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ACT NO. 58 OF 1998



I assent.

[L.S.]

K. K. T. MARA
President

[18 December 1998]

AN ACT

TO AMEND THE PUBLIC SERVICE DECREE 1990

ENACTED by the Parliament of the Fiji Islands—

Part 1—PRELIMINARY

Short title, etc.

- 1.—(1) This Act may be cited as the Public Service (Amendment) Act 1998.
- (2) The Public Service Decree 1990 is in this Act referred to as the Decree.

Commencement

2. This Act commences on a date appointed by the Minister and published in the *Gazette*.

Part 2—AMENDMENTS OF THE DECREE

Interpretation

3. Section 2 of the Decree is amended:

- (a) by inserting the following new definition:
“‘Appeal Board’ means the Public Service Appeal Board established by section 7A;
- (b) by omitting “constituted under section 126 of the Constitution” from the definition of “Commission” and substituting “continued in existence under section 142 of the Constitution”;
- (c) by inserting the following new definition—
“member” means a member of the Appeal Board; and
- (d) in the definitions of “Ministry” and “Permanent Secretary” by deleting “section 92” and substituting “section 110”.

Delegation of powers and functions

4. Section 6 of the Decree is amended by omitting from subsection (9) “and Legal Services” and substituting “Service”.

Insertion of new Part

5. After Part II of the Decree the following new Part is inserted:

‘Part IIA—APPEALS

Establishment of Public Service Appeal Board

- ‘7A. (1) This section establishes an appeal board to be called the Public Service Appeal Board.
- (2) The Appeal Board consists of the following members:
 - (a) a chairperson appointed by the Minister after consultation by the Minister with the Commission and the public sector unions;
 - (b) a member appointed by the Minister on the nomination of the Commission; and
 - (c) a member appointed by the Minister on the joint nomination of the public sector unions.

- '(3) A person who holds a public office must not be appointed as a member.
- '(4) Subject to this section, a member holds office for 3 years but is eligible for reappointment.
- '(5) The term of appointment of a member expires upon his or her reaching the age of 65, and a person must not be appointed or reappointed if he or she has reached that age.
- '(6) The Minister may terminate the appointment of a member for misbehaviour or for incapacity to perform the functions of the office.
- '(7) If a member:
 - (a) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors, or makes an assignment of his or her remuneration for their benefit;
 - (b) is absent, without reasonable excuse, from 3 consecutive meetings of the Appeal Board; or
 - (c) has, in the Minister's opinion, failed to perform his or her functions as a member satisfactorily for a significant period;the Minister must terminate the member's appointment.
- '(8) A member may resign by notice in writing to the Minister.

Rights of appeal

- '7B. (1) Subject to this section, every officer, other than an officer on probation, may appeal to the Appeal Board under this section against:
- (a) the promotion of any officer, or the appointment of any person who is not an officer, to a position in the Public Service for which the appellant had applied by way of promotion;
 - (b) the taking of disciplinary action against the appellant; or
 - (c) the transfer of the appellant from one district to another within the Fiji Islands.

- (2) An appeal under paragraph (1)(a) lapses if, before the appeal is determined:
- (a) the appellant resigns or retires or his or her employment in the Public Service is lawfully terminated;
 - (b) the promotion or appointment that is the subject of the appeal is cancelled; or
 - (c) the officer whose promotion, or the person whose appointment, is the subject of the appeal dies or vacates, renounces or becomes incapable of taking up the position.
- (3) Despite paragraph (1)(b), an officer does not have a right to appeal against disciplinary action taken against the officer for a refusal to comply with or obey an instruction or order transferring the officer from one district to another within the Fiji Islands if the officer has already had an appeal against the transfer dismissed.
- (4) An appeal does not lie against the promotion of an officer, or the appointment of a person, to an office or position specified in orders made by the Minister, however that office or position is for the time being designated.
- (5) Notice of appeal, setting out the grounds of the appeal, must be lodged with the Secretary of the Appeal Board:
- (a) within 21 days after the date on which the decision was published or notified to the appellant; or
 - (b) within any further time allowed by the Appeal Board on sufficient reason being shown by the applicant.
- (6) For the purpose of determining an appeal, the Appeal Board has the same powers and authority to summon witnesses and to obtain evidence as are conferred upon the commissioners of a Commission of Inquiry by section 9 of the Commissions of Inquiry Act, and sections 14 and 17 of that Act apply, with all necessary changes, in relation to the powers and authority vested in the Appeal Board.
- (7) The Appeal Board may allow or disallow an appeal and the Commission must implement the decision. If an appeal under paragraph (1)(a) is allowed, the Commission must forthwith appoint the appellant to the position.

- '(8) In an appeal the onus of proof rests with the appellant.
- '(9) Proceedings of the Appeal Board are not open to the public but a person authorised by the Board may attend a hearing or part of a hearing.
- '(10) At the hearing of an appeal:
 - (a) the appellant is entitled to be present and may be represented by a legal practitioner or by any other person; and
 - (b) the officer or person against whose promotion or appointment the appeal has been lodged is entitled to be heard in such manner as the Appeal Board thinks fit and may be represented by a legal practitioner or by any other person.
- '(11) The Appeal Board may direct that more than two or more particular appeals are to be heard together.
- '(12) In performing its functions, the Appeal Board must endeavour to combine fairness to the parties with economy, informality and speed.
- '(13) In the conduct of an appeal, the Appeal Board is not bound by the procedures, legal forms and rules of evidence of a court of law but should:
 - (a) accord natural justice to the parties to an appeal;
 - (b) keep a written record of its proceedings; and
 - (c) give reasons for its decision on an appeal.
- '(14) An appellant must, at the same time as lodging the appeal with the Secretary of the Appeal Board, deposit with the Commission the prescribed fee. The fee must be refunded if the appeal is allowed.
- '(15) The Appeal Board may, at any time, disallow an appeal without hearing it, or without hearing it further, on the ground that it is frivolous or vexatious or cannot succeed.

Offence to attempt to influence Appeal Board

- '7C.—(1) Except as provided in subsection (2), a person who attempts to influence the Appeal Board or a member of the Appeal Board in respect of an appeal commits an offence and is liable on conviction to a fine of \$1,000.

- (2) Nothing in subsection (1) prohibits a person from giving information or making representations in respect of an appeal at the request or invitation of the Commission or the Appeal Board, or as a witness, the appellant or the representative of a party at a hearing before the Appeal Board.

Regulations

6. Section 9 of the Decree is amended by inserting the following paragraph after paragraph (3)(e):

- (ea) prescribing fees for the purposes of appeals;’.

Passed by the House of Representatives this 26th day of November 1998.

Passed by the Senate this 10th day of December 1998.