee.
18. The position of Principal Fisheries Officer was advertised from 23 July 2017 to 11 August 2017 and the interview was carried out on 28 September 2017.
19. The Acting CEO for Ministry of Fisheries sent the “*PSC Appointment Form*” to the PSC Office on 03 October 2017 with the following recommendation:

“That Mrs. Eileen Fonua appointed to the position of Principal Fisheries Officer in the Ministry of Fisheries under a probationary period of six (6) months that she be paid at minimum point \$30,240.00 of the band I at salary scale \$30,240 - \$45,360 from the date of assumption of duty in the permanent post.”

20. The PSC Office made a submission to the Commissioners’ Meeting on 17 November 2017 and stated the following:

“... The interview panel was satisfied with Mrs. Fonua’s responded to all questions. She described aquaculture in relation to the nature of the work. She also described the connection of aquaculture to Fisheries in terms of conserving and preserved marine species as indicate at the National outcome and output of the Ministry’s Corporate Plan. She was able to demonstrate how she plans to conduct a case study by working together with the stakeholders, making sure it comply with the Ministry’s Act and Regulations thus with vast experience she had will surely assist her in developing proposals. Her current job at the MEIDECC was found by the Panelist to be relevant to the job in zoning of ocean.

Overall, Mrs. Eileen Elizabeth Fonua advocates team work, positive thinkers and transparent and that she believes that with such attributes she can performed the task well

if given the opportunity. As such, the panel unanimously agreed to recommend her for the Principal Fisheries Officer's position given that the prior recommended candidate withdrew."

21. On the same submission the PSC Office made the following comments:

"The PSC notes the following:

- Mrs. Eileen Fonua first entered into public service on 01 February, 1997 as a Trained Uncertificated Teacher in the Ministry of Education and Training;*
- As per PSCD No. 522 of 12 November, 2012, Mrs. Eileen Fonua resigned from the Public Service with effect from 28 September, 2012;*
- The PSC Office supports the recommendation of the Ministry to reappoint Mrs. Eileen Elizabeth Fonua the position of Principal Fisheries Officer in the Ministry of Fisheries;*
- Given that Mrs. Eileen Fonua was previously resigned from the Public Service while she was paid at \$28,987, her starting pay shall therefore be at the minimum point of Band "I"*
- Mrs. Eileen Fonua has submitted her police record and birth certificate which confirms that she has no criminal records*
- A reference check for Mrs. Fonua from the Director of Environment was also provided with positive feedback about her and that they would re-employ her if they had a vacancy where she would be interested to apply.*
- The case is in order."*

22. On 17 November 2017, the PSC approved the following recommendation (PSC Decision No. 567):

"That Mrs. Eileen Elizabeth Fonua, be re-appointed to the position of Principal Fisheries Officer, Ministry of Fisheries and shall be paid at the minimum point (i.e. \$30,240) of Band I with a salary range of \$30,240 to \$45,360 with effect from the date of assumption of duty"

23. The Acting CEO for Ministry of Fisheries sent a Savingram to the CEO for PSC on 13 December 2017 to inform that the Appellant had assumed duty on the same day.

24. On 14 December 2017, Mr. Vilimo Fakalolo of the Ministry of Fisheries forwarded an email from Maryanne Nakao of the PSC Office to the Appellant regarding her request to reconsider her starting salary point by taking into account her experiences and also her salary at her previous job.

25. The email stated the following:

"1) As discussed on the phone today; the following explains why Ms. Eileen Fonua was paid at the minimum point of Band I:

According to Policy Instruction 5A.3(A) part II; an officer must have **additional** qualifications **and additional** years of **relevant** work experience to qualify for getting an added percentage. Please refer to part II in the table below it reads:

<i>Minimum qualification and experience for appointment</i>	<i>Additional qualification and experience attained</i>	<i>Amount granted on top of the minimum point of the relevant scale or on top of the basic salary of the officer prior to being promoted.</i>
<i>i. Diploma (minimum period for the completion of which is at least one academic year) plus three years of work experience OR a Bachelor's degree with no experience</i>	<i>Postgraduate degree that is of 1 year duration or more AND 5 – 9 years of relevant work experience or 10 years or more work experience</i>	<i>3% of the minimum point of the relevant scale 6% of minimum point of relevant scale</i>
<i>ii. Bachelor's Degree plus minimum of three years work experience OR a Master degree with no work experience</i>	<i>Postgraduate degree that is of 1 year duration or more AND 5 – 9 years of relevant work experience 10 years or more of relevant work experience</i>	<i>3% of the minimum point of relevant scale 6% of minimum point</i>

In light of the above, the reasons for Ms. Fonua being paid only the minimum point of Band I is that her past work experience as a teacher is **not relevant** (as per PS Policy Instruction 5A.3(A)Part II) to that of a Principal Fisheries Officer (PFO).

- When looking at the minimum requirements for the position which includes Specialized training (aquaculture training and farming activities, hatchery, marine species identification skills) SCUBA diving certificate etc) as being desirable; there is no significant relevancy between a teaching profession and a PFO profession in this sense.
- Also, the purpose of the PFO position “To identify, develop, trial and prove the aquaculture of species identified as having the potential to support profitable new industries in Tonga, To develop proposals for potential donor and regional agency technical support, To liaise with industry and coastal communities, provide training and promote alternate livelihood strategy relevant to aquaculture” – there is no significant commonalities between the duties of a Teacher and a PFO in this

regard. These two positions are different in purpose and in nature and therefore the officer's work experience as teacher is not considered as relevant.

As such, the officer met the additional qualification element, but not the additional years of work experience, given that her past teaching profession is not relevant to that of a PFO."

26. The Appellant sent an email to Mr. Vilimo Fakalolo on the same day with the following comments:

"Thank you for the information sent from Maryanne Nakao. I am happy that you did your part to support my request but I totally disagree with her opinion of not taking into consideration my teaching profession experiences. The qualification and experiences attained indicated on the table above was opened to any related field. My teaching profession has linked also to PFO profession because I learned and accomplished a lot of things towards the PFO position which Maryanne Nakao doesn't know because she wasn't a teacher. I had experienced of working as a team, learn how to develop and having potential to support new industries in Tonga, develop proposals when working as a tertiary teacher at Teachers Training College, working with communities when conduct field work for marine conservation, building partnership and networks with communities and parents, building confidence when conducting and facilitating workshops, provide training with communities about the importance of marines conservation including aquaculture and Special Management Areas during our awareness programme and many more. Teaching Experiences is valuable to this position so PSC shouldn't ignore and underestimate the working experience as being a teacher. Teaching profession is related to any field or any post advertised in any Govt or Non-Govt organizations in Tonga.

How about my work experiences as a project coordinator for 5 years now. She did not mentioned anything about it. Why PSC did not take into account to reconsider my salary point as a project coordinator if it is the reasons why I got the position. I have accomplished many outputs as being a project coordinator which is link to this position, why they did not take as a credit not to start from the minimum point and my qualifications as well. I had talked with Tu'ikolongahau about my queries and he advised me to write a letter and provide some supporting letter from those that had advised me that I should entitle to have my salary point up but not to start from the minimum point. So, if you're agreeing with that then I have to go ahead with letter to PSC for reconsideration of my salary scale.

I have shortlisted to this position so my interpretations I met the requirements but I have realized now that they are justifying the scale of my salary according to some points of the advertisement which is not fair."

27. The CEO for Ministry for Fisheries, Dr. Tu'ikolongahau Halafihi, responded to the Appellant's email on the same day, 14 December 2017, and stated the following:

"Please allow me jump in with my comments as the CEO for Fisheries for clarifications. I think we all thank Vilimo, as you mentioned in your mail, for all his supports to your request

and he did his best. As a result, we have received the response from the PSC by Marryan Nakao. For us, we have done our part is to accept you to the post as a PFO for Aquaculture Section. Vilimo has provided our support to raise your request to the PSC. To go further than that, I don't think we can provide any further assistance on this due to the nature of the case as we haven't done anything like that before. However, as per the mail from Marryan, you are welcomed to provide any query or need further clarifications. So, I support that.

The discussion that we made was before this decision comes and as I mentioned to you, you are free to lodge further evidence to support your request, however, the Ministry will follow the decision that will be made by the PSC.”

28. The Appellant sent an email on 17 January 2018 to Tevita Fotu of the PSC Office and introduced herself as the wife of Feleti Fonua at the Ministry of Education and his email address was given to her by her husband to contact him regarding her dissatisfaction with the current status of her pay. She forwarded the email response from Marianne Nakao, her contract with the Civil Society which stated her salary when she was involving with the project for Environment. She also attached her CV and her working history at the Ministry of Education. The Appellant also stated that she had been working in a project for the Environment for 5 years before she joined the Ministry of Fisheries.
29. On 18 January 2018, Mr. Fotu sent an email to the Remuneration Team within the PSC Office and highlighted the Appellant's work experiences that might pursue as relevant to Policy 5A.3(A). Mr. Fotu also stated that *“When looking at the minimum requirements for the position which includes Specialized training (aquaculture training and farming activities, hatchery, marine species identification skills) SCUBA diving certificate etc) as being desirable; there is no significant relevancy between teaching and a PFO profession issue in this sense.* Mr. Fotu also provided the following summation:

“Legal issues that will be raised on this case:

- *Whether her work experience as a ‘Project Coordinator’ will be assessed [sufficient] and qualify for 5A.3(A)?*
- *Whether there is reasonable doubt PSC [the reasonable test requirement] should/should not have awarded her years of work experience at the Projects?*
- *What is the test for ‘relevant work experience’ – does working outside government counts or not? Or is there any other test that might apply?*
- *Keni & M, please do you have facts of recent cases relatively the same as Eilleen's?”*

30. Mr. Fotu sent an email to Mrs. Tupou Falemei Fale, a staff at the PSC Office, on 19 January 2018 and stated the following:

“We think that 5A.3 (A) might apply to Eilleen's case:

Application row [ii] Table 1:

1. *Master degree with no w/experience*

2. 5.3 years of rel/w/experience with the Civil Society [Project Coordinator duration: Sept 2012-Dec 2014 & Jan 2015-Dec 2017]

She may be eligible to the 3%, if her w/exp at the Civil Society counts. The biggest question, we have been trying to decide is whether her w/exp as Project Coordinator will be relevant to her current Job as Principal Fishery Officer.

Our guys might have overlooked, her w/exp with the civil society which could be revealed by the attached 'working history'.

31. On 20 January 2018, Mr Franz K. Tu'uhetoka from the PSC Office sent an email to the Appellant with the following comments:

"Thank You Eileen for your view and comment,

We will look at the point you raised with your teaching years and its relevancies to that required by the post and see if we can come up with something and we will get back to you."

32. On 25 January 2018, Mr. Tu'uhetoka from the PSC Office sent an email to the Appellant with the following comments:

"Hope everything is fine with your new work place and I'll just try to explain and maybe clarify some of the reasons behind our decision.

Firstly, YES, you have all the rights to disagree with our processes & practices. The post required five (5) years' of relevant experience in Senior Management plus Bachelor Degree in Marine Science/Aquaculture or relevant field and your Bachelor Degree and five (5) years on project made you eligible for the interview.

For the bonuses (3% and 5%) we look for extra years of relevant work experience apart from that used to consider the applicant's eligibility for the interview. So your case was that your five (5) years on the project was counted for your eligibility for the interview and those years cannot be used again to consider for bonuses,

We did not agree for your teaching years as relevant to that required by the fisheries post.

I hope I did clarify some of the issues here and as I mentioned above, you do not have to agree."

33. The Appellant responded to Mr. Tu'uhetoka's email on 29 January 2018 with the following comments:

"What is PSC measurement scale or tool that examine that my teaching profession is not related to the PFO? Have you studied clearly the JD of the position to see how my teaching

profession is linked to this post in terms of key results area, specification for this post and core competencies? The post requirement discussed below:

The post required five (5) years' of relevant work experience in Senior Management plus Bachelor Degree in Marine Science/Aquaculture or relevant field and your Bachelor Degree and five (5) years on project made you eligible for the interview.

Why you limit my work experience to project only in which it is discussed above about the relevant field. Any relevant field should take into account. It seems to me that you totally ignored my working experience as being a school teacher for fifteen years and many years as a part time tutor at USP, Tonga. I truly believe that my experiences accomplished from teaching profession is more relevant also to work as a project coordinator as well as PFO and should get the bonus for 3% and 5%.

For the bonuses (3% and 5%) we look for extra years of relevant work experiences apart from that used to consider the applicant's eligibility for the interview. So, your case was that your five (5) years on the project was counted for your eligibility for the interview and those years cannot be used again to consider for bonuses,

Which part of the policy that discuss the abovementioned that my five years on the project was counted for my eligibility for the interview and those years cannot be used again to consider bonuses?

I'm telling you that one of the Environment staff I knew of that he applied for level 5 which she was in Level 7. Her scale salary was still in the middle bar for Level 7 so after her interview she got the position and her salary jumped to the maximum of Level 5. How does it happen? who approved? where is your transparency decision? Its hurt myself because I have worked in the Government for many years and entitle for high salary scale as being a project coordinator due to my great performance and you now telling me to go down to the minimum of BAND I which is not realistic.

If you don't agree with my perspective then I will seek the other options."

34. Mr Tu'uhetoka from the PSC Office responded to the Appellant via email on 01 February 2018 and stated the following:

"I have discussed with our remuneration team and the following was the justification for the entry point assigned to you on your appointment;

"When looking at the minimum requirements for the position; specifically the desirable section (i.e. Specialized training (aquaculture training and farming activities, hatchery, marine species identification skills) SCUBA diving certificate etc); there is no relevancy between a teaching profession and a PFO profession in this case.

Even looking at the purpose of the position "To identify, develop, trial and prove the aquaculture of species identified as having the potential to support profitable new industries in Tonga. To develop proposals for potential funding and regional agency

technical support, To liaise with industry and coastal communities, provide training and promote alternate livelihood strategy relevant to aquaculture” – there is also no significant commonalities between the duties of a Teacher and a PFO in this regard. These two positions are different in purpose and in nature and therefore the officers work experience as a teacher should not be considered in our view.

In light of the above, we are of the view that the officer should only be paid at the minimum point of the salary band for position.”

I am sorry that the outcome was not in your favour but there are other means you can go through with your concern.”

35. The Appellant responded to Mr. Tu’uhetoka’s email on the same day with the following comments:

“If it is that your view that my working experiences in teaching profession is not link to PFO and you justified that my working experiences in the project was the reason I got the PFO position, then why you did not consider my salary scale in the project to be part of your assessment because I’m sure that salary is vital to everyone of us.

Anyway, I think there are some issues in my case are still unclear, I might seek to other options”

36. Mr. Tu’uhetoka sent an email to the Appellant on 02 February 2018 with the following comment:

“We will seek final view from our HODs team and CEO and will inform you of their views and maybe that will be final from us and you can move on to other options if there is no change”

37. On 07 March 2018, the Appellant sent an email to Mr. Tu’uhetoka to check the progress with her request.

38. On 22 March 2018, Mr. Tu’uhetoka responded that they have relooked at the case and the final decision was that her years in teaching cannot be used to justify an increase in her salary’s entry point.

39. The Appellant sent an email to Mr. Tu’uhetoka on 29 March 2018 to seek his advice if her letter of appeal will be sent to the CEO for PSC or the Tribunal.

40. Mr. Tu’uhetoka responded on 03 April 2018 to address her letter to the Tribunal, Prime Minister’s Office.

41. The Acting CEO for Fisheries sent a Savingram to the CEO for PSC on 14 June 2018 to advise that the Appellant had completed her 6 months probationary period and also recommend for her to become a permanent staff in the Ministry of Fisheries.

THE SUBMISSIONS

42. Both parties submitted written submissions, and the Tribunal is appreciative to both counsels, Mrs. Petunia Tupou (on behalf of the Appellant) and the Solicitor-General (on behalf of the Respondent). Counsels also supported their written submissions with helpful oral elaboration and clarification.
43. The Appellant's submissions were in support of the grounds of appeal as contained in paragraph 3, and will not be repeated here. However, the Tribunal, for the purposes of this ruling, have considered all the matters raised by the Appellant in writing as well as orally.
44. The Respondent's submissions may be summarized as follows:
- (i) With regard to the grounds of appeal (i) and (ii), the Appellant's salary rate determined at the minimum point of \$30,240 (Band I) was justified due to her meeting the minimum requirement for the position, but lacked desirable qualities required for the position which is the factor which determines higher salary rate at entry point.
 - (ii) Under Instruction 5A.5 of the Public Service Policy Instructions 2010, the Appellant was re-employed in a higher band, and accordingly, her pay shall be calculated under the normal rules for starting pay, i.e. at the minimum of the appropriate salary scale.
 - (iii) The entry salary point for other employees in the Ministry of Fisheries (as referred to by the Appellant) were determined in accordance with their distinct positions, and job descriptions, and therefore cannot be argued to be comparable to the determination of the Appellant's position salary rate.

TRIBUNAL'S FINDINGS

First ground of appeal

45. The first ground of appeal is that the PSC Decision No. 567 of 17 November 2017 was flawed in that it rigidly applied the relevant policy so as to exclude the merits of the Appellant's case.
46. The 15 years teaching work experience of the Appellant was deemed not to be relevant experience to the advertised position of Principal Fisheries Officer. The Tribunal is not persuaded that there was adequate reason to disturb that situation. The prescribed duties of the Principal Fisheries Officer is clearly of a different nature from previous teaching work experience of the Appellant.

47. However, the entry point for the Appellant in the relevant scale for the Principal Fisheries Officer, must be in accordance with the prescribed terms and conditions. That is, BA with 5 years relevant work experience or MA with 3 years relevant work experience. The Appellant qualified through a BA and 5 years relevant work experience from her previous work as Project Coordinator (non-public service position).
48. The Appellant's previous relevant work experience as Project Coordinator was already factored in her favour to attain the minimum requirement for the position applied for. Therefore, those 5 years work experience should not be taken into account again to gain extra points in salary.
49. On 28 September 2012, the Appellant exited the public service with her salary at point \$28,987 while holding the position of Assistant Teacher Graduate. According to the Remuneration Authority Report of 1 July 2016, the revised Total Remuneration Package (TRP) for that salary point is \$31,886.
50. The Appellant's revised old scale (when she exited in 2012) overlaps with the scale of her new position. Therefore, Instruction 5A.5(c) applies upon her re-appointment. That is, her base salary should be placed on the next nearest point, which is \$32,843 (using 3% as the base variance). That point in the salary scale (\$32,843) should be the Appellant's starting point.

Second ground of appeal

51. A close examination of Instruction 5A.3 shows that it is not relevant, and does not apply to the Appellant. That is, there is no extra benefit that should be awarded to the Appellant beyond the entry point referred to above.
52. In consideration of the first ground of appeal, it is clear that there were certain matters that the PSC had not taken into account. The Tribunal have taken note of those matters as shown above.

Third ground of appeal

53. Again, the Tribunal have taken note of the minimum entry point of the relevant Band, and have considered the appropriate entry point for the Appellant in view of her qualification, experience and previous salary (when she exited the public service in 2012), and the effect of the applicable laws and/or policies.

COSTS

54. The Appellant asked for costs when the appeal was filed, although this matter was not pursued in the hearing. For the removal of any doubt, the Tribunal is guided by the judgment of the Lord Chief Justice in the case of the Public Service Commission v 1. Public Service Tribunal 2. Busby Kautoke, CV 32 of 2017 (Supreme Court, 5 October 2018). In that judgment, it was adjudged that “*costs are entirely a creature of statute*” and there being no such power prescribed under the legislation, “*the Tribunal has no power to award costs*”.

ACKNOWLEDGEMENT

55. The Tribunal acknowledges the efforts of both counsels for the capable manner in which they conducted this case.

56. However, it must be noted that certain steps which were ordinarily taken in employment recruitment exercises, were not carried out in this case. For example, there was no evidence of any offer and acceptance letter prior to appointment. This was a crucial step in the appointment process. It would have prevented the Appellant from making any claim if she had already accepted the terms and conditions of employment.

57. Therefore, the result of this case is restricted to its own facts and cannot be used as a precedent for future cases.

ORDER OF THE TRIBUNAL

58. Section 21F of the Public Service Act provides that the Tribunal may make an order to affirm, vary or set aside the PSC’s decision.

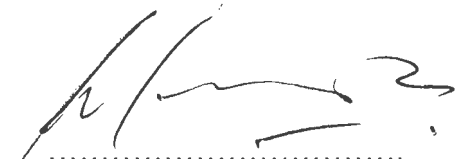
59. The Tribunal makes the following orders:

(a) The PSC Decision No. 567 of 17 November 2017 is set aside, and replaced by the following –

“That Mrs. Eileen Elizabeth Fonua, be re-appointed to the position of Principal Fisheries Officer, Ministry of Fisheries and that she be paid at \$32,843 of Band I with a salary range of \$30,240 to \$45,360 with effect from the date of assumption of duty.”

(b) No order for costs.

(c) That parties are at liberty to apply.



Mr. 'Aisea Taumoepeau SC



Mr. Timote Katoanga



Mrs. Lepolo Taunisila