



Tonga

**PUBLIC SERVICE (GRIEVANCE AND
DISPUTE PROCEDURES)
REGULATIONS 2006**

GS 6B of 2006



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PUBLIC SERVICE ACT 2002

[3rd April 2006]

IN EXERCISE of the powers conferred by Section 21 & 22 of the Public Service Act 2002, the Prime Minister with the consent of Cabinet makes the following Regulations:

PART I - PRELIMINARY

1 Short title

These Regulations may be cited as the Public Service (Grievance and Dispute Procedures) Regulations 2006.

2 Interpretation

In these Regulations, unless the context otherwise requires —

“**association**” means an employee association registered according to law;

“**Commission**” means the Public Service Commission established under the Public Service Act 2002;

“**designated officer**” means any person designated by the Commission under these Regulations;

“**employment dispute**” means a dispute between the employer and an association relating to terms and conditions of employment;

“**employee**” means all persons employed in the Public Service;

“**employer**” means the Commission on behalf of Government;

“**employment grievance**” means a grievance that an employee, may have against the employer or another employee where he claims that —

- (a) his employment, or one or more conditions of it, is or are affected to his disadvantage by unjustifiable action taken by the employer; or
- (b) that his employment conditions disadvantage or discriminate against him.

“**Head of Department**” means any person in charge of the administration of a Ministry, who is employed under a fixed contract of employment under the Public Service Act 2002;

“**industrial action**” means any collective action by an association with the purpose of improving wages, ‘salaries or conditions of employment; and

“**Secretary**” means the Secretary of the Public Service Commission appointed under the Public Service Act 2002.

PART II - EMPLOYMENT GRIEVANCE RESOLUTION

3 Interpretation

For the purposes of this part of these Regulations –

“**employer**” means the Head of Department or Commission.

4 Notice of employment grievance

(1) An employee, who has an employment grievance shall give notice to the —

- (a) Head of department, where the employment grievance relate to another employee in the Public Service; or
- (b) Commission where the employment grievance relates to the Head of Department within a period of 10 working days from the date the

action alleged occurred or the employee was notified or had knowledge.

5 Confidentiality

The employment grievance shall be kept confidential between the parties.

6 Grievance Process: informal

- (1) The employer shall call a meeting with the employee within 5 working days from receipt of the notice.
- (2) The employer and the employee shall in the meeting called under this regulation discuss the employment grievances in the notice.
- (3) The purpose of the discussions under sub-regulation (2) is to resolve the employment grievances. ,
- (4) The outcome of the discussions and the meeting shall be recorded by the employer in writing.
- (5) Each party is entitled to have a third party for moral support and shall not participate in the discussion at such a meeting.

7 Grievance Process: formal

The employee shall, where the employment grievance is not resolved in the meeting called under regulation 5, within a period of 14 working days from the date of impasse, give to the employer a written statement setting out the —

- (a) nature of the grievance;
- (b) facts giving rise to the grievance; and
- (c) remedy sought.

8 Response to employee's statement

The employer shall, within 10 working days of receipt of the employee's statement of the employment grievance provide to the employee a written response setting out his —

- (a) understanding of the facts; and
- (b) decision with reasons.

9 Remedies - employment grievances

The employer may in resolving employment grievances under these Regulations —

- (a) reinstate the aggrieved employee;
- (b) reinstate the employee in a position equal to the former employment position;
- (c) reimburse of wages or salary lost;
- (d) make appropriate recommendations concerning future behaviour or actions of the parties involved;
- (e) maintain the status quo; or
- (f) give any other appropriate remedy.

10 Right of appeal

- (1) The employee shall have a right of appeal to Cabinet against —
 - (a) any decision of the employer; or
 - (b) non-compliance by the employer with the procedural requirements of this Part of the Regulations.
- (2) The employee shall, within 14 working days of receipt of the decision on the employment grievance file its appeal with the Secretary.
- (3) The Secretary shall within 3 working days from the date the appeal was filed, submit the appeal to Cabinet.

11 Determination of appeal

The appeal shall be determined within 20 working days from the date the appeal was filed with the Secretary.

PART III - EMPLOYMENT DISPUTE .RESOLUTION

12 Notice of employment dispute

- (1) In an employment dispute an association which is a party to the dispute shall give the Secretary written notice stating the —
 - (a) facts;
 - (b) grounds or basis; and
 - (c) remedy sought.

13 Commencement date of employment dispute

An employment dispute commences from the date the association gives written notice of the employment dispute to the Secretary.

14 Dispute Process: informal

- (1) The Secretary shall, call a meeting with the association within a period of 10 working days of receipt of the notice, discuss the employment dispute with a representative of the association with an attempt to resolve the employment dispute.
- (2) Where the employment dispute is not resolved in discussion between the representative of the association and the Secretary, the Secretary shall, within a period of 14 working days from the date of impasse, forward the written notice of employment dispute with details to the Commission.

15 Dispute Process: formal

The Commission shall, within 15 working days of receipt of notice of an employment dispute, designate an officer to investigate the dispute.

16 Investigation

The designated officer shall —

- (a) commence investigation of the employment dispute, within 7 working days of his designation and meet with the association or their representative and Head of Department; and
- (b) within 15 working days of his investigation, compile and forward a written report to the Commission and association.

17 Determination of dispute

The commission shall, within 20 working days of receipt of the report from the designated officer —

- (a) determine the employment dispute; and
- (b) give a written decision with reasons.

18 Decision served on association

The Secretary shall, within 3 working days of receipt of decision from the Commission, provide the association with a copy.

19 Right of Appeal

- (1) The Association shall have a right of appeal to Cabinet against —
 - (a) any decision of the Commission; or
 - (b) non-compliance by the employer with the procedural requirements of this Part of the Regulations.
- (2) The Association shall file its written appeal with the Secretary within 14 working days of receipt of the decision.

20 Determination of appeal

The appeal shall be determined within 20 working days from the date the appeal was filed with the Secretary.

PART IV - MISCELLANEOUS

21 Notice of participation in industrial action

An employee who intends to participate in industrial action shall give written notice to the Head of Department, no less than 15 working days before participating in industrial action.

22 Remedies - employment disputes

The Commission may in resolving employment disputes under these Regulations —

- (a) maintain, the status quo;
- (b) make appropriate recommendations concerning future behaviour or actions of the parties; or
- (c) give any other appropriate remedy.

23 Sanction

- (1) The breach by an employee of any provision of these Regulations shall constitute a serious breach of discipline and such employee shall be dealt with under the Public Service (Disciplinary Procedures) Regulations.
- (2) Any association or employer who is in breach of these Regulations commits an offence and shall be liable to a fine not exceeding \$5000 for each breach.

- (3) Any fine under this Regulation shall be paid to General Revenue.

Made at Nuku'alofa this 24 day of March, 2006.

Hon. Dr, Feleti Sevele
Acting Prime Minister.