

PUBLIC SERVICE COMMISSION v PUBLIC SERVICE  
BOARD OF APPEAL

Supreme Court Apia  
St John CJ  
15 October 1980

PRACTICE AND PROCEDURE - costs - S 46(12) Public Service Act 1977  
- S 16 Commission of Inquiry Act 1964

HELD: No power in Public Service Board of Appeals to  
order costs against the Public Service Commission.

F M Sapolu for Applicant  
R Va'ai for Respondent

The conclusion I have reached is that the power of the Public Service Board of Appeals constituted under the Public Service Act 1977, as to awarding costs of an appeal is confined to the power contained in Section 46 (12) of that Act and it has no general power commensurate with the power contained in section 16 of the Commission of Inquiry Act 1964. Detailed reasons for this conclusion will be given at a later date.

There is no order as to the costs of this application.

Section 46 subsection 12 of the Public Service Act is in the following terms:

"(12) If in the opinion of the Board any appeal under this section is frivolous or vexatious, or one that should not have been made, the appellant shall not be entitled to a refund of expenses and the Board may order him to pay the cost of the appeal in whole or in part, and the sum so ordered to be paid shall be recoverable by deduction from the salary of the appellant."

Section 46 subsection 11 provides:

"(11) The Board shall within the scope of its jurisdiction be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1964, and, subject to the provisions of this Act, all the provisions of that Act shall apply accordingly."

It is to be noted that subsection 11 is expressed to be "subject to the provisions of this Act". Subsection 12 is such a provision and when compared with the provision as to Costs in the Commission of Inquiry Act 1964 is much more restrictive as to the circumstances in which costs may be awarded. Firstly the appeal must be "frivolous or vexatious or one that should not have been made" whereas in the Commission of Inquiry Act section 16 the power is expressed in general terms with no such restrictions. The words "subject to this Act" mean that where there are conflicting provisions as to the same subject-matter in the two acts the provision in the Public Service Act prevails.

There are additional reasons to reach the same result in respect to this appeal. Subsection 12 contemplates only orders against the appellant. It is the nature of the appeal that provides the only criterion for making an order and the sum ordered is recoverable by deduction from the appellant's salary. The Public Service Commission cannot appeal; can never be an appellant. It's decision is what is appealed against.

Further, it is to be noted that even if the Commission of Inquiry Act provision applied the Public Service Commission would have to be cited or admitted as a party or authorised in accordance with the proviso to the relevant section. Those description of the role in an appeal before the Board of Appeals are inapt to describe the character in which the Public Service Commission appears before the Board.

Counsel for the Public Service Commission, in a carefully prepared argument, submitted that the Public Service Commission, being in effect a branch of the executive arm of Government, was not liable in costs unless clear words are used to include it within the power conferred. I find it unnecessary to decide on the merit of that submission.

The formal orders consequent upon the views expressed herein have already been made.