

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER the Education Act 1989

IN THE MATTER a charge of serious misconduct referred by a
Complaints Assessment Committee to the
New Zealand Teachers Disciplinary Tribunal

BETWEEN **THE COMPLAINTS ASSESSMENT
COMMITTEE**

Referrer

AND **NGAMETUAANGAI TUAPUTA**

Respondent

DECISION OF TRIBUNAL ON COSTS

Tribunal: Nicholas Chisnall (Deputy Chair)

Hearing: On the papers

Decision: 4 November 2016, but recalled and reissued on 8
November 2016

Representation: Stefan Kaminski as counsel for the Referrer
The Respondent in person

[1] The Tribunal disposed of this matter in a substantive decision dated 30 August 2016. We found that the referrer, the Complaints Assessment Committee (the CAC), had made out its charge of serious misconduct against the respondent and made orders as to penalty. The issue of costs was not addressed at the hearing on 11 August, and we therefore invited the CAC and Secretary to provide schedules of costs to the respondent, along with a copy of our Practice Note on Costs so she could familiarise herself with it. In our decision we invited Ms Tuaputa, who is self-represented, to advise whether she opposed an order for costs. We said that if she wished to argue that costs should not be ordered at all, or that we should depart from the usual 50 per cent quantum discussed in the Practice Note, then we required her to provide us with evidence of her means. We set a deadline of 30 September 2016 for Ms Tuaputa to respond. The question of costs was delegated to the Deputy Chair.

[2] The respondent did not meet the 30 September deadline. After a follow up, the respondent on 12 October sent a very brief email in which she said that she does not have the means to meet “both fees”, which we take to be the full quantum set out in the two schedules. However, she did not provide any evidence regarding her financial position. The respondent said that, should we order costs, she would have to find a fulltime position and make payment in instalments.

[3] We invited the CAC to file a memorandum in response to Ms Tuaputa’s email.¹ It sought the usual 50 per cent contribution from the respondent and Mr Kaminski submitted that, “deviation from the norm [an award of 50 per cent of the CAC’s actual and reasonable costs] should be reflective of the case, not a teacher’s finances”. Further, Mr Kaminski submitted that much of the cost incurred stemmed from the respondent’s “obduracy in trying to deny the undeniable”, and she should not qualify for a reduction as a consequence of that.

¹ The CAC’s memorandum was only brought to my attention after I issued my costs decision on 4 November. This reissued decision takes into account the submissions advanced on behalf of the CAC. I record that I have not altered the order I made in the 4 November decision.

[4] The CAC's total costs amount to \$10,892.94, exclusive of GST. \$9,274 of that figure comprises the calculated costs and disbursements of prosecuting counsel for the CAC, Mr Kaminski.

[5] The Tribunal's costs come to \$5,980, which accounts for members' fees, travel disbursements, venue costs and registrar's fees.

[6] The hearing on 11 August took an entire day, as the CAC's notice of charge contained 10 separate allegations that it alleged separately or cumulatively amounted to serious misconduct. We concluded that the most serious allegation found in particular 1.2 of the notice of charge was proved, and that this constituted serious misconduct in its own right. It is fair to say that the majority of the oral testimony heard focused on this allegation, although there was a significant volume of material contained in the CAC's bundle that related to the remaining particulars. We found three further particulars proved (1.3, 1.7 and 1.10), but did not consider each amounted to serious misconduct in its own right. They lent weight to our overall conclusion that the respondent had committed serious misconduct, however. The CAC conceded it could not make out one particular (1.6) and we found that three were not proved (1.4, 1.5 and 1.11). In terms of particular 1.8 (which was an allegation the respondent's 12 year old son would routinely be present at the ECE centre before and after he finished school), the CAC appropriately conceded during the hearing that it was doubtful the profession would expect a matter of this nature to attract a disciplinary charge. We agreed with that assessment. One particular (1.9) related to behaviour by the respondent that we considered had no bearing whatsoever on her fitness to teach because it dealt with what is best described as a clerical error she made when preparing an invoice for the parent of a child at the ECE centre where she taught.

[7] Therefore, while the CAC made out its case against the respondent, it is fair to say it could have been more discerning in its selection of the particulars to be included in the notice of charge. This might have decreased the length of the hearing and reduced the volume of evidence that we were required to grapple with. To be fair to the CAC, we acknowledge the fact the respondent represented herself at the hearing meant that less focus than usual was brought to bear on identifying the

issue or issues in dispute, which meant she did not take steps to reduce costs.

[8] The usual starting point is to order a 50 per cent contribution towards the three categories of costs described in the Tribunal's Practice Note in favour of the successful party. Here, that is the CAC. However, this is a fact-specific assessment and a fair balance must be struck. In previous cases we have reduced awards of costs from 50 per cent to one-third where we have been provided with evidence by a respondent that he or she is impecunious. Ms Tuaputa, however, has not provided evidence that allows us to conclude her financial hardship reaches that level. We do however take into account the fact her financial position must be difficult given she resigned from her teaching role after the allegations we dealt with were brought to light and she does not currently have a permanent teaching role.

[9] We tend to consider costs awards in percentage terms. However, it is important not to lose sight of the fact that a half share of the overall amount incurred, \$16,872, must represent a very significant sum in the respondent's eyes. I therefore consider the right balance in this case is struck if I order the respondent to pay a sum equating to 33 per cent of the costs incurred by each of the CAC and the Tribunal. This adequately balances the competing considerations, which are that the CAC was successful, but could have streamlined its case; the respondent faced a strong case on the main allegation and did little to aid with the reduction of the costs incurred; but she is of modest means.

[10] I order the respondent to pay \$3,630.93 pursuant to s 404(1)(h) of the Education Act 1989 and \$1,993.33 to the Education Council under s 404(1)(i).



Nicholas Chisnall
Deputy Chair