



Government of Tonga

Public Service Tribunal

PST Appeal No. 3 of 2018

Mr. 'Onetoto 'Anisi **Appellant**

Public Service Commission **Respondent**

PUBLIC SERVICE TRIBUNAL:

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

Mr. Timote Katoanga **Member**

Mrs. Lepolo Taunisila **Member**

REPRESENTATION:

Appellant : Mr. Siosifa Tu'utafaiva Counsel for the Appellant
Mr. 'Onetoto 'Anisi In Attendance

Respondent: Mr. Sione Sisifa Solicitor General
Ms. Eunice Moala Public Service Commission

Date of Hearing: 26 and 28 March 2019

Date of Ruling: 18 April 2019

Mr. 'Onetoto 'Anisi (Appellant) v Public Service Commission (PSC) (Respondent)

PST Appeal No. 3 of 2018

1. This is an appeal by the Appellant seeking the following decision from the Public Service Tribunal (Tribunal).
 - (a) To invalidate the Public Service Decision No. 565 of 01 October 2018 as having no effect.
2. The Appellant relied on the following grounds:
 - (i) The PSC erred in law in failing to give the reasons, or a summary of them, for its decision No. 565 of 01 October 2018 to “*severely reprimand the appellant, and that he be warned that commission of the same or similar offence in the future may result in a more severe disciplinary action taken against him even dismissal*”.
 - (ii) The PSC failed to give the Appellant a fair opportunity to be heard.
 - (iii) It would appear that the PSC in its decision No. 565 of 01 October 2018 approved a recommendation, as amended, by the Chief Executive Officer (CEO). However, the Appellant was not given that recommendation and he was not given the opportunity to make further representation on the recommendation to the PSC. That was a breach by the PSC of Regulation 7(1)(d) and (e) of the Public Service (Disciplinary Procedures) (Amendment) Regulations 2010.
 - (iv) The PSC failed in its duty to decide the case properly and appropriately, and therefore in breach of Regulation 7(1)(f) of the Public Service (Disciplinary Procedures) (Amendment) Regulations 2010, which provides:

“(f) after receipt of the case under paragraph (d) or hearing further from the employee under paragraph (e) the Commission shall decide the case, and if the employee is found to have committed a serious breach of discipline, the Commission shall impose the appropriate sanctions as set out under these Regulations”.
 - (v) The PSC predetermined the issue because it had already decided in its decision No. 390 of 13 July 2018 that the Appellant had “*breached a serious breach of discipline*”, and then approved that the recommendation by the auditor for the Appellant and the Minister to immediately reimburse the \$7,192.00 to Government.

- (vi) The PSC failed to give proper consideration to the written representation by the Appellant's lawyer dated 12 September 2018, to the nine (9) charges against the Appellant, as there is no reference in the PSC's decision No. 565 of 01 October 2018 to counsel's representations.
- (vii) The PSC erred in facts and in law in its decision that the Appellant was negligent in carrying out his duty effectively and professionally.
- (viii) As an alternative ground of appeal, the decision of the PSC to "*severely reprimand the Appellant and, that he be warned that commission of the same or similar offence in the future may result in a more severe disciplinary action taken against him even dismissal from the service*", is too excessive in the circumstances of the Appellant and those of any breaches of discipline.

BACKGROUND

3. The Appellant is the Deputy CEO for Sports and Recreation Activities Division within the Ministry of Internal Affairs (MIA). He was appointed as the Acting CEO for the MIA on or about 01 November 2017.
4. On 02 February 2018 Cabinet approved the following in Cabinet Decision No. 55:
 - “
 1. *That the Minister for Internal Affairs, Hon. 'Akosita Havili Lavulavu be approved to undertake Ministerial field visit travel to Australia as part of her orientation to the Seasonal Work Programme and to meet with key Stakeholders including Employers and Tongan seasonal workers on work sites, from 10th -19th February, 2018.*
 2. *That the Hon. Minister for Internal Affairs travel to Perth, Australia, on the 10th – 17th April 2018, in response to a request from TASWA to meet with the Minister on seasonal workers employment concerns is approved;*
 3. *That all travelling related expenses of the Hon. Minister be met from relevant votes in the Ministry of Internal Affairs Budget.*”
5. On 09 February 2018, the former Minister of Internal Affairs, Hon. 'Akosita Lavulavu sought assistance from the Appellant via email about her wishes to appoint Mr. 'Etuete Lavulavu as her Personal Assistant (PA) to be effective from 10 January 2018.
6. Due to the urgency of the request from the former Hon. Minister, the Appellant on the same day (09 February 2018) authorized the use of MIA's credit with Jetsave Taufonua Travel to facilitate Mr. Lavulavu's air ticket to Australia.
7. The credit account with the Jetsave Taufonua Travel Agent was established by the former CEO of MIA in the 2016/17 financial year and the Appellant was only aware of it about 09 February 2018.

8. Mr. Lavulavu's airline ticket was purchased on 09 February 2018 and he travelled to Australia on 10 February 2018.
9. In an Internal Memo dated 19 February 2018 from the Appellant to the former Hon. Minister of Internal Affairs, he conveyed a verbal direction from the Hon. Prime Minister on the 15 February 2018 to immediately cease further processing of Mr. Lavulavu's recruitment as PA to the Hon. Minister of Internal Affairs.
10. On March 2018, the CEO of Ministry of Finance and Planning (MOFP) requested the Auditor General to carry out a special audit of Mr. Lavulavu's airline ticket to Australia as issued from Jetsave Taufonua Travel.
11. The Auditor carried out his investigation around the months of March-April 2018.
12. On 09 July 2018, the Auditor's report was delivered to the CEO of MOFP, and a copy was also delivered to the Acting CEO of MIA and CEO of PSC with the following recommendations.

"

 - i. *That the alleged appointment by the Minister, 'Akosita Lavulavu of her husband, 'Etuete Lavulavu as her Personal Assistant on Friday 9th February, 2018 is invalid and void.*
 - ii. *That purchasing of 'Etuete Lavulavu's airline ticket with the public fund of \$7,192.00 is hereby confirmed as a misappropriation of public funds.*
 - iii. *That 'Onetoto 'Anisi, Acting CEO Ministry of Internal Affairs and 'Akosita Lavulavu, MP are to immediately reimburse this amount (\$7,192.00) to Government.*
 - iv. *That A/CEO, Mr. 'Onetoto 'Anisi to be severely disciplined for knowingly colluded with the Minister for Internal Affairs and unlawfully authorized the purchase of airline ticket with public money*
 - v. *That Deputy CEO-Corporate Division, Ms Kalesita Taumoepeau, be reprimanded for failure to carry out effective supervisory duties on time, to secure proper accountability of credit with Jetsave Taufonua Travel.*
 - vi. *That Ministry of Finance and National Planning is to issue an instruction, emphasizing to all Line Ministries and Government Departments that leaving of credit balance of public fund with suppliers (clients) is strictly unacceptable."*
13. On 13 July 2018, the CEO of PSC submitted the Special Audit Report of the Auditor General to the PSC with the following recommendations:

“

1. *That Mr. 'Onetoto 'Anisi, Acting Chief Executive Officer and Ms. Kalesita Taumoepeau, Deputy Secretary of Internal Affairs are deemed to have breached a serious breach of discipline based on the Report on Special Audit of Mr. Etuate Lavulavu's Airline Ticket purchased by Ministry of Internal Affairs in February, 2018.*
2. *That the Commission implement recommendations one(i), two(ii), three (iii) and (vi).”*

14. On 13 July 2018, the PSC issued PSC Decision No. 390 which approved the following recommendations as amended, i.e.:

“

1. *The Public Service Commission duly notes recommendations I to VI of the Report on Special Audit of 'Etuate Lavulavu's Airline Ticket Purchased by Ministry of Internal Affairs in February, 2018.*
2. *That Mr. 'Onetoto 'Anisi, Acting Chief Executive Officer and Ms. Kalesita Taumoepeau, Deputy Secretary, Ministry of Internal Affairs are deemed to have breached a serious breach of discipline based on the Report on Special Audit of Mr. Etuate Lavulavu's Airline Ticket Purchased by Ministry of Internal Affairs in February, 2018 and that the procedures for serious breach of discipline under Regulation 7 of the Public Service (Disciplinary Procedures) Regulations 2003 be instituted.*
3. *That recommendations three (iii) and six (vi) of the said Special Audit Report are to be implemented by Ministry of Finance & National Planning as appropriate.”*

15. In the minutes of the PSC Commissioners' meeting of 13 July 2018, they also agreed that:

“...it is high time, public servants are reminded that they cannot act upon Ministerial directions that are unlawful and must always comply with relevant Act, Regulations and policies. The Commission noted that this is very unfortunate but let this be an example to all Ministries that these behaviours will not be tolerated.”

16. On 26 July 2018, the Charge Formulation Committee agreed on the nine (9) charges against the Appellant, as proposed by the Solicitor General.

17. On 01 August 2018, the Appellant received a letter dated 31 July 2018 from the PSC informing him of the nine (9) charges against him. The charges were as follows:

“Charge 1.

Failure to fulfil your lawful obligations to government with professionalism and integrity, contrary to section 3(a) of the Public Service Code of Ethics and Conduct 2010.

Charge 2

Failure to perform your functions in an impartial manner, contrary to section 4(a) of the Public Service Code of Ethics and Conduct 2010.

Charge 3

Failure to comply with the applicable law namely, the Public Finance Management Act 2002, contrary to section 4(b) of the Public Service Code of Ethics and Conduct 2010.

Charge 4

Failure to comply with the applicable instructions namely, the Public Finance Management Act (Treasury Instructions) 2010, contrary to section 4(b) of the Public Service Code of Ethics and Conduct 2010.

Charge 5

Failure to comply with the applicable instructions namely, the Public Finance Management Act (Treasury Instructions) 2010, contrary to section 4(b) of the Public Service Code of Ethics and Conduct 2010.

Charge 6

Failure to comply with the applicable instructions namely, the Public Finance Management Act (Treasury Instructions) 2010, contrary to section 4(b) of the Public Service Code of Ethics and Conduct 2010.

Charge 7

Failure to comply with the applicable instruction namely, the Public Service Policy Instructions 2010, contrary to section 4(b) of the Public Service Code of Ethics and Conduct 2010.

Charge 8

Failure to use public funds in a lawful and proper manner, contrary to section 4(h) of the Public Service Code of Ethics and Conduct 2010.

Charge 9

Failure to behave honestly and with integrity, contrary to section 7 (f) of the Public Service Code of Ethics and Conduct 2010."

18. The particulars of the charges were also provided as follows:

"Charge 1

'Onetoto 'Anisi, Acting Chief Executive Officer, and Deputy Chief Executive Officer for Sports and Recreation Activities Division, on or about the 9th February 2018, at Nuku'alofa, you failed to fulfil your lawful obligations to government with professionalism and integrity, when you authorised in your capacity as the Acting Chief Executive Officer of Ministry of Internal Affairs the issuance of an air ticket in the name of 'Etuete Lavulavu from public funds when you knew very well that 'Etuete Lavulavu was not an appointed public service employee, that was employed at the Ministry of Internal Affairs.

Charge 2

'Onetoto 'Anisi, Acting Chief Executive Officer, and Deputy Chief Executive Officer for Sports and Recreation Activities Division, on or about the 9th February 2018, at Nuku'alofa, you failed to perform your functions in an impartial manner, when you authorised in your capacity as the Acting Chief Executive Officer of Ministry of Internal Affairs the issuance of an air ticket in the name of 'Etuata Lavulavu to be paid from public funds when you knew very well that 'Etuata Lavulavu was the husband of the Minister of Internal Affairs, and was not an appointed public service employee, that was employed at the Ministry of Internal Affairs.

Charge 3

'Onetoto 'Anisi, Acting Chief Executive Officer, and Deputy Chief Executive Officer for Sports and Recreation Activities Division, on or about the 9th February 2018, at Nuku'alofa, you failed to comply with section 39(1)(g)(ii) of the Public Finance Management Act 2002, when you authorised in your capacity as the Acting Chief Executive Officer of Ministry of Internal Affairs the issuance of an air ticket in the name of 'Etuata Lavulavu to be paid from public funds when you knew very well that 'Etuata Lavulavu was not an appointed public service employee, that was employed at the Ministry of Internal Affairs, and with that act, you procured the improper use of public money.

Charge 4

'Onetoto 'Anisi, Acting Chief Executive Officer, and Deputy Chief Executive Officer for Sports and Recreation Activities Division, on or about the 9th February 2018, at Nuku'alofa, you failed to comply with instruction 41(1) of the Public Finance Management Act 2002 (Treasury Instructions 2010), when you authorised in your capacity as the Acting Chief Executive Officer of Ministry of Internal Affairs the issuance of an air ticket in the name of 'Etuata Lavulavu to be paid from public funds when you knew very well that 'Etuata Lavulavu was not an appointed public service employee, that was employed at the Ministry of Internal Affairs, and with that act, you failed to provide the Ministry of Finance and National Planning with a Public Service Commission Decision appointing 'Etuata Lavulavu as an employee of the public service, when you knew very well that he was not.

Charge 5

'Onetoto 'Anisi, Acting Chief Executive Officer, and Deputy Chief Executive Officer for Sports and Recreation Activities Division, on or about the 9th February 2018, at Nuku'alofa, you failed to comply with instruction 41(4)(a) of the Public Finance Management Act 2002 (Treasury Instructions 2010), when you authorised in your capacity as the Acting Chief Executive Officer of Ministry of Internal Affairs the issuance of an air ticket in the name of 'Etuata Lavulavu to be paid from public funds when you knew very well that 'Etuata Lavulavu was not an appointed public service employee, that was employed at the Ministry of Internal Affairs, and with that act, you failed to provide the Ministry of Finance and National Planning with an approval by the appropriate authority namely a copy of the PSC Overseas Travel Plan Form for 'Etuata Lavulavu as an employee of the public service, when you knew well that he was not.

Charge 6

'Onetoto 'Anisi, Acting Chief Executive Officer, and Deputy Chief Executive Officer for Sports and Recreation Activities Division, on or about the 9th February 2018, at Nuku'alofa, you failed to comply with instruction 105(1) of the Public Finance Management Act 2002(Treasury Instructions 2010), when in your capacity as the Acting Chief Executive Officer and accountable officer you failed to ensure that there is effective design and operation of internal control in the Corporate and Accounts Division of the Ministry of Internal Affairs, which ultimately result in leaving public funds at the Jetsave Taufonua Travel for approximately nine (9) months without returning it to the Ministry of Internal Affairs.

Charge 7

'Onetoto 'Anisi, Acting Chief Executive Officer, and Deputy Chief Executive Officer for Sports and Recreation Activities Division, on or about the 9th February 2018, at Nuku'alofa, you failed to comply with instruction 1B.1.3(13) of the Public Service Policy Instructions 2010, when you authorised in your capacity as the Acting Chief Executive Officer of Ministry of Internal Affairs the issuance of an air ticket in the name of 'Etuate Lavulavu to be paid from public funds when you knew very well that 'Etuate Lavulavu was not yet approved by the public service commission to be appointed as a personal assistant to the Minister of Internal Affairs.

Charge 8

'Onetoto 'Anisi, Acting Chief Executive Officer, and Deputy Chief Executive Officer for Sports and Recreation Activities Division, on or about the 9th February 2018, at Nuku'alofa, you failed to use public funds in a lawful and proper manner, when you authorised in your capacity as the Acting Chief Executive Officer of Ministry of Internal Affairs the issuance of an air ticket in the name of 'Etuate Lavulavu to be paid from public funds when you knew very well that 'Etuate Lavulavu was not an appointed public service employee, that was employed at the Ministry of Internal Affairs.

Charge 9

'Onetoto 'Anisi, Acting Chief Executive Officer, and Deputy Chief Executive Officer for Sports and Recreation Activities Division, on or about the 9th February 2018, at Nuku'alofa, you failed to behave honestly and with integrity, when you authorised in your capacity as the Acting Chief Executive Officer of Ministry of Internal Affairs the issuance of an air ticket in the name of 'Etuate Lavulavu to be paid from public funds when you knew very well that 'Etuate Lavulavu was not an appointed public service employee, that was employed at the Ministry of Internal Affairs."

19. The same letter also informed the Appellant:

"If you do not dispute these charges, you should inform the Chief Executive Officer of the Public Service Commission in writing, within 10 days of receipt of this letter, that you do not dispute the charges. You should also set out in that letter any reasons you

think that should be considered in order to mitigate the sanction that may be imposed on you.

If you do dispute the charges, you should submit a written reply to these charges within 10 working days of receipt of this letter.”

20. On 02 August 2018, the Appellant wrote to the CEO of PSC acknowledging that he received the PSC Decision No.390 on 30 July 2018 and also received on 01 August 2018 the Disciplinary Charges of 31 July 2018. The Appellant requested to extend the deadline for his response because he will be appealing to the Tribunal.
21. In the same letter, the Appellant also raised the following concerns:
 1. *The Disciplinary procedure is now instituted against me.*
 2. *I believe that all facts/sides of the incidence should have been carefully examined before the final decision and recommendations were made.*
 3. *The decision made by the Commission is taken or deduced as being based on incomplete information because it did not consider all the facts, which in this case is my side of the story.*
 4. *It is to my understanding that a final decision has been made by the Commission despite the fact that I have not been provided with the opportunity to provide a response to the charges against me, which in short is for me to pay back the airfare or ticket in question.”*
22. On 06 August 2018, the CEO of PSC wrote in a Savingram to the Acting CEO for MOFP to withhold action on Recommendation 3 of the Public Service decision on the reimbursement of the \$7,192 until the PSC completes the disciplinary procedures for the Appellant.
23. On 10 August 2018, the Appellant wrote to the Auditor General denying the allegations against the collusion between him and the former Minister and raising his complaint that the Auditor’s report was not complete because he was not given an opportunity to respond to the allegations made against him.
24. On 28 August 2018, the Appellant sent an email to the CEO of PSC requesting another ten (10) days extension to fully provide his response to the charges together with his evidence.
25. On 12 September 2018, the Appellant’s Counsel, Mr. Siosifa Tu’utafaiva submitted his client’s response to the nine (9) charges laid against him.
26. On 01 November 2018, the Appellant launched his appeal to the Tribunal against PSC Decision No. 565 of 01 October 2018.

PSC ACTION AND DECISION

27. On 09 July 2018, the PSC office received a copy of the Auditor General's Special Audit Report on Mr. Lavulavu's airline ticket to Australia as purchased by MIA in February 2018.
28. On 13 July 2018, the CEO of PSC in a submission to the PSC, informed them of the Auditor's report on special audit of Mr. Lavulavu's airline ticket purchased by MIA in February 2018 and submitted the following recommendations:
- “
- 1) *That Mr. 'Onetoto 'Anisi, Acting Chief Executive Officer and Ms. Kalesita Taumoepeau, Deputy Secretary of Internal Affairs are deemed to have breached a serious breach of discipline based on the Report on Special Audit of Mr. Etuate Lavulavu's Airline ticket purchased by Ministry of Internal Affairs in February, 2018.*
 - 2) *That the Commission implement recommendations one (i), two (ii), three (iii) and six (vi).”*
29. In the minutes of the PSC Commissioners' meeting No. 20 of 13 July 2018, the following recommendations were approved as amended:
- “
1. *The Public Service Commission duly notes recommendations 1 to VI of the Report on Special Audit of 'Etuate Lavulavu's Airline Ticket Purchased by Ministry of Internal Affairs in February, 2018.*
 2. *That Mr. 'Onetoto 'Anisi, Acting Chief Executive Officer and Ms. Kalesita Taumoepeau, Deputy Secretary of Internal Affairs are deemed to have breached a serious breach of discipline based on the Report on Special Audit of Mr. Etuate Lavulavu's Airline Ticket purchased by Ministry of Internal Affairs in February, 2018 and that the procedures for serious breach of discipline under Regulations 7 of the Public Service (Disciplinary Procedures) Regulations 2003 be instituted.*
 3. *That recommendations three (iii) and six (vi) of the said Special Audit Report are to be implemented as appropriate.”*
30. In the meeting of the Charge Formulation Committee on 26 July 2018, they agreed on the nine (9) charges to be made against Mr. 'Onetoto 'Anisi and for the Solicitor General to draft the charges and distribute to the members.
31. On 31 July 2018 the CEO of PSC wrote to Mr. 'Anisi informing him:
- “...that having received from the Auditor General a report on Special Audit of 'Etuate Lavulavu's airline ticket purchased by Ministry of Internal Affairs in February 2018, dated 6 July 2018, the Public Service Commission under regulation 3(2) of the Public Service (Disciplinary Procedures) Regulations 2010 has initiated a disciplinary action*

against you alleging serious breach of discipline by you, charges of serious breach of serious breach of discipline are hereby made against you in accordance with regulation 7(1)(b) of the Public Service (Disciplinary Procedures) Regulations 2003, as amended.”

32. The details of the charges have been referred to in paragraphs 17 and 18.
33. The letter of the CEO of PSC on 31 July 2018 also enclosed copies of the following documents:
- “
- 1) *Letter from the Auditor General to the Chief Executive Officer for Ministry of Finance and National Planning, in respect of Special Audit of ‘Etuave Lavulavu’s airline ticket purchased by Ministry of Internal Affairs in February 2018, dated 6 July 2018;*
 - 2) *Public Service Commission Decision No. 390 of 13 July 2018.*
 - 3) *Public Service (Disciplinary procedures) 2003, and subsequent Amendments;*
 - 4) *Public Service Code of Ethics and Conduct 2010;*
 - 5) *Public Service Policy Instructions 2010;*
 - 6) *Public Finance Management Act 2002; and*
 - 7) *Public Finance Management Act 2002 (Treasury Instructions 2010)”*

34. On 02 August 2018, the Appellant wrote to the CEO of PSC acknowledging the receipt of the Disciplinary Charges and raised for consideration the matters referred to in paragraph 21.
35. In the same letter the Appellant requested an extension of the deadline for his response to the allegations made against him and his intention to appeal to the Tribunal.
36. On 06 August 2018, the CEO of the PSC wrote to the Acting CEO of MOFP advising of the direction from the PSC to withhold the action on Recommendation 3 of the said PSC Decision No. 390 (*i.e. reimbursement of the amount of \$7,192 to Government*) until the PSC completes the disciplinary procedures for Mr. ‘Anisi.
37. In a submission to the PSC, the CEO of PSC informed that the charges have been served on Mr. ‘Anisi and Mrs. Taumoepeau and they have acknowledged receipt of the charges on the same date and were given ten (10) working days to respond to the charges. The PSC was also informed of the following:

“The PSC Office has received a letter dated 2nd August 2018 on the 6th of August, 2018 from Mr. ‘Onetoto ‘Anisi upon which he has clearly stated that it should not be treated as his response to the Charge letter (annex 3). The PSC Office has provided oral advice to Mr. ‘Anisi that the initiation of the disciplinary process is stipulated under the Public Service Disciplinary Regulations (a copy was enclosed to the charges) and the process is to ensure natural justice for the employee. There was a misunderstanding that the issued PSC decision no.390 was a ‘penalty’ and a ‘sanction’ which clearly was not. A final

decision on whether there really was a breach or not is yet to be decided pending the disciplinary process however the employee feels that he was not given fair treatment.”

38. The PSC was also informed that Mr. ‘Anisi has been given an extension of ten (10) working days to respond and he is required to respond no later than 29 August 2018.
39. In another submission on 24 August 2018 to the PSC, the CEO of PSC informed the PSC of a letter received from the Appellant addressed to the Auditor General which outlined the Appellant’s dissatisfaction with the audit report alluding it to be unfair and containing defamatory remarks.
40. On 28 August 2018, the Appellant sent an email to the CEO of PSC requesting further ten (10) days extension to provide his full response to the charges while he sought a lawyer to assist him in his response.
41. On 29 August 2018, the CEO of PSC sent a letter to the Appellant informing him of the agreement to extend the deadline to his response for a further ten (10) working days making 12 September 2018 the final deadline for his response to be submitted. The Appellant was also reminded that:

“.....you are to submit a written response to the Commission in response to the charges and either admit the charge and include mitigation or dispute the charges and make submissions why you dispute the charges with the provision of evidence.”

42. On 12 September 2018, the Appellant’s counsel, Mr. Tu’utafaiva submitted his response to the charges to the PSC Office, disputing all the nine (9) charges against the Appellant.

The grounds for disputing all the charges are as follows:

“

- i) *The Auditor General failed to give our client the opportunity to be heard before making his adverse findings and recommendations against Mr. ‘Anisi.*
- ii) *The Commission failed to give our client the opportunity to be heard before making its decision NO. 390 of 13 July 2018.*
- iii) *Alternatively, Mr. ‘Anisi did not act unlawfully in any actions taken in relation to the issuance of the airline ticket.”*

43. In a submission to the PSC dated 25 September 2018, the CEO of PSC provided the following recommendations:

“

- (1) *That Mr. ‘Onetoto ‘Anisi be issued a strong letter of reprimand and as a final warning for further sanctions should something similar occurs.*

(2) That Mr. 'Onetoto 'Anisi's acting position as CEO be ceased in view of this reprimand.

(3) That Mrs. Kalesita Taumoepeau be issued a letter of reprimand."

44. In the minutes of the PSC's meeting on 25 September 2018 the PSC agreed to the recommendations of the CEO of PSC and directed the CEO of PSC to write the letters conveying the agreed recommendations to Mr. 'Anisi and Mrs. Taumoepeau.

45. On 25 September 2018, the Appellant called the PSC Office to enquire about the status of his case and received the following advice from the Senior Legal Officer, Ms. Eunice Moala:

"

1. The PSC Office will serve him the CEO's recommendations tomorrow.

2. Within 10 working days of receipt of the recommendations of the CEO of the Commission, he may make further representation in writing or orally to the Commission."

46. On 26 September 2018, Ms. Moala of PSC sent a soft copy of the CEO's recommendations to the Appellant and advised that the hard copy will be delivered to him that afternoon to sign and retain one copy.

47. On 26 September 2018, the CEO of PSC wrote to the Appellant acknowledging his response to the charges and stated the following:

"The Chief Executive Officer of the Commission had submitted the matter to the Commission along with her recommendations as per Regulations 7(d) of the Disciplinary Procedures. The recommendation for the appropriate sanction as put forth by the Chief Executive Officer, for further consideration by the Commission is as follows:

1. That Mr. 'Onetoto 'Anisi, Acting CEO, Ministry of Internal Affairs is to be strongly reprimanded and warned that any further commission of similar or other offences in future will result in a more severe disciplinary action taken against him.

2. That as per recommendation (iii) three in the Audit Report, Mr. 'Onetoto 'Anisi is to reimburse the Government for half of the cost of the ticket.

As such, you are given the opportunity to make further representation in writing or to request an oral representation to the Commission within 10 working days of receipt of this letter.

Following receipt of your further representations (should you wish to do so), the Commission shall then make the final decision concerning your case."

48. On 26 September 2018, the Appellant sent an email to Ms. Moala expressing the following concerns:

“

1. *Why you didn't response to my lawyer (Mr. Sifa Tu'utafaiva) who is protecting me from the 9 charges and a defender for my case.*
2. *Why Lia Maka still wanted me to pay back the ticket knowingly that I had NOT stolen any government Money or used it for my family in her recommendation.*
3. *I felt and hear say that you trying to put me out from this CEO office which is OK with me but on what ground and do it right.*
4. *You should response and mention whether the PSC Commission has accepted or NOT the defence from my lawyer to the 9 charges.*
5. *The Cabinet decision for paying all Delegations does helped your decision or NOT?*
6. *Why questioned my authority please refer to minutes of CEO forum hosted by CEO for Land and Survey where my authority as acting CEO is clearly stated by the SG.”*

49. On 27 September 2018, Ms. Moala sent an email to the CEO of PSC advising her that the letters to Mrs. Taumoepeau and Mr. 'Anisi were received and signed by their secretaries because they were in a meeting. However, copies of the letters were also sent to their respective emails.

50. In the same email, Ms. Moala informed CEO of the phone calls from the Appellant on 26 September 2018 conveying his frustrations and anger with the PSC and CEO's recommendation. Ms. Moala summed up her telephone conversations with the Appellant as follows:

“

- *Complaining of the long disciplinary process. I advised as I have in previous times (roughly 3-4 times on phone) that the process is stipulated by Regulation and every public servant who is charged goes through the same process. Asks if he can end process. I told him whether he chooses to respond to Commission is completely up to him but the process will continue.*
- *Why the letter was not forwarded to his lawyer. I advised him he can always disclose the letter to his lawyer and we will copy his legal rep on all correspondences. I also proposed if he can discuss his personal views with his lawyer concerning the case and not PSC Office. He also agreed moving forward for PSC office to correspond all matters to his legal rep and not himself because he's affected.*
- *Asks why CEO and Commission never considered the Cabinet Decision and he was acting on the direction of the minister, asks what was unlawful about that.*
- *Asks how many times he is going to be reprimanded? I advised that this is only a CEO recommendation and not a final decision on sanction by the Commission, it's to give employee further opportunity to respond by oral or written within 10 working days. He then called again this morning and mentioned that he would want to see the Commission ASAP so I suggested he can request an oral rep with the Commission.”*

51. On 27 September 2018, the Appellant emailed Ms. Moala to request for an oral presentation to the PSC Commissioners.
52. On 28 September 2018, Ms. Moala sent an email to the Appellant advising that his request for oral representation before the PSC was approved and that it will take place on Monday 01 of October 2018 at the PSC Office.
53. On 28 September 2018, the Appellant emailed Ms. Moala to confirm his attendance for the oral representation.
54. In response to the Appellant's request for oral representation, the PSC Commissioners held a special meeting on 01 October 2018. The minutes recorded the following discussions:

“

- *“The Acting Chairman opened the meeting by welcoming the Commissioners and Mr 'Onetoto 'Anisi, Acting CEO for Internal Affairs to their meeting whereby he is provided this opportunity to present further oral representation regarding his disciplinary case.*
- *Mr 'Anisi thanked the Commission for the opportunity given him, acknowledged the presence of the Commissioners and presented his disappointment and frustration with the process and whether Commission had considered his response to his nine charges. His concern was whether the Commission had even considered the Cabinet Decision that allowed the payment of the delegates travelling overseas which included Mr 'Etuete Lavulavu. (He did not provide any new documents other than what has already been provided).*
- *The Acting Chairman of the Commission raised and clarified to Mr 'Anisi the disciplinary process and each step required to be undertaken which may have led to some frustrations on Mr 'Anisi's part. However, the Acting Chairman reiterated the need to follow due process and the recommendations provided by the CEO of the PSC are just recommendations and the Commission will make their own decision after he is given an opportunity to provide oral or verbal representation as per meeting this morning.*
- *The Acting Chairman of the Commission asked a question to Mr 'Anisi which was to confirm as to who has the authority to appoint Personal Assistants (PA). Mr 'Anisi responded that the authority lies with the Minister of the Ministry.*
- *The Acting Chairman informed Mr 'Anisi that his answer is wrong and the authority to approve lies with the Public Service Commission, a Minister may pick a personal assistant but needs the approval of the Commission.*

- *Mr 'Anisi raised that this was a direction from the Minister and Hon. 'Akosita Lavulavu had made the direction whereby she had confirmed that Mr 'Etuate Lavulavu is her personal assistant. However, this was in the process of being submitted to the Public Service Commission but there was an urgent need for the travel to take place. Mr 'Anisi also raised that the current practice now is that the Minister engages someone as PA and can be processed at a later time to the Commission.*
- *The Commission noted the explanation provided by Mr 'Anisi however raised that there was no submission on this to the Commission.*
- *Mr 'Anisi also stated that when they were to process the submission to the Commission, the Prime Minister directed him to write to the Hon. Minister for Internal Affairs and inform her that Mr 'Etuate Lavulavu (her husband) cannot be her personal assistant.*
- *The Commission noted all the explanations provided by Mr 'Anisi but reconfirmed their stance that in order for the appointment to be valid and for a salary to be paid out, it needs to be approved by the Commission.*
- *Mr 'Anisi raised that as Acting CEO for MIA he has the authority to act on any policy direction made by a Minister and that is why he had acted on the direction. He also raised that he is deeply hurt by the recommendation to pay back the funds used for Mr 'Etuate Lavulavu's travel as he feels he has not done anything wrong.*
- *The Acting Chairman of the Commission informed Mr 'Anisi that this is just the recommendation from the CEO of the Commission and that the Commission has not issued a decision for Mr 'Anisi to pay back the funds used for travel.*
- *However, Mr 'Anisi raised that PSCD No. 390 of 13 July, 2018, stated that MOFNP has been directed to implement the Audit report and that he has been deemed to breach the code of ethics and conduct as a serious breach.*
- *The Acting Chairman of the Commission raised that No. 2 of PSCD No. 390 of 13 July 2018 is just part of the process and it is not the Commission's final decision. The Acting Chairman also raised that he can only appeal to the Tribunal once a final decision is made and that has not been done.*
- *Mr 'Anisi raised that since his appointment to the Public Service in 1989 as a costing clerk to various positions in Government and now to his position as Deputy and Acting CEO for MIA he takes full responsibility for his oath to perform his duties*

well. Mr 'Anisi reiterated that he had performed his duties to the best of his abilities and it is possible that this mistake might be a learning lesson.

- *Mr 'Anisi also raised that since he took up the Acting CEO role which is almost one (1) year now, that he had managed to submit annual reports for the Ministry of Internal Affairs, there is now a Corporate Plan, AMP and cash flow forecast submitted. These are hurdles that he had to deal with as Acting CEO for Internal Affairs.*
- *Mr 'Anisi also raised for the Commission's information that since the beginning of his disciplinary; he feels that he has been disadvantaged against and that he does not feel that he was being taken care of, and he has been psychologically affected. Mr 'Anisi raised that the Acting Auditor General was very rude to him and did not like it when he questioned the outcome of the audit report. He also raised that the CEO of the Commission was unwilling to meet with him to discuss his case.*
- *The commission noted the comments and information raised by Mr 'Anisi and advised Mr 'Anisi to continue to do his job well.*
- *Mr 'Anisi was advised that he will receive the Commission's decision by tomorrow and from then he can submit an appeal to the Tribunal should he wishes to do so.*
- *The Commission thanked Mr 'Onetoto 'Anisi for availing himself to meet with them."*

55. In the meeting of the PSC on 01 October 2018, it was recorded in the minutes that:

"The Commission in consideration of the oral representation made by Mr 'Onetoto 'Anisi, his previous responses to the charges made against him and noted the following:

- *Mr. 'Onetoto 'Anisi disputes all charges made against him;*
- *Mr 'Anisi still insists that the authority for appointment of a personal assistant lies with the Minister even when the current policy was clarified to him that the authority for appointment is the Commission.*
- *Mr 'Anisi seems to be affected psychologically especially on the recommendation from the Audit to pay back the public funds used for Mr 'Etuete Lavulavu's ticket.*
- *That Cabinet had already made a decision to pay for Mr 'Etuete Lavulavu's air ticket.*
- *This is Mr 'Anisi's first time to breach the code of ethics as a serious breach and that he seems genuinely affected by this disciplinary process."*

56. In the same meeting of the PSC on 01 October 2018, they approved the following recommendation:

"That Mr 'Onetoto 'Anisi, Acting Chief Executive Officer, Ministry of Internal Affairs shall only be severely reprimanded of negligence in carrying out his duty

efficiently and professionally and that he be warned that commission of the same or similar offence in the future may result in a more severe disciplinary action taken against him even dismissal from the service.”

57. On 02 October 2018, the CEO of PSC sent a letter to the Appellant informing him of the PSC’s final decision regarding his disciplinary case stating that the relevant PSC Decision No. 565 of 01 October 2018 is reproduced below for ease of reference:

“That Mr ‘Onetoto ‘Anisi, Acting Chief Executive Officer, Ministry of Internal Affairs shall only be severely reprimanded of negligence in carrying out his duty efficiently and professionally and that he be warned that commission of the same or similar offence in the future may result in a more severe disciplinary action taken against him even dismissal from the service.”

58. The same letter also reiterated that:

“.....this letter therefore issues you a strong reprimand and warning for the breach of the Public Service Code of Ethics and Conduct 2010, Sections 3(a), 4(a), 4(h) and 7(f).”

59. On 02 October 2018, the CEO of PSC sent a Savingram to the CEO for MOFP to advise the outcome of PSC Decision No.565 of 01 October 2018.

60. The CEO for MOFP was also advised in the same Savingram that:

“Mr ‘Onetoto ‘Anisi shall not be required to reimburse any cost to government as per recommendation No. 3 of PSC Decision No. 390 of 13 July 2018.”

61. On 02 October 2018, the Appellant sent an email to the CEO of PSC acknowledging receipt of the PSC Decision No. 565 and expressed his disappointments and his intention to appeal to the Tribunal.

62. On 05 October 2018, Ms. Moala sent an email to the Appellant advising him of his right to appeal to the Tribunal against any decision of the PSC but must do so within 30 days of receipt of the PSC’s final decision.

63. On 09 October 2018, CEO of PSC wrote to the Appellant and made references to his previous email and telephone correspondences on which he made misleading accusations bordering on disrespect against the PSC and its services. The Appellant was reminded of the followings:

“Your Disciplinary process has nothing to do with the CEO MIA recruitment process.

...that at all instances, the Commission has complied with the Public Service (Disciplinary Procedures) Regulations 2003 concerning your case and within that process has afforded natural justice and a fair opportunity for you to make your responses to the charges.

...you again falsely accused the Public Service Commission publicly on the 87.5FM radio which can amount to a civil liability under defamation and breach of Public Service Code of Ethics and conduct.

Given the above, you are hereby directed to immediately cease all false and misleading accusations against the Commission.

Should you fail to do so, the Commission will take the appropriate legal actions as required."

64. On 10 October 2018, the Appellant wrote to the CEO of PSC acknowledging receipt of the correspondence from the PSC Office dated 09 October 2018 and explaining why he shared to the media his experience on the investigation processes with the PSC.
65. On 31 October 2018, the Appellant's Counsel, Mr. Tu'utafaiva wrote to the CEO of PSC requesting that the Appellant's application for the CEO Vacancy at MIA be processed because he is appealing against the decision of the PSC.
66. On 01 November 2018, Ms. Moala sent an email to the Appellant and his Counsel, Mr. Tu'utafaiva that nothing in the PSC decision to reprimand him, obstructs or hinders his application to the CEO post or to any other post.

SUBMISSIONS

67. Both parties submitted written submissions, and the Tribunal is appreciative to both counsels, Mr. Siosifa Tu'utafaiva (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.
68. The Appellant's submissions were in support of the grounds of appeal as contained in paragraph 2, and will not be repeated here.
69. The Respondent's submissions may be summarized as follows:
 - (i) That PSC Decision No.390 of 13 July 2018 did not predetermine that the Appellant had committed a serious breach of discipline, but merely decide that a disciplinary procedure be instituted against the Appellant under regulation 7 of the Public Service (Disciplinary Procedures) Regulations 2010.
 - (ii) That the Respondent is not obliged by law to give reasons for its decision.
 - (iii) That the Respondent did in fact gave the Appellant a fair opportunity for him to be heard on 01 October 2018.

- (iv) That the Respondent did in fact give the CEO of PSC's Recommendations to the Appellant on 26 September 2018 in accordance with Regulation 7(d) and 7(e).
- (v) That the Respondent did in fact decide the case properly and appropriately under Regulation 7(1)(f).
- (vi) That the Respondent did in fact give proper consideration to the written representation by the Appellant's Counsel dated 12 September 2018.
- (vii) That it was a finding of fact by the Respondent that Appellant was in fact negligent in carrying out his duties effectively and professionally.
- (viii) That the sanction imposed by the Respondent upon the Appellant on 01 October 2018 was appropriate in the circumstances of the Appellant and his serious breaches of discipline.

TRIBUNAL'S FINDINGS

First ground of appeal:

70. The Appellant asserted in his first ground of appeal that PSC erred in law in failing to give the reasons, or a summary of them, for its decision No. 565 of 01 October 2018 to "*severely reprimand the appellant, and that he be warned that commission of the same or similar offence in the future may result in a more severe disciplinary action taken against him even dismissal*".
71. The Appellant's counsel conceded that PSC is not obliged by law to give reasons for its decisions. Reference was made to PST ruling in the case of *Vatulele Tuputupu v Public Service Commission* (App. No. 7 of 2013).
72. However, the Appellant maintained that in general, the PSC decision does not state the rules, regulations or statutory provisions alleged to have been breached by the Appellant.
73. The disciplinary action against the Appellant was quite a lengthy process, which started after receipt of a report by the Auditor-General, formal charges were made under specified statutory provisions including detailed particulars, time given for written responses from the Appellant, further opportunity accorded to the Appellant to make verbal representations/explanations, opportunity was also given to the Appellant to comment on the submissions to PSC (*from the CEO*), consideration by PSC of lengthy documents and information, discussions, and finally a decision on the matter on 01 October 2018.
74. It may be noted that the relevant charges (*charges 1-9*), the statutory provisions relied upon, and their particulars were clearly provided to the Appellant.

75. The briefing submission to PSC from the CEO contained detailed analysis of those charges.
76. Those were presented to PSC, and were the matters that the PSC Decision No. 565 of 01 October 2018 were based on.
77. It may also be noted that that situation was reiterated by the CEO's letter of 02 October 2018 to the Appellant (*implementing the PSCD No. 565 of 01 October 2018*) in issuing a "*strong reprimand and warning for the breach of the Public Service Code of Ethics and Conduct 2010 Section 3(a), 4(a), 4(b), 4(h) and 7(f)*".
78. This ground fails.

Second ground of appeal:

79. The second ground of appeal asserted that the PSC failed to give the Appellant a fair opportunity to be heard, when he attended a "*hearing*" on 01 October 2018.
80. The Appellant conceded he was given an opportunity to be heard "*at his request*". However, he claimed that he was not given the opportunity to bring his lawyer to represent him at the meeting.
81. There is no record relating to this matter in the case documents. In response to a question from the Tribunal at the hearing of this appeal, the Appellant confirmed that he had not requested that his lawyer be present nor was he told not to bring his lawyer.
82. The Appellant further maintained that he was only asked one question, which was a question relating to the authority to appoint "*Etuate*" to the public service as the PA to the Minister.
83. The minutes of that meeting (*where the Appellant made oral representation*) on 01 October 2018 at 9:00 am gives a detailed account of what took place, (3 pages), and included the followings:
- "*The Acting Chairman opened the meeting by welcoming the Commissioners and Mr 'Onetoto 'Anisi, Acting CEO for Internal Affairs to their meeting whereby he is provided this opportunity to present further oral representation regarding his disciplinary case.*
 - *Mr 'Anisi thanked the Commission for the opportunity given him, acknowledged the presence of the Commissioners and presented his disappointment and frustration with the process and whether Commission had considered his response to his nine charges. His concern was whether the Commission had even considered the Cabinet Decision that allowed the payment of the delegates travelling overseas which*

included Mr 'Etuate Lavulavu. (He did not provide any new documents other than what has already been provided).

- *The Acting Chairman of the Commission raised and clarified to Mr 'Anisi the disciplinary process and each step required to be undertaken which may have led to some frustrations on Mr 'Anisi's part. However, the Acting Chairman reiterated the need to follow due process and the recommendations provided by the CEO of the PSC are just recommendations and the Commission will make their own decision after he is given an opportunity to provide oral or verbal representation as per meeting this morning.*
- *The Acting Chairman of the Commission asked a question to Mr 'Anisi which was to confirm as to who has the authority to appoint Personal Assistants (PA). Mr 'Anisi responded that the authority lies with the Minister of the Ministry.*
- *The Acting Chairman informed Mr 'Anisi that his answer is wrong and the authority to approve lies with the Public Service Commission, a Minister may pick a personal assistant but needs the approval of the Commission.*
- *Mr 'Anisi raised that this was a direction from the Minister and Hon. 'Akosita Lavulavu had made the direction whereby she had confirmed that Mr 'Etuate Lavulavu is her personal assistant. However, this was in the process of being submitted to the Public Service Commission but there was an urgent need for the travel to take place. Mr 'Anisi also raised that the current practice now is that the Minister engages someone as PA and can be processed at a later time to the Commission.*
- *The Commission noted the explanation provided by Mr 'Anisi however raised that there was no submission on this to the Commission.*
- *Mr 'Anisi also stated that when they were to process the submission to the Commission, the Prime Minister directed him to write to the Hon. Minister for Internal Affairs and inform her that Mr 'Etuate Lavulavu (her husband) cannot be her personal assistant.*
- *The Commission noted all the explanations provided by Mr 'Anisi but reconfirmed their stance that in order for the appointment to be valid and for a salary to be paid out, it needs to be approved by the Commission.*
- *Mr 'Anisi raised that as Acting CEO for MIA he has the authority to act on any policy direction made by a Minister and that is why he had acted on the direction.*

He also raised that he is deeply hurt by the recommendation to pay back the funds used for Mr 'Etuave Lavulavu's travel as he feels he has not done anything wrong.

- *The Acting Chairman of the Commission informed Mr 'Anisi that this is just the recommendation from the CEO of the Commission and that the Commission has not issued a decision for Mr 'Anisi to pay back the funds used for travel.*
- *However, Mr 'Anisi raised that PSCD No. 390 of 13 July, 2018, stated that MOFNP has been directed to implement the Audit report and that he has been deemed to breach the code of ethics and conduct as a serious breach.*
- *The Acting Chairman of the Commission raised that No. 2 of PSCD No. 390 of 13 July 2018 is just part of the process and it is not the Commission's final decision. The Acting Chairman also raised that he can only appeal to the Tribunal once a final decision is made and that has not been done.*
- *Mr 'Anisi raised that since his appointment to the Public Service in 1989 as a costing clerk to various positions in Government and now to his position as Deputy and Acting CEO for MIA he takes full responsibility for his oath to perform his duties well. Mr 'Anisi reiterated that he had performed his duties to the best of his abilities and it is possible that this mistake might be a learning lesson.*
- *Mr 'Anisi also raised that since he took up the Acting CEO role which is almost one (1) year now, that he had managed to submit annual reports for the Ministry of Internal Affairs, there is now a Corporate Plan, AMP and cash flow forecast submitted. These are hurdles that he had to deal with as Acting CEO for Internal Affairs.*
- *Mr 'Anisi also raised for the Commission's information that since the beginning of his disciplinary; he feels that he has been disadvantaged against and that he does not feel that he was being taken care of, and he has been psychologically affected. Mr 'Anisi raised that the Acting Auditor General was very rude to him and did not like it when he questioned the outcome of the audit report. He also raised that the CEO of the Commission was unwilling to meet with him to discuss his case.*
- *The commission noted the comments and information raised by Mr 'Anisi and advised Mr 'Anisi to continue to do his job well.*
- *Mr 'Anisi was advised that he will receive the Commission's decision by tomorrow and from then he can submit an appeal to the Tribunal should he wishes to do so.*

- *The Commission thanked Mr 'Onetoto 'Anisi for availing himself to meet with them."*

84. The Tribunal believes that on the balance of probabilities, the Appellant was accorded a fair hearing and that he was not prejudiced in any way by the conduct of the PSC.

85. This ground fails.

Third ground of appeal:

86. In the third ground of appeal the Appellant asserted that it would appear that the PSC in its decision No. 565 of 01 October 2018 approved a recommendation, as amended, by the CEO. However, the Appellant was not given that recommendation and he was not given the opportunity to make further representation on the recommendation to the PSC. That was a breach by the PSC of Regulation 7(1)(d) and (e) of the Public Service (Disciplinary Procedures) (Amendment) Regulations 2010.

87. The Appellant's counsel conceded at the hearing of the appeal that the Appellant was in fact given the opportunity, and the statutory requirements referred to above were complied with.

88. This ground fails.

Fourth ground of appeal:

89. The fourth ground of appeal asserted that the PSC failed in its duty to decide the case properly and appropriately, and therefore in breach of Regulation 7(1)(f) of the Public Service (Disciplinary Procedures) (Amendment) Regulations 2010, which provides:

“(f) after receipt of the case under paragraph (d) or hearing further from the employee under paragraph (e) the Commission shall decide the case, and if the employee is found to have committed a serious breach of discipline, the Commission shall impose the appropriate sanctions as set out under these Regulations”.

90. In support of the above, the Appellant tendered the following particulars –

- a) The PSC did not make a finding, on the appropriate standard of proof, that the Appellant had committed a serious breach of discipline. It only approved the recommendation.

b) The PSC approved the recommendation to severely reprimand the Appellant for “*negligence in carrying out his duty efficiently and professionally*”, but it is not stated which duty of the Appellant the PSC is referring to.

91. The main thrust of the Appellant’s appeal on this ground is that PSC failed to “*decide the case properly and appropriately*”. The processes and every step required by the relevant law for the conduct of disciplinary actions, were carried out. The final consideration of the case on 01 October 2018 was pretty extensive, as shown by the minutes of both meetings (*the meeting with the Appellant and also the final deliberation of the PSC resulting in PSCD No. 565*).

92. It appears from the minutes of those meetings that PSC had given proper and appropriate consideration to the case before its final decision.

93. The minutes of the 9:00 am meeting shows that the Appellant had conceded that “*this mistake might be a learning lesson*”. That was in the context of the Appellant’s persistence that his Minister had already appointed a PA (*Mr. ‘Etuete Lavulavu*). That was not the case as the PSC is required by law to finalise such a process, and the Appellant was so informed at that meeting.

94. The statutory authority for the appointment of a Minister’s PA is provided under the Public Serviced Policy and Instructions 2010 Instruction 1B.1.3 (13) provides as follows –

“(13) *Staffing for the Office of the Minister*

(a) *Once a Minister assumes duty, he may, with the consent of the Commission, appoint on contract a VIP Driver and a Personal Assistant remunerated up to Level 9, for the duration of his term in office.*

(b) *Persons appointed under paragraph (a) shall be remunerated from the Ministry’s budget.”*

95. Clearly, a consideration of the background facts and the relevant statutory authority, shows that the correct conclusion was reached.

96. The minutes of the PSC meeting on 01 October 2018 at 10:00 am, clearly shows that “*The Commission in consideration of the oral representation made by Mr ‘Onetoto ‘Anisi, his previous responses to the charges made against him.*”

97. The PSC also noted the followings:

- “*Mr ‘Onetoto ‘Anisi disputes all charges against him;*

- *Mr 'Anisi still insists that the authority for appointment of a personal assistant lies with the Minister even when the current policy was clarified to him that the authority for appointment is the Commission;*
- *Mr 'Anisi seems to be affected psychologically especially on the recommendation from the Audit to pay back the public funds used for Mr 'Etuete Lavulavu's ticket;*
- *That Cabinet had already made a decision to pay for Mr 'Etuete Lavulavu's air ticket;*
- *This is Mr 'Anisi's first time to breach the code of ethics as a serious breach and that he seems genuinely affected by this disciplinary process".*

98. In addition, further comments were made in consideration of those matters as mitigating factors, when the minutes went on to say –

"In light of the above, the Commission agreed to severely reprimand Mr 'Onetoto 'Anisi, Acting CEO for MLA, Ministry of Internal Affairs. He shall not be required to pay back the funds utilised for the payment of the airticket for Mr 'Etuete Lavulavu".

99. In the context of the totality of the supporting particulars, the PSC has not failed to decide the case properly and appropriately.

100. This ground fails.

Fifth ground of appeal:

101. The fifth ground of appeal asserted that the PSC predetermined the issue because it had already decided in its decision No. 390 of 13 July 2018 that the Appellant had "*breached a serious breach of discipline*", and then approved that the recommendation by the auditor for the Appellant and the Minister to immediately reimburse the \$7,192.00 to Government.

102. PSC Decision No. 390 of 13 July 2018 reads as follows :

1. *The Public Service Commission duly notes recommendations I to VI of the Report on Special Audit of 'Etuete Lavulavu's Airline Ticket Purchased by Ministry of Internal Affairs in February, 2018.*
2. *That Mr 'Onetoto 'Anisi, Acting Chief Executive Officer and Ms Kalesita Taumoepeau, Deputy Secretary, Ministry of Internal Affairs are deemed to have breached a serious breach of discipline based on the Report on Special Audit of Mr*

'Euate Lavulavu's Airline Ticket purchased by Ministry of Internal Affairs in February, 2018 and that the procedures for serious breach of discipline under Regulation 7 of the Public Service (Disciplinary Procedures) Regulations 2003 be instituted.

3. *That recommendations three (iii) and six (vi) of the said Special Audit Report are to be implemented by Ministry of Finance and National Planning as appropriate".*

103. The assertion by the Appellant that PSC predetermined the issue was based on the premise that –

- (i) the decision that the Appellant had “*breached a serious breach of discipline*”; and
- (ii) that the audit recommendation to reimburse the \$7,192.00 was approved by PSC.

104. It must be noted that PSC did not decide that the Appellant had “*breached a serious breach of discipline*”. What was decided in Paragraph 2 of PSC Decision No. 390 of 13 July 2018, was that the officers concerned (*one of which was the Appellant*) “*are deemed to have breached a serious breach of discipline*” and that the procedures for serious breach of discipline under Regulation 7 of the Public Service (*Disciplinary Procedures*) Regulations 2003 be instituted. The effect of the decision was to facilitate disciplinary procedures. It was not the final decision. The final decision will depend on the outcome of the disciplinary process.

105. In Paragraph 3 of PSC Decision No. 390 of 13 July 2018, there is no decision appearing there for the Appellant to reimburse the money. It simply referred “*recommendation (iii) and (vi) of the Special Audit Report, to the Ministry of Finance and National Planning.*” to implement as appropriate.

106. This ground fails.

Sixth ground of appeal:

107. The sixth ground of appeal asserted that the PSC failed to give proper consideration to the written representation by the appellant’s lawyer dated 12 September 2018, to the nine (9) charges against the Appellant, as there is no reference in the PSC Decision No. 565 of 01 October 2018 to counsel’s representations.

108. The minutes of the meeting of 01 October 2018 refers to the charges made against the Appellant by saying “*The Commission in consideration of the oral representation made by Mr. 'Onetoto 'Anisi, his previous responses to the charges made against him and noted the following.....*”

109. Clearly, PSC had considered the Appellant's counsel's representations to the charges as they were the only representations made on behalf of the Appellant, to the nine (9) charges. This was reflected in minutes as referred to above.

110. It must also be noted that there is no obligation on PSC to specifically refer to everything before it, as held by the Court of Appeal on 17 April 2019 in *Busby Kautoke v Public Service Commission* (AC 17/2018). In that case, the Court of Appeal had this to say:

“ ...there is ordinarily no need for a fact-finding body to make express reference to every piece of evidence. It is not to be assumed without good reason that it has overlooked something which was before it, merely because it has not made reference to it.”

111. This ground fails.

Seventh ground of appeal:

112. The Appellant asserted that PSC erred in fact and in law in its decision that the Appellant was negligent in carrying out his duty effectively and professionally.

113. The PSC made a finding of fact that the Appellant was negligent in failing to comply with his statutory obligations in the issuance of air tickets to Mr. Lavulavu while he was not an appointed public service employee.

114. Those failures were put to him in the nine (9) charges that were preferred. They were discussed thoroughly in written and oral discussions between the Appellant and PSC.

115. The facts show that Mr. 'Etuete Lavulavu was not a lawfully appointed employee of the Ministry. Yet, the Appellant maintained that he was. By doing that, the Appellant had for example, *“failed to fulfill your lawful obligation to government with professionalism and integrity when you authorize in your capacity as Acting CEO of the Ministry of Internal Affairs the issuance of an air ticket in the name of 'Etuete Lavulavu from public funds when you knew very well that 'Etuete Lavulavu was not an appointed public service employee.”* Furthermore, by doing that, the Appellant procured the improper use of public funds.

116. It is trite law, that ignorance of the law is no excuse.

117. The Appellant proposed that the above considerations ought to be deemed to have been negated by Cabinet Decision No.580 of 03 August 2018 (*refer to minutes of the PSC on 01 October, 2018*) where Cabinet had already made a decision to pay for Mr. 'Etuete Lavulavu's air ticket. The Tribunal is satisfied that this was given due consideration by the PSC.

118. It must be noted that Cabinet Decision No.580 of 03 August 2018 was made about six (6) months after the event concerning the disciplinary actions against the Appellant. As such that Cabinet Decision had no effect on the result of the disciplinary process, except as a point of mitigation.

119. It must also be noted that Cabinet Decision No.55 of 02 February 2018, approved that only the travel cost of the former Minister for Internal Affairs is to be paid and from MIA's budget. At the relevant time, that was the specific direction from Cabinet.

120. This ground fails.

Eighth ground of appeal:

121. As an alternative ground of appeal, the Appellant asserts that the decision of PSC to:

“severely reprimand the Appellant and, that he be warned that commission of the same or similar offence in the future may result in a more severe disciplinary action taken against him even dismissal from the service”, is too excessive in the circumstances of the Appellant and those of any breaches of discipline.

122. The sanctions for a serious breach of discipline is prescribed under Regulation 10. The sanction imposed in PSC Decision 565 of 01 October 2018 is within that range.

123. The Tribunal is not persuaded that the sanction imposed was too excessive in the relevant circumstances.

124. This ground fails.

ACKNOWLEDGEMENT

125. The Tribunal acknowledges the efforts of both parties in providing the necessary documentation, and the capable manner in which both counsels conducted this case.

ORDER OF THE TRIBUNAL

126. Section 21F of the Public Service Act 2002, as amended, provides that the Tribunal may make an order to affirm, vary or set aside the PSC's decision.

127. The Tribunal makes the following orders:

- (a) The PSC Decision No.565 of 01 October 2018 is affirmed, and the appeal by the Appellant is dismissed.
- (b) The parties are at liberty to apply.



.....
Mr. Aisea Taumoepeau SC



.....
Mr. Timote Katoanga



.....
Mrs. Lepolo Taunisila