

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:

8 May 2013

Counsel:

Adam Lewis for the Complainant
(by written submission)
No submissions filed by or for
Respondent

Introduction

By Notice of Charge dated 6 August 2012 the Complainant charges the Respondent with serious misconduct, that charge being particularised in the following terms:

“Particulars of Charge

3. *The Complaints Assessment Committee, pursuant to Section 139AT(4) charges that ..., teacher of ..., behaved in an unprofessional manner amounting to serious misconduct under (Rule 9(1)(b)(e)(o) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004 and/or conduct warranting referral to the Disciplinary Tribunal in that while he was a teacher employed at ... College, he engaged in inappropriate conduct including having an inappropriate relationship with a student in that he:*

3.1 *picked a female student up out of school hours;*

3.2 *took her to a park;*

3.3 *got into the back seat with her;*

3.4 *discussed personal matters with her;*

3.5 *engaged in sexual activity with her.*

4. *The conduct alleged in paragraphs 3.1 to 3.5 either separately or cumulatively amounts to serious misconduct pursuant to section 139AT of the Education Act 1989 and Rule 9(1)(b), (e), (o) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004, and/or conduct warranting referral to the Disciplinary Tribunal.”*

Prior to a scheduled pre-hearing telephone conference which was to take place on 6 December 2012, counsel for the Complainant, Mr Lewis, and the Respondent filed a Joint Memorandum. The substance of the Memorandum was to the effect that the charge brought by the Complainant was not to be defended by the Respondent and that he had “... given up teaching.” On that

basis, the parties requested that the matter be dealt with on the papers, and indicated that an agreed Summary of Facts would be filed.

The Chairman issued a Minute dated 6 December 2012 confirming that the matter would be dealt with on the papers and making directions for the filing of the agreed Statement of Facts and submissions by both parties.

Evidence

An agreed Statement of Facts dated 1 March 2013 and signed by or for both the parties was duly filed. It was in the following terms:

"May it please the Tribunal:

- 1. The Complaints Assessment Committee ("CAC") and the Respondent have agreed to the following Summary of Facts.*

Introduction

- 2. The Respondent is a fully registered teacher (registration number ...). His practising certificate expires on [REDACTED].*
- 3. By letter dated 24 April 2012, the Principal of ... College sent a mandatory report regarding the Respondent to the New Zealand Teachers Council. The mandatory report indicated that the Respondent was found by Police in a compromising position with a student of the College. A Police report dated 2 April 2012 was*

*annexed to the mandatory report, and a copy is **attached** to the Summary of Facts.*

- 4. A CAC was appointed to investigate the mandatory report. Following the investigation, the CAC resolved to lay a notice of charge alleging serious misconduct.*

Evidence of 9 April 2012

- 5. The Respondent was a Year 8 home-room teacher at ... College. He taught the student (■) when relieving for a teacher on maternity leave from May to December 2008. The Respondent also knew ■ was a student at ... College when he attended an annual Year 8 camp with ■ in 2008. The Respondent was employed at ... College from May 2008 until April 2012.*

- 6. On 9 April 2012, a Police patrol vehicle observed a vehicle parked at ... in A Police officer approached the vehicle and noticed a male in the left-hand back seat. The Police officer observed the Respondent had his jeans and underwear pulled down to his knees, and his genitals were exposed. The Respondent appeared to pull up his trousers. ■ was lying down on the right-hand side of the back seat with her legs facing the Respondent. When asked what he was doing the Respondent advised the Police that they had gone to ... to talk about family problems. He denied that he and ■ had been doing anything wrong as ■ was 16 years of age. The Respondent said that he had touched ■ breasts but they did not have sex.*

- 7. The Respondent also advised the Police that he was a family friend of ■ family and that he often picked ■ up after school*

and dropped her off at any place that she needed to go.

- 8. The Respondent advised the Police that he had been [REDACTED] teacher since she was 12 years old.*
- 9. [REDACTED] was spoken to by Child Youth & Family in relation to the events of 9 April 2012. [REDACTED] said that the relationship did not commence sexually until after she was 16 years of age. She refused to make any statement or make any complaint regarding the Respondent.*
- 10. When the Respondent was interviewed by the Police, he advised that [REDACTED] had been confiding in him since she was 14 years of age. He said nothing sexual had happened until the day they were caught in the car. He also stated that they did not have sexual intercourse that day in the car, and had never had sexual intercourse. No Police action was taken on the matter as no criminal offences were disclosed.*
- 11. The Respondent advised the Teachers Council, in response to the mandatory report, that on 8 April 2012, he had a chance meeting with [REDACTED] at the ... Shops. She had indicated to him that she was thinking of leaving school. He suggested to [REDACTED] that she should stay at school, and that they should meet the following day to discuss the matter. The Respondent said [REDACTED] texted him on 9 April, and the Respondent picked her up in his car after school. The [REDACTED] drove to the ... Shops and then to The Respondent said that [REDACTED] and the Respondent moved to the back seat of the car, and talked about whether she should leave the school. They then*

began touching each other, and when the Police knocked on the door the zipper of his trousers was undone.

12. The school had two full-time guidance counsellors, who are members of the New Zealand Association of Counsellors. The school has no record of ■ or the Respondent approaching the counsellors to discuss issues ■ was having at home, or that she intended leaving school.

13. Following the investigation by the Board of Trustees, the Respondent was dismissed from the school without notice effective from Friday 20 April 2012.

14. The Respondent accepts that his actions gave the Board of Trustees little option but to dismiss him, and that his behaviour on the day in question was unacceptable. He accepts that he put a young student at risk and in doing so damaged the reputation of the school and the wider teaching profession. He is deeply remorseful for what he did, and wishes to offer an unreserved apology to the student, her parents and the school.

15. The Respondent accepts that the conduct alleged in the Notice of Charge, and the particulars in paragraphs 3.1 to 3.5 are correct, and amount to serious misconduct and/or conduct warranting referral to the Disciplinary Tribunal pursuant to section 139AB of the Education Act 1989 and Rules 9(1)(b), (e) and (o) of the New Zealand Teachers Council (Making Reports and Complaints) Rules 2004.

The Tribunal need say nothing further at this stage about the factual background.

Submissions

For the Complainant, Mr Lewis submitted that on the basis of the factual situation as described in the agreed Statement of Facts and the Respondent's admission of serious misconduct, the only real issue in the case was one of penalty and he turned to that. The Complainant's submission is that on any view of the charge it calls for the cancellation of the Respondent's registration, more especially having regard to the fact that the Complainant has indicated that he does not resist that course. In making that submission Mr Lewis reminded us of the primary purposes of professional disciplinary proceedings, those being the protection of the public, the maintenance of professional standards and punishment (having regard to the circumstances of the case and where appropriate rehabilitation). We would add that the Tribunal is obliged to consider all available options before determining the outcome in any case, and identify the least punitive option consistent with discharging our responsibilities as already outlined.

On the Complainant's behalf Mr Lewis sought costs, noting in doing so the Respondent's level of cooperation with the investigation and the disciplinary proceeding generally.

The Respondent elected not to make any formal submission.

Discussion

This is serious case. The Tribunal has now said in a number of cases that any form of sexual relationship between a teacher and a student (irrespective of whether the student has attained the age of consent (16) and therefore whether the relationship constitutes a criminal offence) is unacceptable.

An aggravating feature of this case is that on the Respondent's own admission, the student here was in a vulnerable emotional state.

The only redeeming feature of the case from the Respondent's point of view is that he does appear to have cooperated with the Complainant's investigation and recognised the unacceptable nature of his behaviour.

As to penalty, the Tribunal has, as it is obliged to do, considered all the options available to it. In the end, however, particularly bearing in mind the Respondent's apparent acceptance that he has no future as a teacher, the conclusion we have reached, without great difficulty, is that the least punitive outcome that we can impose and at the same time discharge our obligations to the public and the profession is de-registration.

No argument having been advanced to the contrary, we propose to award costs to the Complainant on the usual basis

Conclusion

The Tribunal's formal Orders are as follows:

- (a) Pursuant to s.139AW(1) (b) of the Education Act 1989, the Tribunal formally censures the Respondent for his serious misconduct;

- (b) Pursuant to s.139AW(1) (g) the Tribunal orders the Respondent's deregistration;
- (c) Pursuant to s.139AW(1) (h) and (i), the Respondent is to pay to the Complainant 50% of its actual and reasonable costs in connection with this matter. The Chairman is authorised to determine quantum on receipt of memoranda, if that cannot be agreed by the parties.

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.