

IN THE PUBLIC SERVICE DISCIPLINARY TRIBUNAL
AT SUVA

PSDT CASE No. 02 of 2024

BETWEEN : THE MINISTRY OF FORESTRY
EMPLOYER
AND : SEVANAIA DUCIVAKI
EMPLOYEE

Appearances

For the Employer : Mr. Navitalai Dausiga
For the Employee : In-person
Date of Ruling : 15th November 2024

R U L I N G

Background

1. The following allegations were filed by the Ministry against Mr. Sevanaia Ducivaki ("**employee**") who is employed by the Ministry as a Forest Guard:
 - a. **ALLEGATION 1:** Misconduct - Failing to comply with *Part II section 25 (i) (a) of the 2013 Transport Policy* by driving motor vehicle registration number GR548 without obtaining the appropriate approval.
 - b. **ALLEGATION 2:** Misconduct - Failing to comply with *Part II section 25 (h) of the 2013 Transport Policy* by driving motor

vehicle registration GR548 after official working hours without a valid official vehicle pass.

- c. **ALLEGATION 3:** Misconduct - Failing to comply with *Part IV section 35 (1-2) of the 2013 Transport Policy* by failing to report an accident to the Transport officer immediately after he (employee) was involved in an accident whilst driving motor vehicle registration GR548.
- d. **ALLEGATION 4:** Misconduct - Failing to comply with *Part II section 6 (1) of the 2013 Transport Policy* by transporting two (2) villagers using motor vehicle registration GR548.

2. On 6th September 2024, the employee appeared before the Tribunal. He admitted to all the above allegations.

Sanctions

3. Notably, the charges were drafted pursuant to the *2013 Transport Policy* ("**policy**") instead of the *Public Service Code of Conduct*.
4. A charge cannot be drafted pursuant to the policy because there is no provision under the policy which creates an offence. Furthermore, the policy does not set out any sanction.
5. This means that the Tribunal has no power to make a finding that the employee has committed an offence against the policy, let alone, sanction the employee under the policy.

Considerations


- 6. As there is no lawful power to sanction under the policy, the Tribunal shall not direct its mind towards the mitigation filed on behalf of the employee. To do so would be an exercise in futility.

- 7. However, in passing, the Tribunal notes that the employee has fully paid a surcharge of nine hundred and seventy dollars (\$970.00) imposed by the Ministry. The Tribunal notes that the Ministry is entitled to impose a surcharge as such under *Part IV Section 39 and 40 of the Transport Policy*.

Conclusion

- 8. In light of the foregoing, the Tribunal is constrained from sanctioning the employee.

- 9. The Tribunal so orders.

Signed  Date: 15/11/24
Mr. Anare Tuilevuka
[Chairman - Public Service Disciplinary Tribunal]

Signed  Date: 15/11/24
Ms. Deepika Prakash
[Member - Public Service Disciplinary Tribunal]

Signed  Date: 15/11/24
Mr. Jeremaia N.L Savou
[Member - Public Service Disciplinary Tribunal]

