



OMBUDSMAN

SINT MAARTEN

FINAL REPORT

(Article 21 sub 1 National Ordinance Ombudsman)

Complainant: Complainant

Date complaint filed: 13 February 2015

Complaint no.: 2015 00137

Ministry of Ministry of General Affairs

Organization: Personnel and Organization

Department: Personnel and Organization

Department Head: Ms. Christ'l Larmonie

Synopsis of Complaint:

In 2010 Complainant was offered a placement in scale 8.19 as Casino Controller for Country Sint Maarten. According to Complainant, he immediately responded to the job offer by informing Mr. de Weever, Secretary General of the Ministry of TEZVT, that he had been in scale 9 since 1989, and requested that he be placed in the correct salary scale.

Complainant is of the opinion that he has been underpaid, and considers his last two years of service most important as he is now on pension.

Complainant claims that despite writing many letters to different departments within government, to date of filing his complaint with the Ombudsman on 13 February 2015, the situation had not been resolved.

Findings:

By letter dated 20 September 2010 Complainant was offered a placement in scale 8.19 as Casino Controller for Country Sint Maarten.

By letter dated 1 July 2011 (submitted on 8 July 2011) Complainant informed the Prime Minister of what he considered to be an oversight in government administration, reason being that he had been placed in the incorrect salary-scale. In said letter Complainant stated that he had been in scale 9 since 22 February 1989, was then a member of the Island Council, and became a Commissioner. Complainant further claimed that he had contacted Mr. Rudy Richardson and Mrs. Carmen Webb about the matter. Complainant also claimed that he was



OMBUDSMAN

SINT MAARTEN

told that it was a mistake and it would be taken care of.

By letter of 12 September 2012 Complainant brought the matter to the attention of the Minister of Finance. In the letter Complainant claimed that he had been advised by the Personnel Department to write the letter in regard to his pension and the fact that he had held public office as Island Council Member from 1991-1995 and was Commissioner of Health & Sports, and Culture from 1992-1995.

By letter dated 31 January 2014 (stamped by the Department of Records & Information Management on 20 February 2014) Complainant informed the Prime Minister that he was still awaiting an answer to his letter dated 4 July 2011. In said letter Complainant stated that he had been going to the Personnel Department about the matter for two and half years.

On 13 February 2015 Complainant filed a complaint with the Ombudsman as he had not received a response to any of his letters.

On 8 June 2015 a Notification of Complaint (NOC) was sent to the Minister of General Affairs (AZ). The Minister was requested to respond to the NOC within 4 weeks from the date of the letter, however no later than 6 July 2015. The following questions were included in the NOC:

- a. At what point was Complainant's salary-scale changed from 9 to 8?
- b. Why was the change made?
- c. How was Complainant informed of this change?
- What possibilities are there open to Complainant to have the situation resolved?
- When can complainant expect to receive a response to his letters dated 1 July 2011 and 20 February 2014?

By email of 29 June 2015 Ms. Christ'l Larmonie, Department Head of Personnel & Organization requested a two week extension to provide the response to the NOC. Said request was granted.

By email of 9 July 2015 Mr. Luud Hakkens, Section Head of P&O Policies provided the Ombudsman with two '*landsbesluiten*' pertaining to the legal position of Complainant. The '*landsbesluit*' dated 25 August 2011, established Complainant's function within Country Sint Maarten as Casino Controller, salary-scale 8.19.



OMBUDSMAN

SINT MAARTEN

The second '*landsbesluit*' dated 22 January 2014 addressed Complainant's letter submitted on 8 July 2011, requesting that he be placed in the correct salary-scale. The '*landsbesluit*' declined Complainant's request to have his salary-scale changed based on the following:

- By letter dated 30 October 2008, the Government of the former Island Territory Sint Maarten informed all civil servants of the start of the placement process in the new organization. In said letter the civil servants were informed of the 15 November 2008 closing date for the then applicable employment status regulations, and that from that date all claims regarding appointment, promotion, remuneration and evaluations were no longer applicable.

With regard hereto all civil servants were given the opportunity to submit a claim before 15 February 2009; however Complainant did not make use of this opportunity.

- By '*eilandsbesluit*' dated 17 February 2009 Complainant was retroactively appointed to the function of Casino Controller per 1 January 2008. Complainant was placed in the salary-scale 8.17 and received a periodic increase per 1 January 2009 placing him in salary-scale 8.18. Complainant did not object to the appointment. As such the '*besluit*' is inviolable. Said '*besluit*' formed the basis for the placement offer dated 20 September 2010. Complainant did not object to the placement to the former Executive council.
- By National Decree dated 25 August 2011 Complainant was retroactively placed in the new governing structure of Country Sint Maarten per 10 October 2010 according to the placement offer. Complainant did not object to said placement and as such the decree is inviolable.

By email of 10 July 2015 the Section Head of P&O Policies was requested to provide an answer to the questions posed in the NOC dated 8 July 2015 and to provide proof that Complainant had received copies of the '*landsbesluiten*' that were forwarded to the Ombudsman on 9 July 2015.

Since no formal response was received to the NOC, the Secretary General of the Ombudsman sent a reminder to the Secretary General of the Ministry of AZ in a letter **dated 27 July 2015**.

On 7 September 2015 the Preliminary Finding Report (PFR) was sent to Department Head of Personnel & Organization with the following recommendations:

- Provide proof that Complainant received the '*landsbesluit*';



OMBUDSMAN

SINT MAARTEN

- Implement a system to ensure and establish that civil servants receive documents addressed to them.

The Department Head of Personnel & Organization was requested to respond to the findings outlined in the PFR by 21 September 2015.

On 22 September 2015 the Secretary General of the Ombudsman sent a reminder to the Secretary General of General Affairs to respond to the findings and recommendations in the PFR. In the reminder the Department of Personnel & Organization was afforded an additional week until 28 September 2015 to respond to the PFR.

To date of this Final Report, no formal response has been received to the NOC dated 8 June 2015 or the PFR dated 7 September 2015.

On 2 October 2015 Complainant informed the Complaint Officer at the Ombudsman handling the case that he still had not received a response to his inquiries.

Legal Basis:

Pursuant to **article 19 section 1 of the National Ordinance Ombudsman (AB 2010, GT no. 20)**, the Ombudsman is authorized to request from government bodies, civil servants, the complainant, civil servants as experts or witnesses, all information and or documents pertaining to the investigation. The persons mentioned in the aforementioned article are obliged to respond to the request within the time indicated by the Ombudsman, except in cases where the persons can appeal to legal grounds (“*verschoningsrecht*” - see article 19 section 4).

Standard(s) of Proper Conduct:

The Ombudsman investigates whether the behavior of public bodies towards citizens is correct. The applicable standards of proper conduct in this case are *Promptness, Active and adequate information provision and Fair Play*.

Promptness

A public body is expected to be dynamic and as such be decisive and swift in its decision-making. Hence, providing a response or decision within the legal timeframe or at least within a reasonable time is required. When a public body expects citizens to adhere to deadlines, based on the principle of equality the public body should strive to adhere to deadlines



OMBUDSMAN

SINT MAARTEN

provided by law. Not adhering to a legal time frame will undermine the authority of the public body as well as tarnish its credibility with the citizen.

There are acceptable exceptions to the mentioned deadlines. A public body can miss deadline in cases where more information is required to come to a decision. In such cases a public body is required to duly inform the citizen of the delay.

Active and adequate information provision

In the interest of managing the affairs of the citizens, administrative bodies are required to provide adequate information to the public actively and upon request. This implies among others the obligation to answer letters from citizens, sending an acknowledgement of receipt, and an interim notice in case the handling of a request takes longer than anticipated.

That administrative bodies are required to provide adequate information to the public actively and upon request entails on the one hand the duty to provide citizens with information upon request. As well as the duty to inform the citizen on its own initiative about proceedings that have a direct effect on them. Proper information provision creates legal certainty for all.

Fair Play

The principle of Fair Play entails that a public body is expected to allow the citizen the opportunity to express and defend their views and opinions, while also being able to object the position and or point of view of a public body. Thus the behavior of the public body has to attest to openness, honesty and loyalty. A public body should be transparent and cannot prepare covert actions against a citizen. On the contrary a public body is required to actively assist the citizen in utilizing its procedural options. There are various ways to provide the citizen the opportunity to utilize the different procedural options.

Conclusion:

Considering that no reaction was received to the PFR from the Department of Personnel and Organization, the Ombudsman considers the findings up to the submission of the two Resolutions (“*Landsbesluiten*”) to be accurate. However, due to failure to respond to the PFR the Ombudsman could not establish whether the Resolutions were indeed handed to the Complainant.

In 2010 Complainant was offered a placement in scale 8.19 as Casino Controller for Country Sint Maarten. Complainant claims that he immediately responded to the job offer by



OMBUDSMAN

SINT MAARTEN

informing Mr. de Weever, Secretary General of the Ministry of TEZVT, that he had been in scale 9 since 1989, and requested that he be placed in the correct salary scale.

Complainant is of the opinion that he has been underpaid, and considers his last two years of service most important as he is now on pension.

Complainant claims that despite writing many letters to different departments within government, to date of filing his complaint with the Ombudsman on 13 February 2015, the situation had not been resolved.

In response to a request by Complainant submitted 8 July 2011, a Resolution ('*landsbesluit*') dated 22 January 2014 was issued. In said '*landsbesluit*' a detailed explanation was given regarding Complainant's placement in salary-scale 8, which included the steps Complainant could have taken to object to said placement. The Ombudsman however observes that notwithstanding article 19 National Ordinance Ombudsman, no documentation was provided to show that Complainant has received a copy of the '*landsbesluit*'.

The standard of proper conduct *Promptness* requires that administrative bodies provide a response or decision within the legal time frame, or at least within a reasonable period. It took the Ministry of General Affairs two and a half years to respond to Complainant's letter submitted on 8 July 2011, as such the standard of *Promptness* was not observed.

Complainant's last correspondence to the Prime Minister about the situation regarding his placement and salary-scale, dated 31 January 2014 was stamped by the Department of Records & Information Management for receipt on 20 February 2014. If the Resolution dated 22 January 2014 was received by the Complainant, this letter could have been seen as an objection to the Resolution dated 22 January 2014.

In any case Complainant should have been provided a response to his letter dated 31 January 2014. Since the Ombudsman did not receive proof that '*landsbesluit*' was indeed delivered to the Complainant, the Ombudsman concludes that, the standard of *Active and adequate information provision* was not duly observed.

A response to the letter dated 31 January 2014 is still required, either to be handled as a formal objection to the Resolution dated 22 January 2014 providing the Complainant the possibility to appeal a response to the Administrative Court, or an informal letter. The



OMBUDSMAN

SINT MAARTEN

standard of *Fair play* is not observed because of failure to provide a (formal) response to the letter dated 31 January 2014 to the Complainant.

Judgment:

- The complaint that Complainant's inquiries have not been answered is partially founded. Despite the fact the Ombudsman has been provided with a copy of the "*landsbesluit*" addressing Complainant's concerns as presented in the letter submitted on 8 July 2011, no proof has been provided that *landsbesluit* was delivered to Complainant. Moreover Complainant has not been provided with a response to his letter dated 31 January 2015.

- The Department of Personnel & Organization of the Ministry of General Affairs did not observe propriety with regard to the complaint; the standards of *Promptness, Active and adequate information provision and Fair play* are violated.

Recommendation(s):

Considering the above-stated the Ombudsman issues the following recommendations:

- Ensure Complainant is provided a copy of the '*landsbesluit*' dated 22 January 2014 within two weeks to date of the Final Report and send proof of same to the Ombudsman;
 - Handle the letter dated 31 January 2015 as a formal objection to the Decree;
 - That a system be put in place to ensure and establish that civil servants receive documents addressed to them.
-
- o I agree with the recommendation(s)
 - o I do not agree with the recommendations (please explain by submitting a written reaction no later than **6 November 2015**).

The Ombudsman requests a status report on the recommendation(s) within three (3) months from the date of this letter.

Philipsburg, 23 October 2015



OMBUDSMAN

SINT MAARTEN

Dr. R. (Nilda) J.A. Arduin
Ombudsman