

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018/61

UNDER the Education Act 1989

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

BETWEEN **THE COMPLAINTS ASSESSMENT COMMITTEE**

AND **CARMEN ROSE QUINNELL, registered teacher, teacher registration 249544**

Respondent

DECISION OF NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

HEARING: 19 March 2019 (on the papers)

TRIBUNAL: John Hannan (Deputy Chair), Kiri Turketo, Simon Williams

DECISION: 9 October 2019

COUNSEL: N Tahana and TTH Hullena for Complaints Assessment Committee
No appearance for Respondent

Introduction

1. By Notice of Charge dated 14 September 2018 the Complaints Assessment Committee (CAC) charges that the respondent has engaged in serious misconduct and/or conduct otherwise entitling the Disciplinary Tribunal to exercise its powers.
2. The particulars of charge are that the respondent provided medical certificates to the principal of Hawera intermediate school, which are false and/or for which she forged the signatures. These are dated:
 - (a) 6 September 2016; and/or;
 - (b) 20 October 2016; and/or
 - (c) ©31 October 2016; and/or
 - (d) 12 February 2017; and/or
 - (e) 27 February 2017.
3. The CAC alleges that as a result of providing false and/or forged medical certificates the respondent received paid sick leave and therefore gained a financial advantage from the false or forged medical certificates.
4. The CAC alleges that this amounts to serious misconduct pursuant to section 378 of the Education Act one 1989 and Rule 9 (1) (h) and/or (n) and/or (o) of the Education Council Rules 2016 (Rules). (This is a reference to the rules as they stood prior to their amendment in May 2018.)

Facts

5. This matter proceeds by way of formal proof, with an affidavit from an investigator for the teaching Council (formerly the Education Council), Bruce McLachlan.
6. The Tribunal finds the following facts to be established. These facts are from the narrative and documents appearing in Mr McLauchlan's affidavit, and other documents put before the Tribunal.
7. The respondent was issued with her provisional practising certificate on 21 April 2004, and with a full practising certificate on 26 April 2007. Her current practising certificate expired on 23 April 2019.
8. In August 2015 the respondent started work at Hawera intermediate school.

9. On 2 March 2017 the principal of the school sent a letter to the respondent, asking to meet with her to discuss concerns about the amount of sick leave the respondent was taking. The letter noted that since 1 March 2016 the respondent had been absent for 57 days. 14 days of the absences had been without pay since 14 February 2017, when her sick leave entitlement had expired. The letter said that the principal wished to meet the respondent to discuss his concerns and asked her to provide a full medical certificate outlining the reason for the absences, how it affected her ability to teach, and whether the pattern was likely to continue. The letter also said that the information would assist with determining what reasonable support the Board of Trustees could give the respondent. It advised her that she was entitled to seek representation at any stage.
10. The meeting was held on 3 March 2017. A note of the meeting apparently dated 3 March 2017 records that the principal asked the respondent about her current position. She said that she was unfit to teach due to personal and domestic circumstances. There was some discussion about the possibility of part-time employment. The principal also asked for a medical report to clarify the medical problem behind the absences, how it affected the respondent's ability to teach and what recurrences might occur in the future.
11. On 8 March 2017 the respondent sent an email to the principal advising that she was resigning, "in order for me to completely heal and restore my health".
12. By letter 10 March 2017 the principal, behalf of the Board of Trustees, accepted the resignation, effective from 9 March 2017.
13. Subsequently the principal made an enquiry of the medical and GP clinic who employed the doctor who had issued a number of medical certificates for the respondent. A written response was received from the medical clinic dated 28 March confirming that a first medical certificate issued on 8 August 2016 was issued by the relevant doctor. However, the medical clinic said that the subsequent four medical certificates were not issued by the clinic, or the relevant doctor. A later communication confirmed that the other medical certificates (which also includes the 6 September 2016 certificate) were not issued by the doctor. It appears from the material put before the Tribunal that this communication from the clinic was in response to a communication from the principal which attached the medical certificates referred to in the notice of charge.
14. The certificates had on them a signature purporting to be that of the relevant doctor.

15. The mandatory report from the principal says that a scrutiny of the signatures on the certificates after 8 August 2016 indicated they are different and therefore possibly forgeries. The principal goes on to say that if they are forgeries then the respondent has gained a financial advantage by being paid for the periods covered by the certificates dated between 6 September 2016 and up to 14 February 2017.
16. Following the receipt of the mandatory report CAC investigators attempted to make contact with the respondent.
17. On 23 March 2018 Mr McLachlan sent an email to the respondent's email address attaching a copy of the mandatory report from the principal and inviting her to submit a response. Mr McLachlan spoke to the respondent by telephone on 23 March and says that he explained that a mandatory report had been received alleging that she had forged medical certificates.
18. On 1 May 2018 Mr McLachlan sent an email to the respondent responding to an email from her dated April. He noted that in her response to the allegations she might like to consider the possibility that her breakdown could have affected the actions she took.
19. On 4 April 2018 the respondent sent an email to Mr McLachlan. The email said that the respondent had not received some documents from the principal. The respondent agreed that she met with the principal on 3 March 2017. It said that she felt that she had no support from the principal regarding "my breakdown; this being a combination of a marriage breakdown, work overload and very little support for all staff. After discussing at length with my whanau the decision to resign was the only option...".
20. This email goes on to say that "I have not returned to teaching. I am no longer looking at teaching as a career as I am still struggling 12 months on from my breakdown to walk into a classroom and both emotionally and physically I personally do not think I would be able to handle to (sic) workload to the best of my ability. I was not going to renew my registration as I would not have the teaching experience and/or appraisals to warrant receiving my registration".
21. Notwithstanding that email the respondent had previously asked the principal to act as referee for her for a teaching position, but subsequently withdrew that request. The withdrawal of the request occurred three days after the conversation with Mr McLachlan in which he had advised there was an allegation of forging medical certificates

22. According to the material before the Tribunal that was the last time any response was received from the respondent.

CAC submissions

23. The CAC submits that this was clearly serious misconduct, and that the outcome should be censure and cancellation of registration.
24. The CAC points out that forgery and using forged documents are criminal offences in the Crimes Act 1961, with the relevant offences carrying maximum prison sentences of 10 years. Accordingly, they meet the criteria for reporting serious misconduct as set out in Rule 9 (1) (g), (j) and (k) (as currently amended).
25. The CAC submits that such behaviour reflects adversely on the respondent's fitness to be a teacher and/or may bring the teaching profession into disrepute. The CAC says that the respondent has dishonestly and fraudulently created and provided documents to gain an unjust advantage from the school. The behaviour was a conscious and repeated deception of the school.
26. The CAC refers to previous Tribunal decisions demonstrating that convictions for fraudulent behaviour or provision of misleading documents to the employing school in particular are treated as serious. It notes that the respondent provided false medical certificates for a total of 22 days and received payment for 19 of those days.
27. With respect to penalty the CAC refers to what it says are comparable cases. For example, in *CAC v Clark*¹ the teacher forged signatures to obtain an unjust advantage from the school. The teacher did not engage with the Tribunal process. The teacher was censured, and their practising certificate was cancelled.

Decision

28. The Tribunal finds serious misconduct established.
29. In the first instance, we accept that the CAC has established that the respondent forged, or was responsible for the forging of, the medical certificates in question. She was responsible for submitting the certificates. She must be taken to have known that they were false. The evidence from the medical practice establishes that they are not issued by that practice, or by the doctor whose name appears on them.

¹ NZTDT 2017/4

30. The medical certificates supported the taking of paid sick leave. The respondent was thus paid when she was not entitled to be paid.
31. This is therefore an instance of serious dishonesty by the respondent, including the submission of false documents to her employer.
32. Section 378 of the Education Act 1989 defines "serious misconduct" as behaviour by a teacher that has one or more of the following outcomes, in that it:
 - (a) adversely affects, or is likely to adversely affect, the well-being or learning of one or more students; or
 - (b) reflects adversely on the teacher's fitness to be a teacher; or
 - (c) may bring the Teaching profession into disrepute.
33. As well as having one or more of these effects, the conduct must also be of a character and severity that meets the Teaching Council's criteria for reporting serious misconduct, as found in the Education Council Rules 2016.
34. We have no hesitation in concluding that deliberate submission to her employer of forged medical certificates reflects adversely on the respondent's fitness to be a teacher. It is also of a character and severity which meets the relevant criteria for reporting serious misconduct. The subparagraphs of Rule 9 (1) referred above apply (in either version).
35. High standards of conduct are expected of teachers, as set out in the Code of Ethics for Registered Teachers. Under the code teachers are expected to teach and model positive values that are widely accepted in society and to encourage learners to apply them and critically appreciate their significance. That is, teachers are expected to role-model behaviours of honesty and integrity. A teacher who repeatedly submits forged medical certificates to their employer falls woefully short of the required behaviour.
36. As to outcome and penalty, the primary purposes of professional disciplinary proceedings are the protection of the public and the maintenance of professional standards. In discharging its responsibilities to the public and profession, the Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances. It also must seek to apply the least punitive sanction which is appropriate in the circumstances. If rehabilitation appears a reasonable possibility that will be a highly relevant consideration.

37. The respondent has offered no real contextual explanation of her behaviour other than a general statement about a breakdown, marriage breakdown and work overload. In some cases involving serious or relatively serious dishonesty offending or behaviour the Tribunal has refrained from cancelling a teacher's registration where some or all of the following factors apply²;
- (a) there is appropriate evidence that the offending occurred in situation of significant personal crisis which would have affected the teacher's judgement;
 - (b) the teacher has expressed remorse in a meaningful way;
 - (c) there are good prospects for rehabilitation;
 - (d) the teacher can point to evidence of valuable contributions to the profession;
 - (e) there is a support from the current employer, in particular in relation to conditions to put protective measures in place;
 - (f) if the dishonesty behaviour occurred in a situation of personal crisis, the teacher has taken rehabilitative steps in the way of counselling or other support;
 - (g) the teacher has admitted the behaviour, preferably at an early stage.
38. In the present case there is no real evidence suggesting that any of the above factors apply. The respondent has not admitted the matter; the matter has had to proceed by way of formal proof. Neither is there any evidence of rehabilitative steps.
39. The appropriate outcome is censure and cancellation of the respondent's teacher registration.

Orders

40. The Tribunal orders as follows:
- (a) The respondent is censured;
 - (b) The respondent's teacher registration is cancelled.

Costs

41. It is appropriate that in a professional disciplinary system the costs of carrying out professional disciplinary procedures be borne at least to a significant extent by

² for example, *CAC v Lyndon* NZTDT 2016/61, *CAC v Wilson* NZTDT 2019/14

teachers who are found to have engaged in professional misconduct, to avoid an inappropriate burden being placed upon the balance of the teaching profession. The Tribunal normally requires teachers found to have engaged in serious misconduct to pay 50% of the costs of both the CAC, and of the Tribunal itself. In situations where the teacher has cooperated with the process and has avoided the need for an in-person hearing by agreeing a summary of facts, the Tribunal will reduce the costs to 40%, and sometimes to a lesser percentage in cases involving proven hardship or other particular circumstances.

42. There is no evidence of cooperation by the respondent which could result in a discount for such cooperation.
43. The CAC has said it will be seeking costs and will file a cost schedule in due course.
44. The Tribunal orders that the respondent pay 50% of the CAC's actual and reasonable costs. No costs schedule has yet been received from the CAC. The CAC is to send a copy of its costs schedule to the respondent. The respondent is ordered to pay 50% of the costs shown in the CAC schedule unless the respondent files and serves submissions as to costs within 14 days of the CAC send the costs schedule to her. If submissions as to costs are received from the respondent, the Tribunal delegates to the Deputy Chair the task of fixing the amount of the CAC's costs.
45. The respondent is also ordered to pay 50% of the Tribunal's costs. The Tribunal's costs are \$1145. 50% of that amount is \$572.50 and the respondent is ordered to pay that sum.

Date: 10 October 2019



John Hannan

Deputy Chairperson

NOTICE - Right of Appeal under section 409 of the Education Act 1989

1. A person who is dissatisfied with all or any part of a decision of the Disciplinary Tribunal under sections 402(2) or 404 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) – (6) of section 356 apply to every appeal as if it were an appeal under subsection (1) of section 356.