

REPUBLIC OF VANUATU
OFFICE OF THE OMBUDSMAN

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Port Vila
Vanuatu

PUBLIC REPORT .
ON THE
IMPROPER SUSPENSION AND
NON-PAYMENT OF SALARY TO
NURSE PRACTITIONER
MR PHILIP TANAKE

15 March 2004

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**PUBLIC REPORT ON THE
IMPROPER SUSPENSION AND
NON-PAYMENT OF SALARY
TO MR PHILIP TANAKE**

SUMMARY

The Ombudsman is issuing this report to show how some Directors of Government Departments could make improper decisions that are against the laws and legal administrative procedures of the Public Service that could affect the officers working under their supervision.

This report is made against the Ministry of Health for improper decision to suspend Mr Philip Tanake (**Tanake**). His suspension did not follow the legal procedures that are outlined in the Public Service Staff Manual.

The Ombudsman finds that the procedures that the former Director General of the Ministry of Health, Mr Johnson Wabaiat (**Wabaiat**) used for suspending Mr Tanake from duty on 5 August 1999 were improper.

The enquiry found that Mr Tanake was suspended for three (3) years and his termination was only made after the health authorities became aware that the Ombudsman is investigating his alleged improper suspension. Mr Tanake was not given an adequate opportunity to answer any of the alleged charges made against him before he was suspended or terminated.

During the enquiry, the Ombudsman found that Mr Tanake was appointed only as a temporary officer when he was suspended. His claim that he was a permanent civil servant as per his appointment letter of 1 November 1995 cannot be justified in this enquiry since all health officers whose status were regraded on 1 November 1995 were revoked by the Public Service Commission.

The Ombudsman has concluded in this enquiry that Mr Tanake was suspended when he was only a temporary officer. His salary was withheld by the health authorities contrary to the content of the suspension letter given to him. The letter stated that he was supposed to be on full pay during his suspension.

The Ombudsman also found that Mr Tanake's suspension was only based on allegations and the health authorities did not provide proof or evidence to suspend Mr Tanake.

The Ombudsman further found that the reports about the reasons to suspend Mr Tanake was only made by the Health Department in February 2003, three (3) years after he was suspended on 5th August 1999. The suspension period lasted for more than 3 years.

Mr Wabaiat, and other departmental heads involved in Mr Tanake's suspension were negligent of the Public Service laws that guide the performance of their official duties.

The Ombudsman further found out that Mr Tanake's employment was only terminated by Mrs Myriam Abel (**Abel**), current Director-General of the Ministry of Health on 26 February 2003, after three (3) years of suspension. Again, this action came about only after the Ombudsman's enquiry into the matter.

The actions taken against Mr Tanake by the Health Officials were not considered to be within the laws that govern persons working in the Public Service.

Following the above findings, the Ombudsman recommends that Mr Tanake should be paid his back-dated salary because he was already terminated from the service. This payment should be immediately back-dated to the time when he was suspended. He should also be paid all outstanding entitlements prescribed by the Public Service Act.

The Ombudsman also recommends that if the Health Department fails to administer the payments of his entitlements, Mr Tanake should consider suing the Government for the improper actions done to him.

1. JURISDICTION

- 1 The Constitution, the Ombudsman Act and the Leadership Code allow the Ombudsman to investigate the conduct of persons working in the Government, government related bodies and leaders. This includes the former Director-General of the Ministry of Health, Mr Wabaiat and Mr Isom, the former Acting Director-General of Health and currently the Director, Southern Health Care Group, and the Health authorities.

2. PURPOSE, SCOPE OF INVESTIGATION AND METHODS USED

- 2.1 The purpose of this report is to present the Ombudsman's findings as required by the Constitution and the Ombudsman Act.
- 2.2 The scope of this investigation is to establish the facts about the improper suspension and non-payment of salary to Mr Tanake.
- 2.3 This Office collects information and documents by informal request, summons, letters, interviews and research.

3. RELEVANT LAWS, REGULATIONS AND RULES

3.1 CONSTITUTION OF THE REPUBLIC OF VANUATU

Article 5(1)(k) of the Constitution states that everybody is entitled to equal treatment without discrimination.

Article 66 states how a leader should conduct himself or herself both in his or her public and private life.

Article 67 defines who are leaders and are expected to comply with Article 66 of the Constitution and other enactment that affect their leadership.

A full text of the above Articles can be viewed in **Appendix A**.

LEADERSHIP CODE ACT NO. 2 OF 1998

The Leadership Code is code of conduct for all leaders that are defined under section 5 of the Code in addition to Article 67 of the Constitution.

Section 5(e) of the Code defines that Messrs Wabaiat, former Director-General, Ministry of Health and Isom as Director of Southern Health Care Group are leaders and are expected to comply with section 13 of the Leadership Code Act.

A full text of the above provisions of the Leadership Code Act can be viewed in **Appendix B**.

EMPLOYMENT ACT (Cap 160)

Section 50(4) states that no employee be dismissed without adequate opportunity to answer any charges made against him.

PUBLIC SERVICE ACT NO. 11 OF 1998

INTERPRETATION

Section 5 gives the definition of the word "**Employee**" in relation to the Public Service includes temporary staff.

Section 17 states that all appointments, promotions, disciplinary matters and terminations in respect of the Public Service must be made in accordance with this Act.

Section 30 states that a temporary salaried employee either be given a minimum of 1 week's notice or without notice in the case of misconduct or inability. The employee may be employed for a period not exceeding 6 months.

PUBLIC SERVICE STAFF MANUAL – 1998

Chapter 6 clearly states that it is important that when an employee commits a disciplinary offence, it is resolved promptly and effectively in accordance with the procedures of chapters 6 and 7.

It is alleged that Mr Tanake's case was not carried out pursuant to the above chapters.

The full text of the relevant sections of the above Acts and Public Service Staff Manual can be viewed in **Appendix C**.

4. OUTLINE OF EVENTS

- 4.1 On **3 October 1994**, Mr Tanake was appointed on temporary basis as a Nurse Practitioner. He was informed about this appointment in a letter dated 28 September 1994 by Public Service Department (**PSD**). His temporary appointment can be viewed in **Appendix D**.
- 4.2 The PSD in a letter of 4 April 1996 informed Mr Tanake that his appointment had been made permanent as of 1 November 1995. Refer to his permanent appointment in **Appendix E**. However, this permanent appointment could not be justified because the Public Service has revoked all permanent appointments of health officers on its meeting on 10 December 1999 whose status were regraded on 1 November 1995.
- 4.3 On **9 July 1999**, the Public Service Commission (**PSC**) and the Ministry of Health approved his transfer effective from 30 August 1999, as directed by the then Director-General, Mr Wabaiat. Refer to his transfer letter in **Appendix F**.
- 4.4 On **5 August 1999**, Mr Tanake was suspended from duty on full pay by the then Director-General, Mr Wabaiat, Ministry of Health. His suspension notice can be viewed in **Appendix G**.
- 4.5 On **15 November 1999**, Mr Tanake wrote to Mr Wabaiat in regards to his suspension notice. Refer to letter in **Appendix H** which is self-explanatory.
- 4.6 On **3 February 2000**, Mr Tanake was only informed of the revocation of his permanent appointment that was made by the PSC in its decision on 10 December 1999. PSC revocation letter can be viewed in **Appendix I**.

- 4.7 (i) On **14 May 2002**, the Office of the Ombudsman received a complaint from Mr Tanake against the Department of Health and PSC on his suspension and non-payment of his salary. He alleged that he was suspended unfairly. The suspension notice was signed on 5 August 1999 by Mr Johnson Wabaiat, however, Mr Tanake was not informed until 21 October 1999 when he actually received his suspension notice.
- (ii) Mr Tanake alleged that several attempts through his superiors at Lenakel Hospital via tele-radio to get more information about his suspension failed because there was no co-operation with his superiors in the Health Department in Vila. He even wrote to the Director-General on 15 November 1999, but he did not respond to his letter. So his suspension dragged on for two(2) years before he lodged a complaint to the Ombudsman's Office.
- (iii) Mr Tanake stated in his complaint that due to the unjustified reasons for his suspension, he travelled to Vila at his own expense in May 2000 hoping to solve the issue. He went to the Ministry and the Department of Health. His aim was to see the Director-General, but Mr Wabaiat was in New Caledonia. In a letter to the Ombudsman dated 3 December 2003, he confirmed that his total expenses for coming to Vila was Vt42.362. **Refer to Appendix S.** Mr Tanake only met with Mrs Helsie Timataso (**Timataso**) and Mrs Judith Melsul (**Melsul**) who both confirmed that there was no report filed in his file on the reasons to suspend him. Mr Tanake claimed that he was given a Public Service plain form and was advised to fill it up and return it. He left the office discouraged.
- (iv) The other issue raised was in regard to his salary. The first paragraph of Mr Tanake's suspension letter states that "you are suspended from duty on full pay immediately from the date of this letter". Mr Tanake alleged that he didn't receive any salary since April 2000 to December 2000. In 2001, there were only two(2) payments made for just 20 working days. The first was on 7 January 2001 and the second payment was made on 18 February 2001. He was not aware of all the allegations against him that is taking place, therefore, he wrote to PSC. He alleged that outside influence pressured the Director General to suspend him as there was no clear or proper investigation on the matter.
- 4.8 On **18 July 2002**, the Ombudsman sent letters of enquiries to the following persons in the Health authorities and PSC.
- (i) The Ombudsman wrote to Mr Isom, Acting Director-General, Ministry of Health to clarify the proper procedures of suspending an officer in the Department of Health; how long is the suspension period; the reasons for Mr Tanake's suspension by the then Director-General, Mr Wabaiat; and if Mr Tanake was improperly suspended from official duty, and why the Department of Health stopped to pay his salary?
- (ii) A letter was sent to Mrs Melsul, Personnel Manager, Health Department stating that "in an attempt to obtain an explicit reason of his suspension notice, Mr Tanake had discussed the matter with her and Mrs Timataso in Port Vila. However, they both confirmed to Tanake that there was no report filed against him in his record". Mrs Melsul was also requested to confirm if she has received a report against Mr Tanake and to provide reasons why Mr Tanake was suspended from official duty, and why the Health Department stopped paying his salary?

- (iii) A letter of enquiry was also sent to Mr Lui Naling (**Naling**), Officer-In-Charge, Lenakel Hospital. It was alleged that on many occasions Mr Tanake attempted to contact his superiors at Lenakel Hospital via tele-radio in order to have a clear explanation of his suspension notice but they did not cooperate. Mr Naling was requested to provide detailed information on Mr Tanake's suspension. The information is:
 - (a) improper conduct as per the notice of suspension [Public Service Staff Manual, Chapter 6, section 4.1(i)];
 - (b) failure to comply with the requirements of the Code of Conduct under Part V in the Public Service Act as per the notice of suspension [Public Service Staff Manual Chapter 6, section 4.2(a)];
 - (c) wilful act of assaulting another staff member or any other person as per the notice of suspension [Public Service Staff Manual, Chapter 6, section 4.2(d)].
 - (iv) It was alleged that on many occasions, Mr Tanake attempted to contact both the Public Service and Health authorities in order to have a clear explanation of his suspension notice but there was no response from them. See letter to the Secretary of the PSC dated 16 November 2001 **Appendix J**. This letter was sent to Mr George Pakoasongi (**Pakoasongi**), Secretary, PSC and requested him to confirm if he had received the said letter and for him to provide the Office of the Ombudsman with his response about Mr Tanake's suspension.
- 4.9 On **22 August 2002**, reminder letters were sent to the same people above: Mr Isom, Mr Naling, Mr Pakoasongi and Mrs Melsul.
- 4.10 On **2 October 2002**, the Ombudsman received a response from Mr Pakoasongi who confirmed that PSC received Mr Tanake's letter of 16 November 2001. He stated that:
- (i) he had written twice to Mr Isom and his letters were dated 19 December 2001 and 15 July 2002 requesting an Employee Discipline Report (EDR) on Mr Tanake's case so that it could be submitted to the PSC Board and the Disciplinary Board for a hearing.
 - (ii) he gave Mr Isom an ultimatum to respond by 22 July 2002. Since no response was received, PSC closed its file on this case. He advised the Ombudsman to address any future enquiries regarding this matter directly with the Health authorities. Mr Pakoasongi stated clearly in his letter to Mr Isom that since no action is taken, he must take immediate steps to reinstate Mr Tanake on full pay.
- PSC's response and relevant attachments can be viewed in **Appendix K**.
- 4.11 On **4 November 2002**, Ombudsman's Office sent a second reminder to Mr Isom, Mr Naling and Mrs Melsul.
- 4.12 On **12 November 2002**, Mr Naling advised the Ombudsman by fax that he has no idea on the matter and requested the Ombudsman to contact Mr Isul Nalau (**Nalau**), Financial Officer in the Tafea Rural Health Office and Mr Judah Isaac (**Isaac**), District Health Manager at that time, who were involved in the decision to suspending Mr Tanake. (refer to Naling's fax in **Appendix L**)

4.13 On **18 November 2002**, the Ombudsman's Office returned Mr Nalau's telephone call to query about how he became aware of the issue. Mr Nalau responded that Mr Naling contacted him to brief him on Mr Tanake's case as Mr Naling himself knows nothing about the case. Mr Naling told him that he needed to respond to the Ombudsman's letter on the matter. The following information were given by Mr Nalau to the Office of the Ombudsman :

- (i) Mr Nalau advised that he and Mr Tanake were suspended about the same period. At that time, Mr Tanake's case was being dealt with on provincial level and later by the Aneityum community on Aneityum. Tanake was suspended due to political influences.
- (ii) His opinion was that Mr Tanake's case was a personal matter (something to do with a female member of a family) and shouldn't have been raised to the Ministry of Health and the Public Service. How the case reached the PSC, he admitted that he knew nothing about. He thought that it must have been the Aneityum community who processed the case to the PSC. Mr Nalau added that Mr Tanake should have been given an opportunity by the Health authorities or PSC (whoever suspended him), to respond to any allegations raised against him.

4.14 On **19 November 2002**, we had an interview with Hon MP Judah Isaac (**Isaac**). He said that Mr Tanake was working under his supervision. He worked in various health centres like Kerepei, Paunangisu, Vaemali and Lenakel Hospital. He alleged that Mr Tanake created problems in all of these health centres where he worked. These problems involved females. He was aware of such problems created by him, but he ignored the advice or instructions given to him by his superiors. After this there was no other choice to take but to suspend him. All the reports and records were kept in the office at Lenakel Hospital, unless they were destroyed.

4.15 On **28 November 2002**, the Ombudsman's Office contacted Mr Naling after the interview with Hon MP Isaac. Later during the same day, the Ombudsman received a fax from Mr Naling which he confirmed that they found **no** files or records on the allegation made against Mr Tanake which resulted in the decision to suspend him and stopped paying his salary. Copy of fax can be viewed in **Appendix M**.

4.16 On **18 December 2002**, the Ombudsman wrote to Hon MP Isaac requesting him to clarify if proper procedures or steps were taken to suspend Mr Tanake; and whether Mr Tanake was given an opportunity to be heard and to respond to any allegations against him.

4.17 On **13 January 2003**, Mrs Melsul stated in her Statement of Interview that Mr Tanake's suspension was done by the office of the then Director-General, Mr Wabaiat. They have no copies of any reports whatsoever regarding Mr Tanake's suspension and the reasons for suspending him. Mr Tanake was not at work, therefore, his salary was stopped. As daily-rated, if one is absent from work, automatically no salary is paid to them. Because health authorities do not have any records of the allegations made against Mr Tanake, they wanted Mr Tanake to report the reasons for his suspension.

A full text of Mrs Melsul's responses to the Ombudsman's enquiries can be viewed in the Statement of Interview in **Appendix N**.

4.18 On **17 February 2003**, the Ombudsman received the signed Statement of Interview from Mrs Melsul. She indicated in her response that she couldn't find a copy of the suspension letter. The request by the Ombudsman to provide the copy of Health Department's letter to stop the payment of Mr Tanake's salary was not given by Mrs Melsul. Refer to Mrs Melsul's response in **Appendix O**.

4.19 On **20 February 2003**, the Ombudsman received a memo from Mrs Melsul who enclosed reports on the suspension of Mr Tanake. The reports were provided by Mr Iou Frank Pusin (**Pusin**), Acting Provincial Health Manager for Tafea Community Health Services. Mrs Melsul commented that Mr Pusin has made a great effort in consulting the concerned community on this case. Refer to copy of Mrs Melsul's memo and attachments in **Appendix P**.

4.20 On **24 February 2003**, the Ombudsman had an interview with the Director-General, Mrs Abel. Mrs Abel referred to the reports in Appendix P and concluded that the case be closed as Mr Tanake was involved in a serious misconduct.

The Ombudsman's Office asked if Mr Tanake's suspension followed proper procedures as his salary has been withheld contrary to his suspension notice.

Mrs Abel admitted that it was the Health authorities' failure of not administering the suspension procedures properly. The Director-General stated that she will issue Mr Tanake his "termination" letter and added that Mr Tanake can bring it up again as another case. She confirmed to send a copy of Mr Tanake's termination letter to the Ombudsman's Office.

4.21 On **6 March 2003**, the Ombudsman contacted Mr Pusin to confirm whether the reports referred to in Appendix P were the main reasons that were used to suspend Mr Tanake on 5 August 1999. These reports were only made in the year 2003. The reports provide no evidence of serious misconduct.

Mr Pusin confirmed that the above reports were done this year 2003. He also confirmed to have seen the actual reports used to suspend Mr Tanake in 1999. However, Mr Pusin stated that he has no copy with him as they were sent to the Health authorities in Vila.

It is concluded that the records received as allegations against Mr Tanake are not the actual records used in 1999 to suspend Mr Tanake. No records of allegations against Mr Tanake are available in the Health authorities' files.

4.22 On **10 March 2003**, the Ombudsman received a copy of Mr Tanake's second letter of suspension from Mrs Abel, Director-General, Ministry of Health. The first suspension letter was dated 5 August 1999 signed by Mr Wabaiat, former Director-General, Ministry of Health. Letters of suspension can be viewed in **Appendices Q and G** respectively.

4.23 On **31 March 2003**, after numerous correspondences between Health Department and Ombudsman's Office, the Ombudsman's Office made its findings and submitted them to the Director General of the Ministry of Health, Mrs Abel. The Ombudsman's Office recommended that Mr Tanake is paid his outstanding salaries.

- 4.24 On **14 April 2003**, the Ombudsman received a copy of the Director-General, Mrs Abel's memo addressed to Thomas Isom, Judith Melsul and Iou Pusin urging the Human Resource Manager to work closely with the Director of Southern Health Care Group, to respond to queries and to furnish her office with correct information and actions to be taken with respect to Mr Tanake's case as she is advised to submit the Ministry's decision on that matter by the 28 April 2003 to the Ombudsman's Office. Refer to copy of memo in **Appendix R**.
- 4.25 On **27 May 2003**, the Ombudsman requested Mrs Abel, Director-General that if she has all the information available to submit them to the Office of the Ombudsman by 10 June 2003 for his pursuance.

No response received to date.

- 4.26 On **9 September 2003**, after numerous correspondences on the issue, the Office of the Ombudsman sent a letter of enquiry to Mr Wabaiat, who is now Director-General, Ministry of Internal Affairs to assist in this investigation. However, at the time of writing this report, there was still no response from Mr Wabaiat.

5. RESPONSES BY THOSE WITH COMPLAINTS AGAINST THEM

- 5.1 A Working Paper on this matter was issued on 11 December 2003 in accordance with Article 62(4) of the Constitution which states that the Ombudsman must give an opportunity to those complained of an opportunity to respond to the findings made against them.
- 5.2 On 29 December 2003, the Ombudsman received Mr Tanake's comments on the Working Paper as follows:

Outline of Events

- 4.14 (a) if the allegations made against him were true, the Health Department should have provided proof or evidence of the allegations.
- (b) since his 27 years of service with the Health Department, he had never been posted to Kerepei or Vaemali Health Centres until his suspension.
- 4.19 as a registered midwife, Mr Tanake was surprised to see the report submitted by Mr Pusin on the subject of "Having intercourse with pregnant mothers in the work place."

During his 27 years of his nursing carrier, he has never had sexual intercourse with any anti-natal patients who attended anti-natal clinic. If Mr Pusin was true, he should have provide names of pregnant mothers that he mentioned in his report.

The report in Appendix P produced by the temporary secretary, council of chiefs, Mr Tonny Keith (**Keith**), who claimed to be on behalf of community groups, was only done for his own personal interest. The reports have the same handwriting with no signatures of those concerned.

The reports were produced only when the Health authorities failed to submit the appropriate findings to the Ombudsman. Mr Pusin had to fly Tanna/Aneityum at the beginning of 2003 and contacted Mr Keith to assist him in compiling the reports. Mr Pusin then filed the reports to Mrs Melsul dated 10 February 2003.

Mr Tanake made the following points:

- why did Mr Pusin compiled the reports without the Aneityum chiefs and councillors?
- why did Mr Keith produced the reports without those people concerned?
- Mr Pusin is a responsible person in the Tafea Health region, however, work done by him is considered or perceived to be bribery.
- Mr Pusin is regarded as a leader and Mr Tanake's boss as well. Why didn't he discuss the matter with Mr Tanake while on Aneityum?
- in one of Mr Keith's report, he mentioned that Mr Tanake refused to be transferred to Tanna. Mr Tanake requested Mr Keith to provide him with a copy of transfer letter issued by Mr Isaac.

- 4.20 Mrs Abel, Director-General, Ministry of Health terminated him without giving him adequate opportunity to respond to any allegations made against him. He was shocked when he received his termination letter dated 26 February 2003.

Copy of Mr Tanake's comments can be viewed in **Appendix T**.

- 5.3 Mr Isom, Director, Southern Health Care Group (**SHCG**) verbally stated during an interview that:

- (i) although his name appeared in the Working Paper, Mr Isom was not part of or involved in Mr Tanake's suspension.
- (ii) Mr Tanake's case was raised way back in 1999. Mr Isom was appointed Director, Community Health Services in May while in Santo. Mr Tanake's suspension was done by Director-General Wabaiat while Mr Isom was not actually in office.
- (iii) when Mr Isom took office in Vila, he was addressed to follow up this case. Several trips were taken to Tanna but could not locate the documents related to Mr Tanake's suspension until this time.
- (iv) Mr Isom respected the Director-General, Mr Wabaiat as his superior, therefore, he could not override Mr Wabaiat's decision. Mr Wabaiat was approached to assist and solve the matter. Nothing was done.

Mr Wabaiat signed Mr Tanake's suspension letter, therefore he should also be the signature for withdrawal.

- (v) refer to Finding 4 – Mr Isom has not breached Section 13 of the Leadership Code for the above reasons. Mr Isom requested the Ombudsman to withdraw his name because

- (a) it wasn't his case;
- (b) he wasn't involved in it;
- (c) he knew nothing about;
- (d) he followed up the case, but it was difficult to proceed as they could not locate the relevant documents that led to Mr Tanake's suspension.

Mr Isom elaborated more to prove himself that he knows the procedure of discipline when referring to Health cases taken to Court by him during past years. This is the only case that his name appears in it which is not the product of his work but someone else's.

- (vi) Mr Isom knows that Mrs Melsul is also involved in Mr Tanake's suspension and she should be mentioned in the report (findings and recommendations). All documents concerning discipline, recruitment, housing allowances etc., she is the officer responsible. Mr Isom doesn't understand why Mrs Melsul failed to produce the relevant documents on Mr Tanake's suspension.
 - (vii) Mr Isom has no objection to the Recommendations concerning his former Director-General, Mr Wabaiat. Mr Tanake has the right to proceed or follow up the Recommendations. Health authorities failed to provide or maintain facts or proof of relevant documents that led to Mr Tanake's suspension. Correspondences received from the Ombudsman were brought to the attention of the former Director-General, Mr Wabaiat and Mrs Melsul.
 - (viii) Some of the Health officers know about the case but they did nothing about it.
- 5.4 Mr Isul Nalau phoned to say that he agreed with the contents of the Working Paper.
- 5.5 Mrs Melsul stated that she has no comments to make on the working paper. See copy of her response in **Appendix U**.
- 5.6 Mrs Abel advised that the Ministry does not have any further comments to add to the report. Refer to **Appendix V**.
- 5.7 **Appendix W** is the Ombudsman's copy of the Ministry of Internal Affairs' letter to the Ministry of Health on the same.
- 5.8 No responses were received from the following:

Mr Wabaiat, former Director-General, Ministry of Health
 Mr Pusin, Acting Provincial Health Manager, Tafea Community Health Services
 Mr Naling, Nursing Manager, Lenakel Hospital
 Honourable Judah Isaac, former District Health Manager, Tafea
 Mr Pakoasongi, Secretary, Public Service Commission

6. FINDINGS

6.1 Finding 1: Former Director-General of the Ministry of Health Mr Johnson Wabaiat may have breached Section 50 of the Employment Act.

Mr Wabaiat may have breached Section 50(4) of the Employment Act when he failed to give Mr Tanake an opportunity to be heard and to answer the charges made against him. Such action could give rise to doubt in the public mind and Mr Tanake whether he has carried out his duty fairly or have followed the law. He acted unfairly resulting and causing him distress and depriving him of natural justice.

6.2 Finding 2: Mr Wabaiat suspended Mr Tanake without grounds.

In his letter of 5 August 1999 to Mr Tanake, the Director General Mr Wabaiat failed to provide proper explanations as to his reasons for suspending him. All that he stated were sections of the Public Service Staff Manual and the Public Service Act.

Despite having been sent a letter by Mr Tanake on 15 November 1999 asking that copies of the complaints be sent to him, Mr Wabaiat failed to send him copies of the complaints to give Mr Tanake an opportunity to respond to the complaints.

Up to now Mr Wabaiat did not respond to the Ombudsman giving the reasons for suspending Mr Tanake.

6.3 Finding 3: Mr Wabaiat may have breached Section 13 of the Leadership Code.

Mr Wabaiat failed to observe and comply with section 13 of the Leadership Code Act. That is, he failed to observe and comply with the provisions of the Public Service Staff Manual and the Employment Act. As the overall supervisor of a Ministry, he failed to allow Mr Tanake an adequate opportunity to answer the charges made against him before he was suspended. By not observing these laws, he has committed an offence under the Leadership Code.

6.4 Finding 4: Mr Isom may have also breached Section 13 of the Leadership Code.

Mr Isom failed to observe and comply with section 13 of the Leadership Code Act. That is, he failed to observe and comply with the provisions of the Public Service Staff Manual and the Employment Act. As the overall supervisor of Southern Health Care Group and the immediate supervisor of Mr Tanake, he failed to allow Mr Tanake an adequate opportunity to be heard and to answer the charges made against him before he was suspended. By not observing these laws, he has committed an offence under the Leadership Code.

7. RECOMMENDATIONS

The Ombudsman makes these recommendations based on the above findings to resolve this complaint and prevent such practices to occur again in the future.

7.1 Recommendation 1:

The Ministry and the Department of Health make immediate payment of Mr Tanake's salary, back-dated to the time when his salary was withheld to the date of his termination letter, plus other entitlements, since his suspension and termination was not done according to proper Public Service Staff Manual procedures and law.

7.2 Recommendation 2:

The Public Service Commission should impose disciplinary actions against the health officers who failed to carry out their responsibilities efficiently and according to the laws.

7.3 Recommendation 3:

The Ministry and Department of Health refund Mr Tanake for all his costs totalling to Vt42.362 when he travelled to Vila in May 2000 and the time and trouble he took in writing letters and making radio calls without achieving anything in regard to his suspension.

7.4 Recommendation 4:

The Ministry and Department of Health apologise to Mr Tanake.

The action of suspending Mr Tanake for over three years without reasons, the right to be heard was unfair and prevented him from natural justice. As an employer they fail to demonstrate fair and proper treatment to Mr Tanake. The two agencies fail to demonstrate the ethics of a good employer.

7.5 Recommendation 5:

That Mr Johnson Wabaiat be punished under Section 40 of the Leadership Code for breaching Section 13 of the same Act.

Dated the 15th day of March 2004.



Hannington G ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

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Appendix A

CONSTITUTION OF THE REPUBLIC OF VANUATU

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Article 5(1)(k) equal treatment under the law or administrative action ...

CONDUCT OF LEADERS

Article 66.(1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to-

- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
 - (b) demean his office or position;
 - (c) allow his integrity to be called into question; or
 - (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.
- (2) In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by subarticle (1).

DEFINITION OF A LEADER

Article 67. For the purposes of this Chapter, a leader means the President of the Republic, the Prime Minister and other Ministers, members of Parliament, and such public servants, officers of Government agencies and other officers as may be prescribed by law.

Appendix B

LEADERSHIP CODE ACT NO.2 OF 1998

LEADERS

5. In addition to the leaders referred to in Article 67 of the Constitution, the following are declared to be leaders:

... (e) directors-general of ministries and directors of departments. ...

DUTIES OF LEADERS

13.(1) A leader must:

- (a) comply with and observe the law;
- (b) comply with and observe the fundamental principles of leadership contained in Article 66 of the Constitution; and
- (c) comply with and observe the duties obligations and responsibilities established by this Code or any other enactment that affects the leader.

Appendix C

EMPLOYMENT ACT (Cap 160)

50(4) No employer shall dismiss an employee on the ground of serious misconduct unless he has given the employee an adequate opportunity to answer any charges made against him ...

PUBLIC SERVICE ACT NO.11 OF 1998

INTERPRETATION

Section 5 "Employee" in relation to the Public Service means a person employed therein whether on the permanent staff or temporarily or on probation or as a casual employee or daily rated worker, whether by way of written contract or otherwise but does not include a director-general or director other than for the purposes of section 27.

APPLICATION TO PUBLIC SERVICE

Section 17 All appointments, promotions, disciplinary matters, and terminations in respect of the Public Service must be made in accordance with this Act.

TEMPORARY SALARIED AND CONTRACT EMPLOYEES

30. (1) The Commission may engage such temporary salaried employees as may from time to time be required and may dismiss a person so engaged with not less than 1 week's notice. No action shall lie in any Court in respect of the dismissal of any temporary salaried employee except in the case of a breach of the Commission's obligation to act as a good employer, during the course of the employment.

(2) Temporary salaried employees may be employed for a period not exceeding 6 months and shall be paid such remuneration and be subject to such conditions of employment as may be determined by the Commission.

(3) Where, due to the nature of the employment (such as short term specialist services) to be performed, and where it is inappropriate for that person to be employed on a permanent basis, the Commission may employ persons pursuant to a contract of employment.

(4) The contract may, in the discretion of the Commission, exclude the person so employed from being subject to this Act or from provisions of this Act.

CHAPTER 6 – MANAGING EMPLOYEE DISCIPLINE

1. Introduction

Under section 4 of the Public Service Act, employees of the Public Service are to have the highest ethical standards; be accountable for their actions; and observe the law in all they do as public servants. Consequently, to ensure that highest standards of appropriate and ethical behaviour are maintained in the Public Service, it is important that when an employee commits a disciplinary offense, it is resolved promptly and effectively ...

At the same time, the Commission also has a responsibility under the *Public Service Act* to be a good employer. This requires that employees are treated fairly in all employment related matters, including discipline. To ensure that all of these requirements are met all discipline matters must be dealt with in accordance with this chapter. These procedures are based on the *Public Service Act* with additional procedures authorized by Commission.

2. Procedures to be followed in all discipline matters

The following procedures must be followed by all persons involved in dealing with discipline matters. These procedures require that:

- 2.1 Departments are to have appropriate management systems in place for preventing disciplinary matters from arising and that concerted attempts are made to resolve any discipline matters that arise first within the department;
- 2.2 Employees are suspended from duty (on full pay) only in very serious discipline cases and can only be suspended by a Director, Director-General or the Commission;
- 2.3 Discipline matters are only referred to the Public Service Commission *after* attempts have been made to resolve it within the Department within ten working days if the employee has been suspended from duty for a serious discipline matter;
- 2.4 The Commission considers which discipline matters should be dismissed or referred to the Disciplinary Board, with the employee being provided with an opportunity to respond to any allegations made against them.
- 2.5 Only the Disciplinary Board is authorised to hear and determine discipline cases and must provide at 28 days notice to the employee of the hearing date.

2.1 Attempting to first resolve the matter within the department

- (a) Directors-General and Directors are responsible for ensuring that there are appropriate work management systems in place within Departments, so that employees clearly understand what duties they should be doing and what level of work performance is expected of them.
- (b) Directors-General and Directors are responsible for ensuring that employees within their departments know what forms of behaviour may lead them to being charged with a disciplinary offense under the *Public Service Act* or the Public Service Staff manual.

- (c) Except in cases of serious disciplinary cases requiring immediate suspension of the employee (for example, theft; fraud; misappropriation of funds; serious misuse of Government property; assault; and sexual harassment) under the next section, if an employee commits a disciplinary offense, his or her supervisor must attempt to resolve the matter first with the employee directly through informal discussion and counselling. The aim must be to resolve the matter within the Department and avoid it becoming a discipline case that needs to be referred to the Disciplinary Board.
- (d) If this is unsuccessful, and the employee continues to commit the disciplinary offense, the Supervisor shall, through his or her manager, inform the Director of the Department.
- (e) The Director shall warn the employee in writing up to two times, warning the employee that if the alleged behaviour continues or re-occurs, the matter will be referred to the Commission for possible referral to the Disciplinary Board.
- (f) The employee *must* be provided with an opportunity to respond to the allegations in writing within seven days.
- (g) The Director's warnings and any written response from the employee shall be placed on the employee's personal file within the Department and the Office of the Commission.

2.2 Suspending the employee from duty immediately in serious discipline cases

- (a) No prior written warnings or verbal counseling need to be given where the employee commits a *serious disciplinary offense* requiring immediate suspension, but no employee shall be suspended except in accordance with this section.
- (b) If an employee commits a serious disciplinary offense (for example, theft; fraud; misappropriation of public funds; assault; or sexual harassment), the Director (or authorized delegate) of the Department where the employee works, shall suspend the employee on full pay and immediately inform his or her Director-General of the suspension who shall confirm or vary the Director's decision within 24 hours (see model "Notice of Suspension" letter for department use in Chapter 8, schedule 5).

2.3 Referring the matter to the Public Service Commission

2.3.1 Documentation required for discipline cases

- (a) In *all* alleged discipline offenses, the Director-General shall refer the matter formally to the Commission in writing, providing an *Employee Discipline Report* (PSC FORM 6-1) on the offense and what steps have been taken by the Department to resolve the matter.
- (b) Before submitting the report to the Commission, it shall be provided by the Director to the employee, who shall be given *seven (7) calendar days* to submit a written response to the allegations made in the Director's report, which shall be forwarded in full to the Commission with the Director's report.
- (c) If the employee fails to make a written response, it may be assumed by the Commission that the employee agrees with the Director's report.

2.3.2 Time limits for referring discipline cases

- (a) In cases where the employee has not been suspended from duty, but the employee continues to commit or repeats the disciplinary offense, the Director-General shall refer the matter to the Commission *after* the process in section (1) has been undertaken. This should be done as promptly as possible.
- (b) In cases where the employee has been suspended on full pay, the matter shall be referred to the Commission as soon as practicable but not later than 10 working days after the Director has become aware of the alleged discipline offense committed by the employee.

CHAPTER 7 – MANAGING CESSATION OF EMPLOYMENT

4. General employee entitlements

Required Periods of Notice and Employee Entitlements

3. End of temporary salaried employment	One week or as specified in employee's written contract	-Standard payments or as specified in employee's written contract - If applicable, payment in lieu of notice of termination
---	---	--

5.3 Temporary employees

- (a) Temporary employees may only be employed for a period not exceeding six months and must be provided with a minimum of *one week notice* of termination (Public Service Act, section 30(1)), although if possible, two weeks notice should be provided.
- (b) In the case of *serious* misconduct or *serious* inability to perform their duties, their employment may be terminated without notice but subject to the Commission's obligation to act as a good employee (*Public Service Act*, section 30(1)).
- (c) Temporary salaried employees are entitled to the standard range of entitlements specified in Section 4.1 of this chapter or, if applicable, as specified in their written contract of employment.

Appendix A

CONSTITUTION OF THE REPUBLIC OF VANUATU

FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL

Article 5(1)(k) equal treatment under the law or administrative action ...

CONDUCT OF LEADERS

Article 66.(1) Any person defined as a leader in Article 67 has a duty to conduct himself in such a way, both in his public and private life, so as not to-

- (a) place himself in a position in which he has or could have a conflict of interests or in which the fair exercise of his public or official duties might be compromised;
 - (b) demean his office or position;
 - (c) allow his integrity to be called into question; or
 - (d) endanger or diminish respect for and confidence in the integrity of the Government of the Republic of Vanuatu.
- (2) In particular, a leader shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by subarticle (1).

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PUBLIC SERVICE STAFF MANUAL – 1998

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- 2.4 The Commission considers which discipline matters should be dismissed or referred to the Disciplinary Board, with the employee being provided with an opportunity to respond to any allegations made against them.
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2.3.2 Time limits for referring discipline cases

- (a) In cases where the employee has not been suspended from duty, but the employee continues to commit or repeats the disciplinary offense, the Director-General shall refer the matter to the Commission *after* the process in section (1) has been undertaken. This should be done as promptly as possible.
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CHAPTER 7 – MANAGING CESSATION OF EMPLOYMENT

4. General employee entitlements

Required Periods of Notice and Employee Entitlements

3. End of temporary salaried employment	One week or as specified in employee's written contract	-Standard payments or as specified in employee's written contract - If applicable, payment in lieu of notice of termination
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- (b) In the case of *serious* misconduct or *serious* inability to perform their duties, their employment may be terminated without notice but subject to the Commission's obligation to act as a good employee (*Public Service Act*, section 30(1)).
- (c) Temporary salaried employees are entitled to the standard range of entitlements specified in Section 4.1 of this chapter or, if applicable, as specified in their written contract of employment.

GOUVERNEMENT
DE LA
RÉPUBLIQUE DE VANUATU

SERVICE DE LA
FONCTION PUBLIQUE

Sac Postal Privé No. 017
Port Vila



GOVERNMENT
OF THE
REPUBLIC OF VANUATU

DEPARTMENT OF
PUBLIC SERVICE

Private mail Bag 017
Port Vila

PF.P.TANAKE/14/94

Date: 28th September 1994

Mr Philips TANAKE
Health Department,
Aore Health Centre, Santo

Dear Mr Timothy,

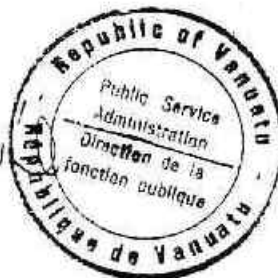
Temporary appointment - DAILY RATED

I am writing to inform you that you have been appointed by the Public Service Department on a Temporary basis as a Nurse Practitioner of Aore Health Centre, Santo.

Your appointment will be effectif as from October 3rd, 1994 and you will be paid on the Daily - rated Salary Scale C04.2 which is equivalent to Vatu Two Thousand and Eight. (VT.2008) per day.

Hope you will like the job and provide the required of you.

Yours Faithfully,



Hosea TALLY
Personnel Officer (DRL)

Copies: Ministry of Health
: Department of Health
: Director, Public Service Dept
: Department of Finance
: File
: Chrono

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GOUVERNEMENT
DE LA
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SERVICE DE LA
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Port Vila



GOVERNMENT
OF THE
REPUBLIC OF VANUATU

DEPARTMENT OF
PUBLIC SERVICE

Private mail Bag 017
Port Vila

PF-P-TANAKE/14/94

Date: 28th September 1994

Mr Philips TANAKE
Health Department,
Aore Health Centre, Santo

Dear Mr Timothy,

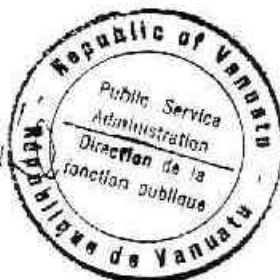
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GOUVERNEMENT
DE LA
RÉPUBLIQUE DE VANUATU

SERVICE DE LA
FONCTION PUBLIQUE

Sac Postal Privé No. 017
Port Vila



Appendix E
Appendix B
GOVERNMENT
OF THE
REPUBLIC OF VANUATU
DEPARTMENT OF
PUBLIC SERVICE
Private Mail Bag 017
Port Vila

PF 761538|02|617|96

4th April 1996

Mr PHILIP TANAKE
C/- Health Department (61528)
C/- Health Department
PORT VILA

Dear Mr Tanake,

I wish to inform you that the Public Service Commission at its meeting held on the 1st of November 1995, has approved your Permanent Appointment to the post of a Nurse Practitioner in the Health Department of the Vanuatu Government, Public Service

You are hereby required to provide to the Public Service, a Certificate of Medical Fitness given by a Medical Practitioner approved by the Administration. The Medical Certificate should be submitted within 28 days as from the date of this letter

The post is in grade P7/1 of the Public Service Scales and your appointment would be on an annual salary of VT 510,096 per annum plus a supplement of VT 51,000 per annum with effect from the 1st of November 1995

The terms and conditions of the service applicable to the Vanuatu Public Service are contained in the Staff Manual for the Public Service and will apply to you. You should familiarise yourself with the contents of the conditions of service including all the Public Service Instructions which have been issued so far to amend some of the sections of the Staff Manual which should be available in your Department

You may be called upon to carry out your duties in any place in the Republic

Mr Philip TANAKE

C/- Health Department

~~Mr Philip TANAKE~~

C/- Health Department

PORT VILA

No accommodation will be provided by the Government. However, you will receive a lodging allowance in lieu thereof if you occupy privately rented house or apartment.

You will be required to serve on probation for two (2) years only and confirmation of your permanent appointment will be decided by the Public Service Commission only after the expiry of the probationary period or terminate your employment after giving one month's notice if your service, conduct or health are not satisfactory.

If you accept this offer of appointment, please confirm your acceptance in writing.

Yours faithfully,



A LESINES *Lesouma*
Acting Director
Public Service Department

Copies : 1st Secretary, Ministry Of Health
Health Department
Public Service Commission
Salary Section
Audit
MSU
PF (2)
Chrono

Appendix A

GOUVERNEMENT
DE LA
REPUBLIQUE DE VANUATU

COMMISSION DE LA
FONCTION PUBLIQUE

Sac Postal Privé 017
Port Vila

GOVERNMENT
OF THE
REPUBLIC OF VANUATU

PUBLIC SERVICE
COMMISSION

Private Mail Bag 017
Port Vila

Tel: 23337
Fax: 26381

Thursday 3rd February, 2000

REF: PSC/11/1/2/021/99/bw

Tanake Philip
Analguat Dispensary-Anietym, Tafea Province

Dear Mr Philip

I am writing to you about a letter you received dated 27 March 1996 from the former Public Service Department purporting to 'appoint' you to a permanent position of Nurse Practitioner at P7.1 within the former Department of Health from 1 November 1995.

Following an extensive inquiry by the Ombudsman in 1998 and subsequent legal advice from the Attorney General, the Public Service Commission at its meeting of 10 December 1999 has reviewed your appointment to the permanent position and agrees that it was made unlawfully.

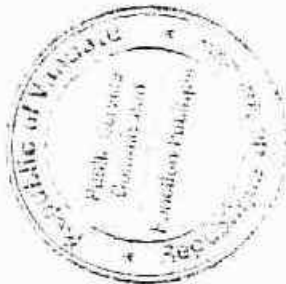
This means that your status has not changed, since 1 November 1995, from being employed by the Ministry of Health on a daily-rated basis, unless you have obtained another permanent position through the normal *Public Service Staff Manual* recruitment procedures since that date.

Your employment with the Ministry in your current position and salary on a daily-rated basis will continue under the provisions of the Public Service Commission *Casual Staff Employees Manual*.

Should you wish to be considered for a permanent appointment, I would encourage you to apply for any advertised vacancy in the Public Service, including the Ministry of Health, that your skills and qualification make you eligible to be considered for.

Yours faithfully

Bill WILLIE (Mr)
Secretary



cc Director-General, MOH; Attorney-General; Personnel Manager, MOH;
Manager, HRM Unit; PSC Personnel file; Payroll section; MFEM; Chrono

To: The Secretary
Public Service Commission
Private Mail Bag 017
Port Vila

From: Philip Tanake
Anelcauhat
Aneityum

Date: 16 November 2001-11-13

Dear Sir,

Re: **Suspension Notice**



Mi stap write mo questionem heading we I stap antap. From we mi stap long suspension over long two years nau mekem se mi questionem order ia. Time suspension notice I been signed dated 5th August 1999, mi no been aware long hem kasem 21 October 1999 afta we mi jast kasem letta blong suspension.

Immediately afta mi receivim leta, mi been mekem several attempts through ol superiors blong mi blong save mo long matter ia example mi usim Tele Radio blong conductem Lenakel Hospital where oli seems blong confuse, even mi been write long Director General letter dated 15 November 1999 be mi never receivim any replyment kam kasem today (date of this letter).

Long personal view blong mi mi suspect se I kat wan outside force we I preasurem Director General blong signem order ia because ino kat wan clear mo proper investigation long kes ia.

From we ol something I no clear mekem se long manis blong May year 2000 mi been fly long Aneityum I kam long Vila long think think blong follem up matter ia (own expense).

After visitem Ministry mo Department concern aim specially blong lukim Director General be from we hem I out long overseas tour long New Caledonia makem se mi been lukim Assistant blong hem Mrs Helsie Timatasa who I admittem se ino kat any report filed againsem mi we hem I save finem long file, mekem se hem I decided blong mi ko blong lukim Mrs Judith who I talem sem something. Mo from there nau herni givim wan plain form blong Public Service mo advisem mi blong must fillemup mo signem afta givim back long hem. Even hem I usim some talk talk olsem sipose mi no agree blong signem olgeta bambai I considerem se mi no mo wantem blong work, mekem se mi signem signature blong mi long Plain Report Form ia mo mi tickim ples we statement I talem se mi no agree. Afta mi givim back long hem, mi walk out long office discouraged mo down hearted.

Nara point mi like blong questionem hem I about salary payments from we long letter blong suspension I kat wan paragraph I talk olsem: "this letter is to inform you that you are suspended from duty on full pay immediately from the date of this letter."

Mi been kasem monthly salary payments blong mi kasem March 2000, mo start long April 2000 kasem December 2000 mi no kasem any payments.

Long year 2001 I been kat two payments wan long 7 January 2001 mo nara wan long 18 February 2001 both payment bong 20 w/days nomo (payment Receipts attached). From we mi never receivim any letter blong informem mi long ol changes ia mekem se mi stap question I kam. Mo from we I affectem mi bigwan olsem wan long ol experienced worker inside long Nursing workforce. Mi stap lukluk mo respectem follem reform programme blong CRP long side blong transparancie mo mi hope se situation ia bambai I soive mo quicker than expected.

Wetem ol thing thing ia mi kam blong talem thankyou very much.

Yours sincerely,

Philip Tanake
Nurse Practitioner

Cc: Ministry of Health
Director General, Ministry of Health
Ombudsman Office
Provincial Health Supervisor, Tafea
President, Tafea Local Government Council
Personal File

VANUATU GOVERNMENT PAY STATEMENT

NAME				PAY No	DEPT No	METHOD	NPF No	PAY TO
P TANAKE				7-61538	614	NBV52	106353	07 JAN 2001
BASIC PAY	OVERTIME	ALLOWANCES	NPF	GROSS PAY		DEDUCTIONS		NET PAY
21600	0	0	064	21600		0		20736
YTD NPF					INCREMENTAL DATE			
2678								
ALLOWANCES								

ALLOWANCES

DEDUCTIONS

DAILY RATE 2180 DAYS WORKED 10

RECEIVED

ANY ENQUIRIES ON THIS STATEMENT SHOULD BE ADDRESSED TO THE ADMINISTRATIVE OFFICER OF THE EMPLOYING MINISTRY DEPT

VANUATU GOVERNMENT PAY STATEMENT

P TANAKE

NAME			PAY No.	DEPT No.	MTRICU	KPF No.	PAY TO
P TANAKE			7-61538	610	NBV82	105353	18 FEB 2001
BASE PAY	OVERTIME	ALLOWANCES	MPR	GROSS PAY		DEDUCTIONS	NET PAY
21600	0	0	1296	21600		0	20304
YEARS	INCREMENTAL DATE						
1296							

ALLOWANCES

DEDUCTIONS

DAILY RATE 2160 DAYS WORKED 10

RECEIVED

ANY QUERIES ON THIS STATEMENT SHOULD BE ADDRESSED TO THE ADMINISTRATIVE OFFICE OF THE EMPLOYING MINISTRY DEPT.

**GOUVERNEMENT DE LA
REPUBLIQUE DE VANUATU**

**COMMISSION DE LA
FONCTION PUBLIQUE**

Sac Postal Privé 017, PORT VILA
Tel: 25090/23337
Fax: 26381



**GOVERNMENT OF THE
REPUBLIC OF VANUATU**

**PUBLIC SERVICE
COMMISSION**

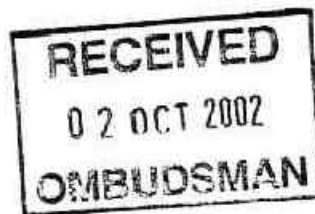
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Tel: 25090/23337
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*Toutes correspondences doivent être adressées au SECRÉTAIRE, de la Commission de la Fonction Publique.
All correspondences should be addressed to the SECRETARY, Office of the Public Service Commission.*

PSC/Ombud/49/1

25/09/2002.

Mr. Alfred Maho
Director
Leadership Code
Ombudsman's Office
PMB 081
PORT VILA



Dear Sir,

RE: ALLEGED UNFAIR SUSPENSION & NON-PAYMENT OF MR. PHILIP TANAKE


We refer to your letter of 23 August 2002 regarding the above matter.

With reference to the questions posed in your letter of 18 July 2002, we would like to reply as follows:-

- It would appear that we did receive Mr. Tanake's letter of 16/11/2001.
- Attached is a copy our memo dated 19/12/2001 to the Director of Southern Health Care Group requesting an EDR on Mr. Tanake's case so that it could be submitted to the PSC Board and the Disciplinary Board for a hearing.
- Also attached is a copy of my letter dated 15/07/2002 to the Acting Director General of the Ministry of Health giving him an ultimatum to respond by 22/07/2002. No response has been received to date.
- The PSC has now closed its files on this matter.

As we now consider this matter closed, we would advise that perhaps it may be more useful to address any future enquiries regarding this matter directly with the Health authorities.

Yours sincerely,


George Pakoasongi
Secretary
Public Service Commission



cc- Chairman, PSC
File
Manager, E.S.U.
PF: P. Tanaka
Ag. DG, Ministry of Health
DF

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MEMORANDUM

Toutes correspondances doivent être adressées au SECRETAIRE, Commission de la Fonction Publique.
All correspondences should be addressed to the SECRETARY, Office of the Public Service Commission.


FROM: Public Service Commission
TO: Director – Southern Health Grouping
REF: PSC 11/7/1
DATE: 19 December, 2001

SUBJECT: PHILIP TANAKE


I refer to Mr. Tanake's letter dated 16th November 2001.

This case has been outstanding since 5th August 1999 despite several attempts to resolve this.

From his letter it looks as though he has already signed the Employee Discipline Report PSC Form 6-1. I am now instructing you to look into this according and provide us relevant documents in regard to his case by 11th January 2002 please.


BILL WILLIE
ACTING SECRETARY



Copies: DG – Min. Health
: Chairman – PSC
: Manager ESU – PSC

: Chrono

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All correspondences should be addressed to the SECRETARY, Office of the Public Service Commission.*

Ref: 1/0/02

15/7/02

Mr Thomas Isom
Acting Director General, MOH and
Director
Health Southern Health Care Group
Port Vila

Dear Mr Isom,

SUBJECT: Discipline Case – Philip Tanake (Health).

We understand that Mr Tanake was suspended since 5th August 1999 and had his salary ceased in March 2000. We refer to a letter from Mr Bill Willie of 19th December 2001 and we note that we still have not received the Employee Discipline Report on this matter.

This matter has been outstanding for sometime now. We confirm the advice given by Li (Legal Adviser, MOH) to Felix Thomas (PSC) on 7th May 2002 to close the file. If we do not receive any communication from you before 22 July 2002 to the contrary, we shall close the file on this matter. Since no action is being taken in this case, if you have not done so, you must take immediate steps to reinstate Mr Tanake on full pay.

We thank you for your cooperation.


George Pakoasongi
Secretary
Public Service Commission



cc: P/F

Chrono✓

12-NOV-2002 08:52

LENAKEL HOSPITAL

678 68625

P.01

FAXIN
12/11/02

Mr Alfred MAHO
Director of Leadership Code
Ombudsman's Office.

12th 11-2002.

Dear Sir,

RE: Alleged Unfair Suspension and Non Payment of Mr. Tanake's Salary.

Following the above subject I am writing to clear my problem concerning the matter. I am working in the Hospital under curative services and Tanake was working in rural health under preventive services.

So I have no idea concerning the matter. Please contact Mr. Iasul Nalan who was a Financial Officer for Tafea Rural Health at that time, and Mr. Judah Isacc who was a Distric Health Manager at that time. They were involved in the decision and they would provide you with more information.

For your information, Mr Iasul Nalan is now terminated and Mr Judah Isacc is now Member of Parliament.



Appendix M

Lenakel Hospital
PoBox 30
Tanna TAFEA

28/11/2002

Office Of the Ombudsman
Republic of Vanuatu
Port Vila.

Re: Alleged Unfair Suspension and Non Payment of Mr
Tanake's Salary.

Following the above subject, Mr Iau Pousin and I Lui
Naling have checked through all personal files but found no
information concerning the above matter.

For your information Mr Iau Pousin is now Acting
Provincial Health Manager.

So your office to contact Mr Iesul Nalau and Mr Judah
Isaac for more information.

You

Nursing Manager
Lenakel Hospital.



STATEMENT OF INTERVIEW

DATE:	13 January 2003
TIME:	9.00 am
PLACE:	Ombudsman's Office, PORT VILA

NAME:	Mrs Judith Melsul
ADDRESS:	Health Department, PMB 9009, PORT VILA
TELEPHONE:	22512
OCCUPATION:	Personnel Manager
EMPLOYER:	Department of Health, Vanuatu Government
SUBJECT OF INTERVIEW:	Alleged unfair suspension & non-payment of Mr Tanake's salary

3042/2080/SI34/jm

I hereby declare that my statement is true to the best of my knowledge and belief, and is made by me knowing that I am liable to be prosecuted criminally if I wilfully give information that I know to be false or do not believe to be true.

Signature.....

Good morning Mrs Melsul. Thank yu tumas blong kam tis morning blong ansarem sam queries blong Ofis blong Ombudsman. Ikat sam few kwestens istap bifo yumitu we mi askem yu blong yu lukluk long hem. Mbae mi rid olsem istap, ol kwestens istap long English.

In an attempt to obtain an explicit reason of his suspension notice, Mr Tanake had discussed the very same with you and Mrs Helsie Timataso in Port Vila. However, you both confirmed to him that there was no report filed against Tanake in your record.

Tanake did not receive his salary as from April 2000 onwards.

1. What are the reasons for Tanake's suspension? Hemia nao hemi fes kwesten.

Yes, thank yu. Suspension blong Tanake hemi done by office blong Director General. That time it was Johnson Wabaiat. Nao, kes blong hem was dealt directly thru long office blong Director General so long kes blong hem blong kam thru long mifala, Personnel Section wetem ripots blong hem. mifala ino kat copies eni ripots whatsoever

long suspension blong hem an risons blong suspension.

All mimi no save we
hemi se hemi bin kat sam issues we hemi agensem hem an pipol oli bin ripotem hem
thru long office blong DG. However, reason blong ripots blong hemia, it was done thru
long ofis blong Regional Affairs an he would be the best person blong confirm se
confirmem wan

Thank yu. So Johnson Wabait istap iet naoia?

No, hemi muv aot finis.

Iko wea nao?

Iko long Internal Affairs. DG for Internal Affairs. But he would be, mbae hemi wan
person we hemi save tingbaot stret eh, wanem nao kes blong Philip Tanake.

2. **Please confirm whether you received any report against Tanake? If yes, please provide the Ombudsman with a copy of the report.**

Hemia nao mi talem se ofis blong DG nao hemi kat ol ripots ia.

3. **Tanake alleged that he didn't receive his salary since April 2000 to December 2000. In 2001, there were only two(2) payments. 1st on 7 January 2001 & the 2nd on 18 February 2001 and these payments were only for just 20 working days.**

*See attached
to confirm
payments*

If Mr Tanake was improperly suspended from official duty, why did your Department stop his salary which is contrary to his Notice of Suspension, paragraph 1?

Ol daily-rates, taem oli no stap long duty, oli mifala ino pem salary blong olketa, ol
daily-rates. Nao suspension blong hem, spos DG hemi kat ol infomesen blong
suspendem hem, then infomesen we mifala karem long head ofis blong olketa long
Tanna hemi that taem it was Iou Pusin, hemi bin confirm se, 'he was not at work'. Mi
biliv se whats his name, eh Judah Isaac was also out of work at the moment. Nao hem
nao ibin putum se hemi no stap long wok and that was why hemi bin stopem salary

given wan warning letter. Yes. Even taem we mifala i suspendem olketa, mifala ino sapos i hemi wan offence we hemi kat guarantem wan suspension, that suspension is not done until we Public Service hemi confirmem ol allegations ia, confirmem security blong hem and talem se yes mifala save kohed wetem. But usually mifala iputum evri samting long Public Service blong hemi decide whether mifala oli warnem hem or oli suspendem hem or oli sakemaot hem. But otherwise mifala, at the moment, mifala ino wandem, mifala i respectem ol rights blong olketa, mifala i respectem olketa olsem pis keepers insaet blong Ministry and we wanted them to understand wanem nao principle of discipline in saet long Ministry bifo eni samting i save tek ples taem suspension or even termination will be the last result mifala i save tekem yes. So thats the position mifala i stap tekem/tingting naoia.

This year, and its early February, mifala plan tu blong ko aot again blong mekem another update on managers bakeken long procedures long discipline bifo mifala i save ko on thru tis yia.

6. How long is the suspension period?

As Tanake's suspension order is over three(3) years now? From naoia olsem i luk se ating i ova 3 yias nao!

Long ples ia?

Yes, long kes blong Tanake!

Discipline process blong naoia hemi, mifala ino mo, I min sori, suspension process period, eh? Mifala itekem se olsem mi talem finis mifala itekem se mifala ino mo suspendem ol man long duty until we mifala i putum long PSC.

Mi luk se sapos mifala i suspendem ol man, ating in that case hemi holdup long PSC or mifala or hemi holdup between the two departments, then officer hemi no blong mifala ikontinue blong pem olketa, ino kat man on duty, mifala lukim long ol narawan iko long leave, mifala ino kat money blong pem so. What we do is, officer hemi kontinue blong wok, mifala italem long hem mo informem long wanem istap. And therefore, as mi italem, suspension would be the last result. Mifala iputum ol tingting nomo blong Public Service italem se OK mifala ikat samting olsem ia. Tingting istap blong mifala i disciplinem staff ia olsem. To terminate or to dismiss.

blong hem. As a daily-rated, automatically taem yu no stap long wok, ino pem ino kat salary. That was still an absence from duty of work wea hemi confirm by yea, however, suspension blong hem nao olsem hemia nao mi fowodem eh, Janet ibin talem long mi se mbae hemi veri gud sapos yumi kamap wetem blong faenemaot se wea ples sapos olsem wanem then we've to clear this issue as it has been outstanding for too long, eh.

Having gone thru DG's ofis, go thru ol files blong hem mi no kat eni ripot whatsoever.

4. **Please provide a copy of your letter putting to a halt the payment of Tanake's salary.**

Yes, mi no stap provaedem we hemi bin eh boss blong hem hemi bin submitim.

Wanem taem yufala i save kam ?

I'll give it to you during this week. Mi karem ikam daon.

5. **Can you clarify the proper procedures of suspending an officer in the Department of Health?**

Yes, suspension hemi done afta long 3rd warning given long wan ofisa. Warning hemi depend long security blong offence komited, eh. Offence we hemi komited we hemi rili rili big wan then that warning hemi nomo given hemi suspension stret away eh. At the moment mifala ikam blong mekem se instead blong suspension hemi done, mifala itraem blong impruvum disciplinary process we hemi stap, letem ol ofis oli aware, improve in the sense that advaesem olketa, mekem awareness program wetem ol officers traenem ol man just hao to go abaot disciplining wan staff. Mifala ikat wan legal officer, olsem wan nao wan taem blong help nao wetem legal issues blong mifala, mifala itekem hem in blong ranem sam wokshops and actually wetem discipline wetem ol pipol ol staff members, managers are getting on very well nao. Mifala itraem blong mekem se at the moment last resource blong suspension. At the beginning would be a verbal counseling wetem officer and then toktok wetem hem as long and those there's who are toktok and counseling gets into records. The 2nd taem hemi mekem wan offence, then that becomes a warning and hemia hemi ko long file blong hem and hemi

PSC hemi confirm. Sipos i olsem wanem hem nao but otherwise, mifala ino mo suspendem ol man until mifala iluk se inid blong mifala suspendem but process blong suspension hemi tekem quite awhile. Rison blong hem nao olsem samtaem mifala ikat even wan ripot taem iko long officer and officer ikat 7 days a week blong ripot bak. Taem iripot hemi bak, mifala i putum stret iko long PSC. And PSC hemi confirmem wanem action nao mifala/oli save tekem long officer. PSC nomo hemi save

So blong mi mi talem stret wanem period it takes, mi no save, rison we mifala itekem hemia for more than 3 yias, oh yes, more than 24 months hemi rison from hem nao from mifala ino kat ol stret pepa blong kontinue blong mekem ol wanem ia, wanem ia disciplinary ripot blong hem. It was done by Johnson Wabait we mifala itraem blong kolaborate tu hemi ino kat, from hemi jas muv aot nomo tuwods the end of last yia.

7. **Since this matter is serious and urgent as this poor Tanake has been suffering this long, what steps has the Health Department taken to resolve the situation?**

Mifala itoktok wetem man we hemi acting at the the moment afta Judah Isaac hemi finis wan we hemi stap acting at the moment hemi Iou Pusin. Iou Pusin hemi tekemap ples/kes ia wetem man ia from man ia hemi stap long Aneityum Yes Or hemi traem bringimap kes blong hem so olsem wanem but otherwise mi diskasem issue ia wetem the niu Director General who is Mrs Meriam Abel, and Meriam Abel hemi confirm se mbae yumi traem lukluk se sapos mifala ino faenem his records of the allegations then it is possible that mbae mifala i putum bak hem, re-instatem bak hem. But blong pem bak hem, mi no ting se mbae hemi, we mbae hemi stap long discretion blong Meriam Abel, Director General.

Yu min se mbae oli bak-datem ol salaries blong hem?

Yes, i stap long discretion blong hem nao, se mbae olsem Mbae hemi save mekem olsem wanem but mi bin diskasem issue ia wetem Director General, Meriam Abel who is the actual, yes, the new current DG for Health, and hemi kat sem tingting blong sapos DG's ofis ino save provaedem that samting we i bin kat blong suspendem hem long hem, grounds, then mbae possibility blong mifala i putum bak hem nomo. But she will be the best person to confirm.

Yes, tokabaot ol statement blong hem, olsem long ples ia, olsem long Public Service oli klosem file blong olketa finis, mo oli advaesem mifala se eni ting to do wetem Tanake, we mifala i wandem faenemaot abaot man ia, mbae mifala ikontaktem Health authorities.

Yes from hemia nao mi talem long, mi talem long, olsem to me, hemi no stap long duty eh, hemia mi talem long,, hemia mi se, yumi tekem stand blong katemaot salary blong hem from he was not on duty. Nao taem we kes blong hem ikam antap, mifala ibin, mi bin sendem ol forms, disciplinary forms iko taon long hem, long man ia, alé iko daon long Judah Isaac where he was there. Nao Judah Isaac mbe that doesn't min se, naoia mifala ino save se mbae hemi save perform olsem wanem from he's an MP. Mifala ino olsem wanem But those forms mifala ino save tu se those forms whether or not oli rijim and, especially those disciplinary forms we mifala i usum, eh.

Rison is that bicos mifala ino kat eni allegations made against him and mifala ino kat copies of that, mifala iwandem se hemi talem long mifala se hemi talem long mifala se oli bin sakemaot hem from wanem? Oli bin suspendem hem from wanem?

Nao blong putum bak salary blong hem, hem nao mi talem se, mbae hemi no mbae hemi hard blong putum bak salary blong hem.

From hemi no wok?

From hemi no wok, at the same time, mi save se i kat allegations, but the thing is that, the reports have been misplaced. Yes, mi save se ikat allegations, the reports have been misplaced and mi mi fright tumas sapos mifala i pem bak hem. we might be touching something that from hemi, ripot blong hem we, I mean verbally we mi mi hare, hemi quite, hemi no stret lelebet. Its not the first case, we hemi eh, and that's why mi mi talem long DG se mbae hemi very careful taem hemi handelem kes blong hem whether sapos hemi putum bak hem mbae hemi re-instatem bak hem wetem full salary or mifala i re-instatem hem bak nomo. So that's DG's discretion But it would be best to make a clear stand wetem Ministry wetem officer, hemi concern that officer tu italem tingting blong hem.

So taem we hemi nomo wok ia, ko kasem tedei hemi nomo wok?

Mifala i nomo putum hem long wok from ^{mes} eh, hemi bin wok fastaem, and then mi ting se sem ripot nomo afta hemi bin aot long wok. Alé oli jas re-instatem bak hem nomo, and then hemia nao kes ia i kam antap.

So that's why mi ting se mbae Director General nomo hemi appropriate person blong i yes.

OK, thank yu tumas long blong kam blong ansarem ol queries blong Ofis blong Ombudsman, so mi talem thank yu long yu. Ikat kopies blong samting ia nomo.

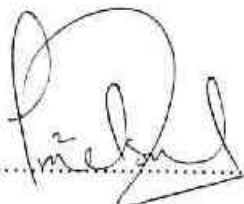
Mbae mi mek sua se mi putum ikam long wik ia. Tumoro mi busy lelebet, Thursday would be a good time, Thursday morning.

OK, thank yu tumas bakeken.

OK, thank yu.

I have read this statement. It is true to the best of my knowledge and belief, and is made by me knowing that I am liable to be prosecuted if I wilfully give information that I know to be false or do not believe to be true. I have been able to correct, add, or alter anything I want.

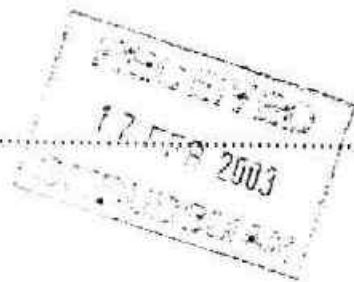
Signed:



Date:

6/02/2003

Received by:



SERMENT

MOI, JE FAIS LE
SERMENT DE DIRE LA VÉRITÉ, TOUTE LA VÉRITÉ, RIEN QUE LA VÉRITÉ AU
COURS DE MA DÉPOSITION DEVANT LE MÉDIATEUR ET DEMANDE À DIEU DE
ME VENIR EN AIDE.

SIGNATURE:.....

DATE:.....

PROMIS

MI, SWEA SE
BAIBAI MI TOKTOK STRET, MI NO-KIAMAN, MI TALEM TRU TOKTOK NOMO
LONG OFIS BLONG OMBUDSMAN, MO MI ASKEM LONG GOD BLONG HELPEM
MI.

SAEN:.....

DEIT:.....

OATH

I, Liam Masul DO SWEAR
THAT THE EVIDENCE THAT I GIVE BEFORE THE OMBUDSMAN IS THE TRUTH,
THE WHOLE TRUTH AND NOTHING BUT THE TRUTH. SO HELP ME GOD!

SIGNATURE: Liam Masul

DATE: 13 JAN 2003



Appendix 0



Office of the Ombudsman
Bureau du Médiateur
Ofis blong Ombudsman

Our Ref: 3043/2080/L34/jm
(Please quote this reference in all correspondence)

24 January 2003

Mrs Judith Melsul
Personnel Manager
Department of Health
PMB 9009
PORT VILA

Dear Madam

ALLEGED UNFAIR SUSPENSION & NON-PAYMENT OF MR TANAKE'S SALARY

We enclose a draft copy of our Statement of Interview conducted at 9.00 am in the Office of the Ombudsman, on 13 January 2003.

It would be appreciated if you could read through thoroughly and correct/amend anything required on your part and return the signed copy to the Office of the Ombudsman as soon as possible.

We still await a copy of your letter putting to a halt the payment of Mr Tanake's salary, which you told us in the interview to bring it to the Office of the Ombudsman on Thursday morning, 16 January 2003.

To assist this office in this investigation, we request that you provide the following by **30 January 2003**:

1. return the draft Statement of Interview, signed by you; and
2. provide the copy of the Health Department's letter putting to a halt the payment of Tanake's salary. *couldn't find a copy of suspension*

Confidentiality is important and is protected by s.28 of the Ombudsman Act. This correspondence is directed only to you and anyone in your office with whom it is necessary to communicate in order to provide the information requested. If you have any question about the extent of confidentiality in this matter, please contact the Ombudsman's Office to discuss it.

Thank you in advance for your assistance in this matter. Please quote our reference number above in any correspondence.

Yours sincerely

A W MOLGOS
Officer-in-Charge
for: Hannington G ALATOA
OMBUDSMAN OF THE REPUBLIC OF VANUATU

Enclosures: Draft Statement of Interview

— 222 —

ALLOWANCES	CODE	AMOUNT	ACCOUNT NO.	START	END	PERIOD
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INDEX

Year 2000

GOUVERNEMENT
DE LA
REPUBLIQUE DE VANUATU
MINISTRE DE LA SANTE



GOVERNMENT
OF THE
REPUBLIC OF VANUATU
MINISTRY OF HEALTH

DIRECTORATE OF PLANNING & ADMINISTRATION

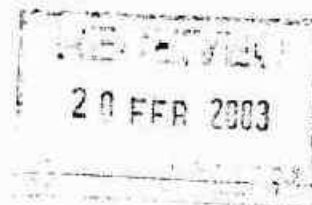
V Re:
Date: Wednesday 19 February 2003

N Re: PA - 03 83 - JM jm.

From: Manager, Personnel & Appraisal

To:

a. Alfred MAHO (Mr.)
Director Of Leadership Code
Ombudsman Office
P. M. Bag 081, PORT VILA.



**Re: ALLEGED UNFAIR SUSPENSION & NON-PAYMENT OF
MR. TANAKE'S SALARY.**

This is a second response to your letter on the above dated 18 July 2002, referenced 1698/2080/L04 jm, to question 1 & 2 after further consultations with the Manager for Tafea Community Health Services. The first response from me on the same dated 12 August 2002.

1. Yes, I have now received reports against Philip Tanake.
2. My office has now received reports on Tanake's case that made him ceased duty. I have discussed the issue with Iou Frank Pusin who is the acting Manager for Tafea Community Health Services. Iou has made a great effort in consulting the concerned community on this case. Attached are the different reports from different people.

Thank you.

J. MELSUL (Mrs.)

Manager- Performance & Appraisal

Planning & Administration
Ministry of Health

Cc : File.

GOUVERNEMENT
DE LA
REPUBLIQUE DE VANUATU
MINISTERE DE LA SANTE
Phone (678) 22512 – Fax (678) 26204



Appendix CP
H RM - Health
mel sul
2/10
RECEIVED
18/02/03
GOVERNMENT
OF THE
REPUBLIC OF VANUATU
MINISTRY OF HEALTH
Private Mail Bag: 09

TAFEA COMMUNITY HEALTH SERVICES
Phone (678) 68607 – Fax (678) 68625 - P.O.BOX 30 LENAKEL - TANNA

To: Judith Melsul [Manager]
Personnel and Appraisal
National Health Office
Port Vila.

Date: 10/2/03.

Re: Philip Tanakes problem [Having intercourse with pregnant mothers in the work place]

This note from the Provincial health office is to confirm and witness the above subject as per dispensary nurse, committee report and the community as enclosed. The concern nurse Philip Tanake has been serving in the Tafea Province when this incident happen of his suspension and termination took place in 1999. As this provincial health office is his long served and last served before his termination, the office has been aware of this similar incident in every health facility that he has been sent to served in. In every health facility that he served he has been doing this [having sex with pregnant mothers who call in for examination].

And from the incident which causes his suspension and termination, he has been doing this several times in the work place and during the official time of work. As per nurse and committee report, the chiefs have several times tried to solved this but he still continue which results in suspension.

After the incident with Johnny Neseanwae's wife his daughter by the name of Dorin about 19 – 20 years came crying in the office in the presence of Iesul Nalau and myself [Iou] and begging for the termination of her father [Philip Tanake], saying that she is fed up and ashamed of this attitude of her father.

We have seen this letter of complain sent to the office and this letter has been processed to the National health office. We have tried to locate the concern nurse file in the Hospital and the rural health office, but we could not find it.

That is all we can give for the concern issue.

Thank You

Aneityum
Aneityum

A/10

4/02/03

Dear Sir.

RE: Suspension
Forming S/N Philip Tanalce.

1) Hemi bin work long year 1997.
No Kam Kasu 1999 Number 8 August,
No Oli bin Suspension Jan.

2) Reasons:

From we Hemi bin stop work no long Sen taiem
Eui stop meken plante problems
women al women we Oli married finish.

3) Inside long ples blong work
Hemi istap usum ples blong work alsem ples blong
Kasem women.

4) Kasem taiem we Hemi meken waken wife blong
Erica Secretary blong Province
Mr. Johnny Neseanwite. No long taiem is now
Oli giving Suspension in long Hemi
Hemi long year 1999.

5) CHIEF, Mo al Big Mans:

1) Oli bin go time long false story problems blong Hemi
No Hemi time use Mr Philip Tanalce
Hemi Ciloby long fasim blong
meken frabal long al women
Taiem Hemi istap long ples blong work

Problems long ples blong
wok:

Appendix P

5/10

1) - melken ol man ol fraet
from ol women blong ol
Semtarian

iget lukluk inquad long Chinie

1. After long ol tingting:

- Chief Naulifa weten ol big man ol kin
pauisen hem finish long Customs fesin
Hemi faien finish.

long side blong melken inquad

Problems long ples blong wok.

long Dispensary.

1) Enia Secretary Mr Johny Neseauwee
hem naa iputun Complaints blong hem
from lex. blong hem.

2) Hemi report go true long Ministry

3) Director Mr. Johnson wapap.
hwa Hemi gin letter

blong Suspender Mr Philip Tauloe.
Hemi hem taul lukluk me story blong
Suspension is.

Reports from Wanem

Oli Suspentem MR Philip/T. 6/10

Hem i bin wok long year 1997.

Mo kam Kasem 1999 C1 16/99.

Mo oli bin Suspentem Hem.

From we Hem i bin stop wok mo
at ^{the} same time Em i stop mekem problem
betan ol women.

Inside long ples blong wok Hem i stop
usum osem wan ples blong Kasem
woman. Kasem taem we Hem i imelkem wetan
wife blong ~~Em~~ Secretary. Mr Johnny Nescam
Mo long taem is nao Oli Suspentem Hem.

Long year 1999 - Ol big man no Chief
Naulita - Oli bin go true long ol story
problem blong Hem. Mo letter i bin go
oug Province - Mo go true long Ministry
me kam se Hem i Kasem reply ^{that} long ol
talk is we Hem i mas stop daen long ol
fasin wogud we Hem i bin stop mekem
oug ples blong wok e.

7/10

Smithy Dispensary

Chairman James Karyawe.

Treasurer - Walter Bile.

Members - Wanganu.

Richard, Willie

Kenneth Samy.

Naem

Walter - Carson.

Racai-Jee.

Antep long ol problems.

I/Judah ibin traem blong Melken Hen
 I/Cam wok long Tanna. Olsen Changem fles-
 Olsen Melken Hen i Transfer but Hen refuse
 blong Cam wok wife blong Hen ibin
 strong times no no wanten nating
 from fasin blong Hen.

Complaints blong Hen ise every fles use fu
 gata stap wok long Hen Hen i stap melken
 sem problems, Hen i I/Judah
 ibin Hen Kasan Nating.

He miser Nomo -

Reports Transfrem.
Mr Philip Tanaka.

8/10

- ① - Mr. Isaac Judah.
Henri got plant stop Hong Husem Philip Tanaka
igo work long tanna.
but Mr Philip Tanaka Henri refuse
Henri ino wanten.
No stop long taven is Mr Judah
② Him Hen stop Kasen nasis.
Henri noma smol
report about suspension is.

Thankyou.

Ande combat

Aneityum

30.07.03

Person Incharge

Rural Health

Tafel Institute

Tanner.



Dear Sir/Madam.

Re: ~~CASE~~ BLONG PHILIP TANAKE.

Foltem of complaints blong mr Philip Tanake of
Councillors blong chief i ket emol same blong Kevin
or sherev wetem yufala.

Sometime long July 1999 chiefmo of man
blong hemi i bin tok long Philip Tanake long
national from fusin blong hemi trouble wetem
ol woman inside long dispensary.

Hemi bin tekem 4 woman and out long objects
woman in list with woman married.
Foltem of trouble. hemi fraetem fullon mama
wei stap ko pas long dispensary mekem se
chief i luk se ino smet so i putim Tanake nu

toik long hem mo mekam hemi fren tu. 10/10

But most important ting-ting est is that long custom mefala sope i kat trouble long plas wei sick man istop sleep long hem bre hemi save affectem hemi back again (body matuakam)

Philip Tanake hemi bin mekam fren mo impletem and long them in chief's councillors i' in explainem gud se oli bin til long trouble nana bai hemi continue blug work. In kat any written letter from chief mo council blug bakem Philip T. long work blug hem.

Councillors i bin aware tu se Rural officer at that time Isaac Indah i bin kam from hem ~~Philip~~ Philip along transferem hem be hemi refuse.

And til then council ino mo save wanem process nao i kotet.

Yours Sincerely,

Keith

Tony Keith - Council Secretary

GOUVERNEMENT
DE LA
REPUBLIQUE DE VANUATU
MINISTERE DE LA SANTE



Appendix 9 12

GOVERNMENT
OF THE
REPUBLIC OF VANUATU
MINISTRY OF HEALTH

DIRECTOR GENERAL

Ref: MOH/DG 06/4/6-MA/mc

26 February 2003

Mr. Philip Tanake
C/- Tafea Rural Health Office
Lenakel
Tanna



Dear Mr. Tanake

Suspension from employment

I write in relation to your suspension from employment in August 1999. The Ministry of Health apologises for the delay in processing your discipline case.

You were suspended from employment on grounds of serious misconduct, namely:

1. Improper conduct in your official capacity, either inside or outside of working hours, or of any other improper conduct which is likely to affect adversely the performance of your duties or likely to bring the Public Service into disrepute (*Public Service Staff Manual*, Chapter 6, section 4.1(i));
2. By wilful action fails to comply with the requirements of the *Code of Conduct* under Part V of the *Public Service Act* (*Public Service Staff Manual*, Chapter 6, section 4.2(a));
3. By wilful act assaulted persons (*Public Service Staff Manual*, Chapter 6, section 4.2(d)).

This disciplinary action was taken following receipt of complaints made against you of sexual assault on and sexual interference with patients in your care. Swift action was taken in order to secure the safety of patients and the community.

At the time when urgent disciplinary action was taken, the Ministry of Health did not yet have the documentary evidence required to process your discipline case. However, the Ministry is now in possession of this evidence, and is in a position to proceed with the formal discipline process.

2/2

Please be advised that you will shortly be receiving an Employee Discipline Report, recommending to the Public Service Commission that you be dismissed immediately on grounds of serious misconduct. You will be given an opportunity to respond in writing to the allegations made against you.

Yours sincerely

M. Abel
Myriam Abel
Director-General
Ministry of Health



cc George Pakoasongi, Secretary, Public Service Commission
Alfred Maho, Director of the Leadership Code, Office of the Ombudsman
Thomas Isom, Director, Southern Health Care Group
Iou Pusin, Acting Manager, Tafea Community Health Services
Judith Melsul, Manager, Personnel and Performance Appraisal

GOUVERNEMENT
DE LA
REPUBLIQUE DE VANUATU
MINISTERE DE LA SANTE



GOVERNMENT
OF THE
REPUBLIC OF VANUATU
MINISTRY OF HEALTH

DIRECTOR GENERAL

MEMO

Ref: MOH/DG 06/4/6-MA/mc

Date: 11 April 2003

To: Thomas Isom Director, Southern Health Care Group
Judith Melsul Manager, Personnel & Appraisal
Iou Pusin Acting Manager, Tafea Rural Health Office

From: Myriam Abel Director General of Health

Subject: ALLEGED UNFAIR SUSPENSION & NON-PAYMENT OF
SALARY TO MR. TANAKE

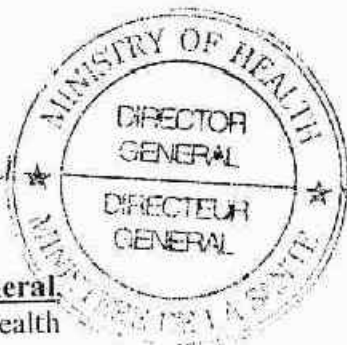
I noted that you also have received copy of the letter of the Ombudsman re: above-mentioned issue.

The letter is self-explanatory and as such have pointed out few points that we may have overlooked. In this context the Human Resource Manager is urged to work closely with the Director of Southern Health Care Group, to respond to queries and to furnish my office with correct information and actions to be taken with respect to this case as I am advised to submit the Ministry's decision on that matter by the 28 April 2003.

Thank you.

M. Abel

Myriam Abel
Director General
Ministry of Health



cc: Hon. Minister of Health
Secretary, PSC
Ombudsman Office

Appendix 5

To - Mr Pasa Tosasa.

Director of General Complaint,

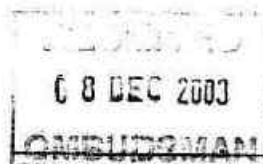
Office of the Ombudsman.

P.M.B. 9081 / Tel 27200.

Port Vila.

3/12/003

From . Philip Tanake,
Anelcauat,
Aneityum.



Dear Sir,

Hemera mi stap fowartem some
information long ol expensis we mi bin meetin
time mi kam long Vila long manis May 2000
blong follem up case blong suspension blong
mi long ministry mo department blong Health,
mo long time ia mi bin stap long Vila blong two weeks,
Heme nau ol expensis.

- Boat Fare Aneityum main land iko long Air port @ 200^{vt} x 2 = 400^{vt}
- Air Fare Aneityum i kam long Vila mo ko back @ 12,681^{vt} x 2 = 25,362^{vt}
- Taxi Fare Vila Air port iko long town mo return @ 700^{vt} x 2 = 1,400^{vt}
- Bus Fare Anamburu iko long George Pamburu @ 50^{vt} x 4 = 200^{vt}
- Share Accommodation = 5,000^{vt}
- Food & Ration = 10,000^{vt}

Sorry mi Lusim ol Receipt.

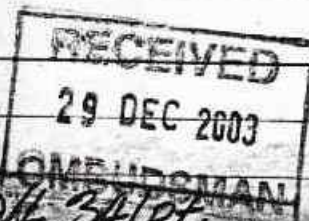
Total 42,362^{vt}

Hemera mo.

Thank you,

Sisa Philip Tanake,
Hemera.

Philip Tanake,
Anelcaukot,
Aneityum.



Date

No.

22/12/003.

Your Ref. 6165/2000/11 34/pt.

Mr Pasa Tosusu,
Director blong General Complaints,
Ofis blong Ombudsman,
Tel. 2720,
Port Vila.

Re Comments Long Reports.

Hemea mi stap raet mo mi wantem blong ansarem
or comment long somefala points we reports we
i bin menon takensem mi.

Outline of Events No 4.14

- A. Sipo's report i tru Health Department i should
providem all reports mo records long of allegations
ia we oli mekem againsem mi.
- B. Long 27 years we mi work wetem Health Department
mi neva posted i go long Kerepai Health Centre or
Vaemeli Health Centre kam kasem today we mi
Suspended i stap.

Outline of Events No 4.19. Appendix P.

Follem report ia mi olsem registered midwife
mi really surprise blong lukum wan report
we mi Iou Pisin i submitim we heading i olsem
Having intercourse with pregnant mothers in the
work place.

Back in during 27 years long Nursing career blong mi mi neva neva havem Sexual intercourse wetem any Antenatal patients we ikam long Antenatal Clinic.

Since Mr Iou Pisin i tru i gud igivin nemes blong ol Pregnant Mothers ia we him i mensem.

Still long Appendix P. Ukat some hand written reports we istap. Hemea Mr Tonny Keith i mekem follem personal interest blong hem mo hem i Claim few Community groups olsem Woman group, Health Committee, Chief mo Councillars blong hem, be ol groups ia ol no aware long ol reports ia. Example Same hand writing long every reports, no kat ol signatures blong ol persons Concern, olsem Chief mo ol Councillars blong him, ol Health Committee members etc.

Whole story blong how all reports ia i come about iko olsem. Afta we Health Department (authorities) i fail blong submitin ol appropriate findings iko long Ofs blong Ombudsman.

Mr Iou Pisin i Fly Tanna / Aneityum Some where end blong January or biggining blong February 2003 in order blong kasem some informations mo toem him istap long Aneityum hem i contact wetem Mr Tonny Keith who we i temporary Secretary blong Council blong Chief, mo Tufala i mekem ol reports ia. Afta time Mr Iou Pisin ikam back long Tanna hem i jas filem ol reports ia ikam long Mrs Judith Melsal dated 10/2/003.

Points mi like blong mekem.

- * From Wanem Mr Iou Pisin i work behiend Chief mo Councillars blong Aneityum?

B1. From wanem Mr Tonny Keith i mekem ol reports ia without ol people concern?

C1. Mr Iou Pasin i wan big man long side blong Health especially long TAFEA region be him i work long fasen blong Pribery.

D1. From wanem Mr Iou Pasin time hem istap long Aneityum hem i no kam lukem mi blong disaussem Some long ol problems ia wetem mi from him i bigman blong mi?

E1. Mr Tonny Keith long wan report blong hem i mensenem Se mi refuse blong transfer iko long Tanna. Mi wantem Sides hem i save givim Copy blong transfer letter we Judah i mekem.

Outline Events No 4.20.

Long side blong Termination notis ikam long mi Director General blong Health MRS Meriam Abel i neva givim mi an adequate opportunity blong mi answerem any charges made againsem mi. Mi jas sek no mo letter blong termination ikam long mi dated 26/2/003.

Tanku Hemea no mo ol comments mi like blong mekem fellew ol reports we i bin made againsem mi

yours sincerely,
Philip Tomake
Tomake

GOUVERNEMENT
DE LA
REPUBLIQUE DE VANUATU
MINISTERE DE LA SANTE



GOVERNMENT
OF THE
REPUBLIC OF VANUATU
MINISTRY OF HEALTH

DIRECTORATE OF PLANNING & ADMINISTRATION

V/Ref.....

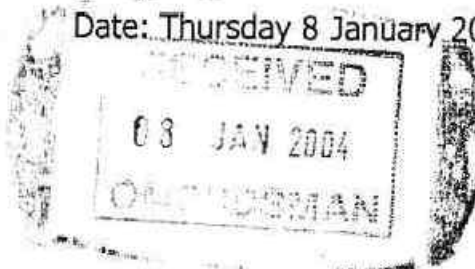
Our Ref..

N/Ref... PA - 03/8/3 - JM/jm,

From : Manager, Human Resource
to

a..... Hannington G. **ALATOA** (Mr.)
Ombudsman
Office of Ombudsman, Vila.

Date: Thursday 8 January 2004.



Re: *Working Paper on the alleged improper suspension and non-payment of salary to Mr. Philip Tanake*

HAPPY NEW YEAR 2004.

This is in response to your letter referenced 0036/2080/L34/jw dated 7 Jan 2004 and received today.

I have no comments to make on the working paper stated above.

Thank you for reminding me and waiting on my comments. I appreciate that.

Thank you,

J.MELSUL(Mrs.)

Manager- Human Resource Management

Planning & Administration

Ministry of Health

Cc : File

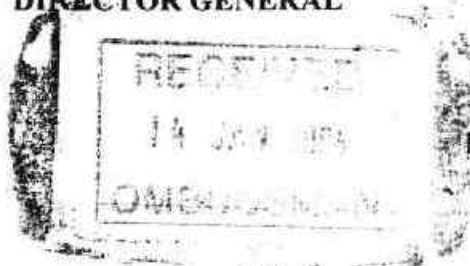
GOUVERNEMENT
DE LA
REPUBLIQUE DE VANUATU
MINISTERE DE LA SANTE



GOVERNMENT
OF THE
REPUBLIC OF VANUATU
MINISTRY OF HEALTH

DIRECTOR GENERAL

Ref: MOH/DG 13/14-MA/mc



12 January 2004

Mr. Hannington Alatoa
Ombudsman
Ombudsman Office
PMB 9081
Port Vila

Dear Mr. Alatoa,

Re: Working paper on the Alleged Improper Suspension and Non-Payment of Salary to Mr. Philip Tanake

The Ministry of Health wishes to acknowledge receipt of your letter of 11 December 2003 regarding the above-mentioned subject matter and hereby advise that we do not have any further comments to add to the report.

We do apologies for the delay in responding.

Yours sincerely,

Myriam Abel
Myriam Abel
Director General,
Ministry of Health



GOUVERNEMENT
DE LA
REPUBLIQUE DE VANUATU

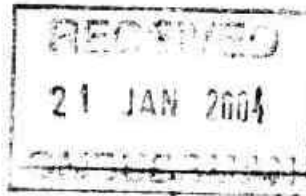


GOVERNMENT
OF THE
REPUBLIC OF VANUATU

MINISTRE DE L'INTERIEUR

MINISTRY OF INTERNAL AFFAIRS

Our Ref: MIA/703/4



15th January 2004

Director General
Ministry of Health
Private Mail Bag 9042
PORT VILA

Dear Colleague

Re: Ombudsman Report on Mr. Philip Tanake

Attached please find a report on alleged improper suspension of Mr. Philip Tanake believed to be a staff nurse or nurse practitioner.

It is my view that you in your current capacity as Director General of Health should respond to or make comments to the recommendations drawn by the Ombudsman.

I am therefore referring this document to you and should you wish to discuss certain issues with Mr. Wabaiat, please do so.

By copy of this note Mr. Wabaiat is informed.

Yours sincerely

Bob LOUGHMAN
Acting Director General



Encl.

Cc: Ombudsman
Mr. Johnson Wabaiat