

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

UNDER

the Education Act 1989

AND

IN THE MATTER

of disciplinary proceedings commenced
by the Complaints Assessment
Committee of the New Zealand
Teachers Council

BETWEEN

**COMPLAINTS ASSESSMENT
COMMITTEE**

Complainant

AND

[REDACTED]

Respondent

DECISION OF TRIBUNAL

Tribunal:

Kenneth Johnston (Chair), Peter Ferris,
Graeme Gilbert, Maraia Hunia, and
Patrick Walsh

Hearing:

On the papers

Decision:

[REDACTED]

Counsel:

James Johnston for Complainant (by
written submission)

No submissions by or for Respondent

Introduction

By Notice of Charge dated 16 July 2012, the Complainant charges the Respondent with serious misconduct. The Notice particularises the charge in the following terms:

“Particulars of Charge

3. *The Complaints Assessment Committee, pursuant to section 139AT(3) and/or 139AT(4), charges that on or about [REDACTED] the teacher assaulted a Year 9 student in his Year 9 class. The conduct amounted to serious misconduct and/or conduct warranting referral to the Disciplinary Tribunal.”*

The Chairman convened a first pre-hearing telephone conference on 6 November 2012. The Complainant was represented at that conference by Mr Johnston. The Respondent took no part. After discussing the matter with Mr Johnston the conference was adjourned, and a further conference took place on 20 November 2012. Again, Mr Johnston participated in that conference for the Claimant and the Respondent took no part. At the conclusion of that second conference, the Chairman set the matter down for hearing and made directions for the filing and service of evidence and submissions as necessary.

Evidence

Ultimately, the evidence was put before the Tribunal in the form of an Agreed Statement of Facts, signed on behalf of the Complainant by Mr Johnston and by the Respondent. We set this out in full.

"STATEMENT OF FACTS"

1. *Mr ... was employed as a teacher at ... College in 2011 and taught there for two (2) weeks at the time of the incident that has been referred to the Disciplinary Tribunal.*
2. *He is a fully registered teacher. Graduating from [REDACTED]
[REDACTED]*
3. *On or about 30 June 2011 (Thursday, 6th period, approximately 2.30 – 2.45pm) Mr ... was teaching a year 9 class at ... College.*
4. *Whilst so doing an incident occurred between Mr ... and a year 9 student, who will be referred to as S in this document.*
5. *S was known by staff as being a student with behaviour and learning challenges who exhibited Attention Deficit Hyperactivity Disorder (ADHA) symptoms.*
6. *During class on 30 June 2011 (Maths Class) S was disrupting the class by making distracting noises and gestures.*
7. *In response to S's behaviour Mr ... repeatedly asked S to be quiet. S continued disrupting the class and Mr ... cuffed S across the top back of his head 4 or 5 times.*

8. *Another year 9 student F, the cousin of S intervened, to stop the assaults knocking Mr ... to the ground. F used a kick boxing technique and kicked Mr ... from behind to his knees, thighs and rib cage.*
9. *Following the incident, S and F left the class room and the school grounds.*
10. *Mr ... settled the classroom. He then immediately reported the incident to the school Principal.*
11. *Mr ... reported that he did wrong. He said that the student pushed him to the limit.*
12. *The incident is the first incident of its kind to have occurred in Mr ...'s 34 years of teaching.*
13. *On or about 11 July 2011 Mr ... resigned from ... College.*
14. *A mandatory report was made to the Complaints Assessment Committee (CAC) on 9 August 2011.*
15. *Following the mandatory report the CAC made various attempts to meet with Mr ... including instructing a private investigator without success. Various correspondence was sent to an address where Mr [REDACTED] was no longer residing.*

16. *All attempts were unsuccessful resulting in the CAC referring the matter to the Disciplinary Tribunal.*
17. *Mr ... wrote to the Counsel acting for the New Zealand Teachers Association (NZTC) by letter dated 7 September 2012. In this letter Mr ... states that he informed the Case Coordinator for the New Zealand Teachers Council about his change of address in May 2012 by telephone.*
18. *Mr ... has expressed his remorse and regret and does not want to assemble a defence campaign and wishes to abide the decision made.*
19. *Mr ... otherwise has an unblemished teaching record."*

Attached to that Agreed Statement of Facts, as the document indicates, was a statement made by the Principal of the College at which the Respondent formerly taught, together with copies of statements made by the students involved.

The Principal's statement was in the following terms:

"STATEMENT OF ..., PRINCIPAL OF ... COLLEGE

1. *I, ... am the Principal at ... College,*

2. *In 2011 Mr ... was employed as a teacher at ... College and had taught there for two (2) weeks at the time of the incident that has been referred to the Disciplinary Tribunal.*
3. *Mr ...'s role was as a long-term reliever. It was a fixed term of 0.5 for one term.*
4. *I confirm that the incident happened on or about 30 June 2011 and that Mr ... was teaching year 9 maths class at ... College.*
5. *I attach a copy of the Statement taken from the year 9 student involved who will be referred to as S in this document on 30 June 2011, along with a statement taken from another student who witnessed events, who I will refer to as F, also taken on 30 June 2011 for the Tribunal's information and marked as A and B respectively.*
6. *Immediately following the incident Mr ... came into my office and reported what he had done. He was obviously upset and reported that he had done wrong and had hit a student. He admitted back-handing and open-handing the student four or five times. He said the student had pushed him to the limit.*
7. *Mr ... was placed on special leave until this matter was to be dealt with. He agreed with that and then on 4 July 2011, tendered his resignation which I accepted on behalf of the Board.*
8. *I can confirm that there had been absolutely no history regarding classroom management by Mr ... prior to this incident.*
9. *In terms of Mr ...'s background prior to being employed by me as a long-term reliever, I confirm that I phoned the Principal who had employed him previously. This was Mr ...'s brother who had taken him under his wing and who he worked for previously. I was told that he was a brilliant maths teacher at junior level. In the short time that he was at ... College, the school was abuzz with the maths he was teaching and how he was engaging the students. In particular Mr ... used the local environment, used a different style with the kids and it was very effective. They really liked him as a maths teacher.*

10. *Mr ... was at home in the bush. He would regularly join the children on camps and use the bush to teach science and maths. The children would really concentrate and enjoy the experience. Mr ... would also show them the health remedies of certain plants and would switch from one subject to another quite easily, for example telling them about photosynthesis. The children would take it all in and could repeat it back to you afterwards.*
11. *In my view Mr ... not only immediately realized that he had done wrong, but also admitted this from the outset. He agreed to be stood down and resigned a couple of days later.*
12. *Whilst the assault cannot be condoned, there are factors which can help to provide some explanation as to what may have triggered this out of character response from Mr*
13. *The year 9 student involved, S, has never been an easy student. S has had counselling and had come back and had been "a pain", however Mr ... chose to keep him in the class. He was making helicopter sounds and had been asked by the teacher to stop. Whilst he stopped for a couple of seconds, he then continued. This was observed by the Deputy Principal. As soon as the Deputy Principal went out of the class, S continued. This type of behaviour even got the class to the point where they asked S to be quiet as well.*
14. *Mr ... is a male Maori teacher who is brilliant at maths and science with innovative teaching methods that really resonate with our kids. It would be a shame to see such talent go to waste, particularly when with the appropriate assistance, measures could be put in place to ensure that this out of character action does not happen again, and enable Maori students in particular to benefit from Mr ... strengths in teaching maths and science."*

We do not think it is necessary to refer to the statements of the students, beyond saying that they supported the description of the background contained in the Agreed Statement of Facts.

Submissions

In his careful and helpful submissions, Mr Johnston began by taking us through the factual background, very fairly emphasising the aspects which might be said to be aggravating and mitigating.

As to the law, Mr Johnston's submission was that the Respondent's behaviour unquestionably amounted to serious misconduct "*... being the physical abuse of a child or young person. It is submitted that it was conduct that was not only likely to adversely affect the well-being of the student in question and those who observed the conduct, but also that it was conduct that reflects adversely on the teacher's fitness to be a teacher.*"

In the Tribunal's view, that submission is unanswerable.

Mr Johnston then turned to the question of penalty. He reminded us of the principal purposes of professional disciplinary proceedings, those being the protection of the public, the maintenance of professional standards, punishment (bearing in mind that the punishment must be proportionate and that rehabilitation must be considered where appropriate). In this context, he referred us to *Patel v Complaints Assessment Committee* (unreported), High Court, Auckland, Lang, J, 13 August 2007. He also reminded us of the Tribunal's obligation to consider the least punitive outcome necessary to discharge our responsibilities as already outlined.

Mr Johnston then referred us to a number of our previous decisions which have some relevance in the sense that they deal with physical abuse by teachers of students, and we have considered all of those cases.

Mr Johnston correctly submitted that this is a case in which the Tribunal will inevitably have to consider the possibility of deregistration, and he identified a number of factors which might be thought to support an outcome including deregistration.

However, his submission was that deregistration was not an inevitable or even necessary outcome in this case because of what he referred to as a series of mitigating factors. We summarise these as follows:

- This was a first “offence” and appears to have been out of character;
- The Respondent reported the incident immediately, showing immediate remorse and recognition of the seriousness of his actions;
- The Respondent resigned from his position and has voluntarily agreed not to teach pending the outcome of this process;
- The Principal’s level of support for the Respondent is evident from her statement;
- In the Complainant’s view at least, the Respondent may well respond to appropriate guidance and assistance;
- The Respondent has co-operated fully with this disciplinary process (albeit that he has not made a direct submission).

Mr Johnston’s submission in this regard was as follows:

"In light of these mitigating factors and in all the circumstances as set out, it is submitted that a penalty short of deregistration may be appropriate. It is Counsel for the CAC's submission that there is merit in considering a penalty such as that the Respondent be censured and that conditions be imposed on [his] practising certificate."

Mr Johnston then went on to suggest a series of possible conditions, effectively designed to assist the Respondent in managing his anger should a similar situation arise in the future.

Discussion

Any case which involves a teacher losing control of himself to the point of attacking a student is by definition serious, and the Tribunal agrees with Mr Johnston's submission that, on the face of it, the question of whether the teacher should be allowed to continue to teach in New Zealand schools is a live one here.

That said, the Tribunal acknowledges that the Complainants submission is that this is a case in which there are extraordinary circumstances.

Foremost amongst these are the teacher's hitherto unblemished record, the fact that this incident seems to have been entirely out of character and the responsible way in which the Respondent appears to have reported the incident, acknowledged his wrong-doing and taken responsibility. Those considerations in themselves give the Tribunal a degree of confidence that this incident is unlikely to reoccur.

On balance, we are persuaded that we can discharge our primary responsibilities to the public and the profession without ordering this Respondent's deregistration, and by and large we are inclined to accept the submission made on the Complainant's behalf by Mr Johnston as to the most appropriate outcome. In short we have reached the view that although this case undoubtedly involves serious misconduct, the least punitive outcome that we can impose is to censure the Respondent and impose a series of conditions on his practising certificate of the sort suggested by the Complainant.

On the Complainant's behalf Mr Johnston sought costs and provided a schedule of the Respondent's actual costs which amounted to \$9,957.94. The Tribunal's usual practise is to award costs to the successful party of half of that party's actual and reasonable costs. We see no reason for thinking that the Respondent's costs are anything other than reasonable, and, as no submission has been made to us to the contrary, we intend to adopt the usual course.

Decision

1. Pursuant to s.139AW(1)(b) of the Education Act 1989, the Tribunal censures the Respondent for his serious misconduct;
2. Pursuant to s.139AW(1)(c), the Tribunal imposes the following conditions on the Respondent's practising certificate for a period of three years:
 - (a) The Respondent being referred to and successfully completing a suitable non-violence/anger management Programme to be approved in advance by the staff member responsible for monitoring at the New Zealand Teachers Council ("the Programme").

(b) The Programme could address issues including:

- i. Why the Respondent acted in the violent and inappropriate way that he did when faced with challenging behaviour on 30 June 2011.
- ii. How the Respondent can better control his behaviours and mood so as to make better and appropriate professional judgments in the future.
- iii. How the Respondent can take charge of situations in a professional and non-violent way so as to mitigate against potential risks regarding the safety of children.
- iv. How the Respondent can address triggers in himself that cause him to react to student behaviour unprofessionally.

(e) The Respondent reporting to the New Zealand Teachers Council upon successful completion of the Programme.

(f) The Respondent providing a reflective statement to the New Zealand Teachers Council at the end of every term providing evidence that the Respondent has implemented the outcomes of the Programme by providing written examples where the Respondent has managed difficult students and difficult situations.

(g) That a registered teacher approved by the New Zealand Teachers Council be appointed to act as the Respondent's mentor to particularly assist the Respondent with ongoing critical reflection of his conduct and to assist the Respondent to manage student behaviour to the standard expected of a fully registered teacher.

(h) In order to put in place safeguards to ensure that children under the Respondent's care are in a safe learning

environment, when the Respondent is employed as a teacher, the Respondent's mentor is to provide reports at the end of each term informing the CAC about the Respondent's progress.

- (i) If the Respondent returns to employment as a teacher the Respondent is to notify his employer of these conditions and provide his employer with permission to immediately inform the CAC if there are any concerns about the Respondent's mental and/or emotional wellbeing or stability that could impact on the safety of students in the Respondent's care.
- (j) That the Respondent provides a letter of apology to the victim. This letter is to be submitted to the New Zealand Teachers Council for approval.

- 3. Pursuant to s.139AW(1)(h) and (i), the Respondent is ordered to pay the Complainant's costs in the sum of \$4,978.97.

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.