

UNDER

the Education Act 1989

IN THE MATTER


of disciplinary proceedings pursuant to
Part 10A of the said Act

BETWEEN

**COMPLAINTS ASSESSMENT
COMMITTEE**

Applicant

AND


Respondent

DECISION OF TRIBUNAL

Tribunal:

Kenneth Johnston (Chairman),
Peter Ferris, Graeme Gilbert,
Maraea Hunia and Patrick Walsh

Hearing:

On the papers

Decision:



Counsel:

Gaeline Phipps for the Complainant
(by written submission)

No written submission received by or
for Respondent

Introduction

In this case the New Zealand Teachers Councils Complaints Assessment Committee charges the Respondent with serious misconduct.

The Chairman convened a pre-hearing telephone conference on 6 November 2012 in which Ms Phipps participated for the Complainant and the Respondent participated in person.

At that conference the parties foreshadowed the filing of an Amended Notice of Charge and an Agreed Statement of Facts, and the Chairman made directions for the filing and service of submissions on the basis that the matter would be dealt with on the papers, as it has been.

An Amended Notice of Charge and an Agreed Statement of Facts signed by both parties were filed in due course.

The Amended Notice of Charge particularised the charge of serious misconduct in these terms:

Particulars of Charge

“3. *The Complaints Assessment Committee, pursuant to Section 139AT (3) and/or (4) charges that ..., teacher of ..., behaved in an unprofessional manner amounting to serious misconduct and/or conduct warranting referral to the Disciplinary Tribunal in that while she was a teacher employed at ..., she –*

3.1 *on or about [REDACTED], spoke to a Year 8 student, Miss ... in a way that amounted to psychological abuse and/or was*

conduct that was likely to bring discredit to the profession in that she:

- 3.1.1 said words and/or conveyed sentiments that gave the impression that by reporting her grandparents to CYPS she had done something wrong; and/or*
- 3.1.2 said words intended to convey that ... was a 'naughty girl'.*
- 3.1.3 said words that were likely to make ... feel guilty for what she had done to the effect of "you know your koro loves you", and/or*
- 3.1.4 said words that were likely to have the effect of making ... feel responsible for her grandparents being charged and placed in police custody using words to the effect of "look at what you have done to your koro"; and/or*
- 3.1.5 made ... feel unwelcome at school by saying words to the effect that she had come to school not in school uniform because she wanted to show off the new clothes that had been purchased for her by CYPS.*
- 3.2 communicated with a student for purposes of advancing a personal view on a matter before the courts, not for purposes properly related to teaching.*

- 4. The conduct alleged in paragraphs 3.1 to 3.2 either separately or cumulatively amounts to serious misconduct and/or warranting referral to the Disciplinary Tribunal pursuant to section 139AB of the Education Act 1989 and Rule 9(1)(a), (c), (o) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004, and/or conduct warranting referral to the Disciplinary Tribunal".*

Evidence

As already stated, the evidence was in the form of an agreed Statement of Facts, and we set this out in full:

1. *At all material times, the teacher was employed at*
2. *She is a provisionally registered teacher whose registration is annotated to show that she is subject to conditions following an agreement reached with the Complaints Assessment Committee ("CAC"), a copy of which is annexed to this Agreed Statement of Facts.*
3. *The teacher is related to ... and his partner ... ("the caregivers").*
4. *Those person were at all material times the caregivers and koro for a student in the teacher's class,*
5. *At all material times, ... was a Year 8 student aged either 11 or 12 (she is now aged 13).*
6. *On [REDACTED], ... and her two siblings were uplifted from the care of Mr ... and Ms ... following allegations of abuse.*

7. *The children were placed in the care of the Children, Young Persons and Their Families Service.*
8. *On or about [REDACTED], ... returned to the Kura and was in the Respondent's class.*
9. *On arrival in the classroom, the Respondent observed ... playing around including having given one of the boys a plastic headband from her head. She said that "her stomach felt sick". She immediately told ... to remove her lipstick, finger polish and earrings and that she needed to have her uniform on for the next day.*
10. *The Respondent was angry that ...'s koro had been charged and angry with*
11. *The Respondent then proceeded to have her usual Monday morning round-table meeting. She asked the children in the care of the caregivers in the presence of the others how they felt about what had happened.*
12. *She also asked them if they felt they could get everything they wanted now, referring to the CYPS's clothes.*
13. *When asking these questions, the Respondent acknowledges that from her experience of ... she regarded her as someone who had stolen and lied to people, and felt annoyed that she had been put in the situation of having ... in her class.*

14. *The Respondent's intention with the meeting was to let the students air what was happening and then it would be over.*

15. *The Respondent described what happened in the class when interviewed the next day. A copy of the notes of interview are annexed and marked with the letter "A".*

16. *The Respondent says that she found the situation she had been put in by the Kura in having ... in her class as being provocative. This was set out by her in a statement she made, received on 31 May 2011, annexed and marked with the letter "B".*

17. *The Respondent accepts that she:*
 - "3.1.1 said words and/or conveyed sentiments that gave the impression that by reporting her grandparents to CYPS she had done something wrong; and/or*

 - 3.1.2 said words intended to convey that ... was a "naughty girl".*

 - 3.1.3 said words that were likely to make ... feel guilty for what she had done to the effect of "you know your koro loves you", and/or*

 - 3.1.4 said words that were likely to have the effect of making ... feel responsible for her grandparents being charged and placed in police custody using words to the effect of "look at what you have done to your koro", and/or*

 - 3.1.5 made ... feel unwelcome at school by saying words to the effect that she had come to school not in school*

uniform because she wanted to show off the new clothes that had been purchased for her by CYPS.

- 3.2 *communicated with a student for purposes of advancing a personal view on a matter before the courts, not for purposes properly related to teaching."*
18. *The Respondent has at all times recognised the inappropriateness of what she did. Annexed and marked with the letter "C" is a copy of a letter she sent to the CAC addressing this.*
19. *The grandparents pleaded guilty to assaults on ... and were sentenced to five months home detention.*
20. *The CAC attempted to resolve the matter by agreement. A copy of the CAC's proposed agreement is annexed and marked with the letters "D" respectively.*
21. *The matter was not able to be resolved in this way because the maker of the report did not agree."*

At this stage, we need say nothing more as to the factual background.

Submissions

For the Complainant, Ms Phipps began her submissions by reiterating the terms of the charge and referring us to the Agreed Statement of Facts. As to the latter, she said:

What is admitted can be encapsulated as being that, when teaching children who were in CYPS care due to abuse, the Respondent conducted herself that was in a way that was intended to or was likely to cause the children to feel that their allegations were not believed in that they had acted wrongly for their part in having the matter reported to CYPS.

That seems to the Tribunal to be a fair summary of the position.

Ms Phipps then referred us to a number of earlier cases decided by the Tribunal. As she said, there is no case precisely on point, but the Tribunal has made it clear (in cases such as NZTDT 2006/5 and NZTDT 2012/11) that it regards psychological abuse of school children by teachers very seriously indeed.

Ms Phipps then identified what she submitted were aggravating features of the case. She referred in particular to the fact that the Respondent's behaviour contradicted various aspects of the New Zealand Teachers Council Code of Ethics, and concluded this aspect of her submission by saying that:

Overarching the Code of Ethics is the requirement contained in section 139AA of the Education Act 1989 which entitles all learners to be in a classroom where safe and effective learning takes place. It is submitted that by confronting the students as she did, there was a fundamental failure to ensure that the classroom was a safe place for students who were particularly vulnerable.

Ms Phipps then went on to identify what she submitted was a mitigating feature of the case, namely the Respondent's admission of her wrong-doing as set out in the Agreed Statement of Facts and the attachments thereto.

Turning to penalty, Ms Phipps informed the Tribunal that the Complainant had attempted to resolve this case by reaching agreement with the Respondent to the imposition of a censure, and went on to say that her instructions were to indicate that the Complainant still regards that as an appropriate outcome. Having said that, she acknowledged that the Tribunal is obliged – as of course it is – to reach its own conclusion about the appropriate outcome.

For her part, the Respondent did not make a formal submission to the Tribunal. However, attached to the Agreed Statement of Facts was a copy of the submission she had made to the Complainant at an earlier stage in the matter, and it seems appropriate to set this out in full:

"Tena koe e te Rangatira o te Kaunihera,

*Ko... ahau, no... taku kainga noho. My name is ... and I live in
Thank you for giving me a second change to reply.*

I have attached three letters and my Curriculum Vitae for your information. Two of the letters were written at the time of the investigation and the third is my plead to the CAC.

I am a mother of three boys, two daughter-in-laws, and a nanny of seven grandchildren. I bought the boys up with the help of my family. I was a solo mum on a benefit for 18 years and when my last son was at high school I knew that something had to be done about my future. I studied at Massey University and graduated in 2001. Prior to this I was a teacher aide and I am a tutor for the waiata-a-ringa (action song) waiata tira (choir) and poi.

Today I make this statement knowing clearly that other strategies could have been put in place. I believe my case was not fully and fairly addressed by the Tumuaki or the Commissioner. I was not given full support between myself and the Tumuaki and NZEI kaupapa there was no consultation between myself and the Tumuaki and whanau support. I was suspended straight away and isolated from any Kura whanau contact and support. I was isolated from colleagues and the Tumuaki wiped her hands of me. I was handled in a manner which took my mana and dignity away and thrown in the gutter.

I was not given the opportunity to attempt to deal with the complaint by being heard in a Maori context and manner. This related to a meeting being held on a marae, face to face engagement (kanohi ki te kanohi), no opportunity for whanau support for all involved and no advice and guidance from kaumatua and kuia- for all involved. This strategy could have been used. The procedure could have been a meeting with my dad and I, ... and her guardian, the police man who put in a complaint to Cyfyps, the Tumuaki, the commissioner and staff and a facilitator. This was not the case.

Instead I was interrogated by the policeman in the Tumuaki's office in front of my peers and made to feel like a dishonest, cruel, unbelievable idiot. I was shattered. Upon all this the threat from the policeman was "I don't believe you, you lie, but I will not be laying any charges just writing a letter of complaint to Cyfyps and the teacher's council and the Tumuaki." I believe both the Tumuaki and Commissioner do not know what Kura 'kaupapa' they are following. (Te kura o NgaRuahineRangi is a Kura Maori but since the insertion of the commissioner and a new Tumuaki the kura is following main stream kaupapa because of the ignorance of the commissioner in things Maori and the naivety of the Tumuaki). They saw me as troublesome and took me out of the equation as fast as they could.

If the intention was to crush me then it happened.

I told a young girl off for putting her grandfather through hoops. I am not guilty of anything but telling a young girl off. I know I could have handled the situation between ... and myself with less pressure and more empathy for her. At that time I had none. ... is part of my whanau, her grandfather and I are cousins from Northland. That in Maoridom gives me a say in her life.

Professionally I didn't act appropriately under the values of the teaching profession. I apologise for this. I would have also apologised to ... if I was given the opportunity. I have apologised to her grandfather for behaving like a 12 year old at the time. Please give me the benefit of the doubt.

I thank you for your letter once again. I apologise for not being able to attend the meeting kanohi ki te kanohi.

Ma te Atua koutou e manaaki e tiaki hoki e nga wa katoa.

Kia pai to ra, ..."

Discussion

This is not a case in which the Tribunal has found it easy to reach a conclusion as to the appropriate outcome.

At the outset, we state that we have unanimously, and without great difficulty, reached the conclusion that the Complainant has made out its case of serious misconduct. The agreed facts establish beyond question that the Respondent was – and knew she was – dealing with a vulnerable child. Against that background, her treatment of the child was abusive.

That is quite enough in our view to justify the allegation of serious misconduct, as it not only amounted to a potential breach of s.139AA of the Education Act 1989 by rendering the school environment one in which the child would inevitably felt unsafe, and therefore detracted from the possibility of effective teaching and learning, but also constituted serious misconduct in terms of s.139AB because the Respondent's actions adversely affected or were likely adversely to affect the well-being or learning of the student and reflect adversely on her fitness as a teacher, and breached rule 9(c) and (o)

New Zealand Teachers Council (Making Reports and Complaints) Rules 2004.

Additionally, as Ms Phipps submitted, this Respondent's actions breached a number of aspects of the New Zealand Teachers Council Code of Ethics, most particularly that aspect of the Code which provides that the primary professional obligation of teachers is to teach and nurture the capabilities of students by developing and maintaining professional relationships with students which are in the best interests of those students.

We would add that in a country struggling with issues of child abuse, and in which all right-thinking citizens must be shocked by publicly available statistical information about child abuse, it is nothing short of unforgivable for a teacher of young children, ignorant as she undoubtedly was of the background details of the matter, to convey to a child that she did not believe what that child has reported to the proper authorities and that she regards the child as having acted wrongly in doing so.

We regard it as an additional aggravating feature of this case that, in seeking to justify or explain her actions to the Complaints Assessment Committee, the Respondent drew attention to the fact that she had familial relationships with the student and the caregivers about whom the complaint had been made and they sought to draw on those relationships to suggest that she had some right of intervention justified by Maori cultural values. We have said in previous cases, and we say again, in the clearest terms that we can, that the law governing the education of children in this country, and the relationships between registered teachers and students in our educational institutions, is governed by the Education Act 1989 and related subordinate legislation, and the principles that have been developed by the courts. Those principles – such as that outlined in s.139AA – apply to every teacher and every student in New Zealand. Appeals to cultural values of particular groups within our multicultural society cannot be allowed to interfere with those fundamental principles.

We repeat that we are entirely satisfied that the Complainant has made out its case of serious misconduct, and see very little in the way of mitigating

features of this case, aside from the point which Ms Phipps very fairly makes that the Respondent has cooperated in the process of bringing the matter on for hearing.

As to penalty, we note that the Complainant seeks only a censure.

As we are obliged to, we have considered the question of penalty against the background of the primary purposes of professional disciplinary proceedings, namely the protection of the public (most especially students), the maintenance of professional standards and punishment (bearing in mind that the punishment must be appropriate to the circumstances and must have regard to issues of rehabilitation where they are relevant). We have considered the entire range of penalties available to us in this case, and considered in some detail the minimum penalty that we can impose having regard to the proper discharge of our obligations as explained.

We should say that we have given serious consideration to the de-registration of the teacher, or the suspension of her practising certificate.

However, in the end, partly as a result of the position taken by the Complainant, and partly because of a sense that emerges out of the evidence before us that this Respondent has – however grudgingly, and however slowly – come to understand the extent to which she has crossed professional boundaries, found ourselves able to accept that a censure together with the imposition of conditions on the Respondent's practising certificate, is an appropriate outcome.

Conclusion

The Tribunal's decision is as follows:

1. Pursuant to s.139AW(1) (b) of the Education Act 1989, the Tribunal censures the Respondent for her serious misconduct.

2. Pursuant to s.139AW(1)(c), the Tribunal imposes the following conditions on the Respondent's practising certificate:

- 2.1 that she is to advise the New Zealand Teachers Council's Manager, Teacher Practice, if she changes her employment or ceases to practise as a teacher;
- 2.2 that should she change her employment she is to notify the New Zealand Teachers Council's Manager, Teacher Practice of the contact details of any new employer;
- 2.3 that she will provide her current employer and any new employer with a copy of this decision;
- 2.4 That she is to provide the New Zealand Teachers Council's Manager Teacher Practice, within a month of the date of this decision, with the name, qualifications and experience of a senior teacher who is prepared to mentor her, and confirmation that that mentor has reviewed this decision including these conditions;
- 2.5 That she is to provide the New Zealand Teachers Council's Manager Teacher Practice within two months of the date of this decision, with a plan to specifically address:
 - a) professional boundaries with students;
 - b) the appropriate use of cultural norms in a school setting and;
 - c) the ethical conduct expected of a registered teacher.

Kenneth Johnston
Chairman

NOTICE

1. A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 139AU (2) or 139AW of the Education Act 1989 may appeal to a District Court.
2. An appeal must be made within 28 days of receipt of written notice of the decision, or within such further time as the District Court allows.
3. Subsections (3) – (7) of section 126 apply to every appeal as if it were an appeal under subsection (1) of section 126.

