

IN THE MATTER

of the Education Act 1989

AND

IN THE MATTER

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

BETWEEN

**COMPLAINTS ASSESSMENT
COMMITTEE**

Referrer

AND

ROZEETA KUMAR SINEL

Respondent

DECISION OF TRIBUNAL

Dated 2 June 2020

Tribunal:	Sam Wimsett (Deputy Chair) Sue Ngarimu Nikki Parsons
Hearing:	13 May 2020
Decision:	2 June 2020
Counsel:	Richie Belcher for Referrer Janette Brown for Respondent

INTRODUCTION AND SUMMARY OF DECISION

1. The Complaints Assessment Committee (“CAC”) charged the respondent with serious misconduct.
2. The particulars of the charge are as follows:
 - 2.1. That the respondent during June and July 2018:
 - a) On more than one occasion, breached the Centre’s Complaints Procedures and Policy, despite being advised to follow it;
 - b) Approached the Board Chair at her place of employment on four occasions despite being asked not to; and
 - c) Failed to return the Centre keys to the Centre, despite being asked to on more than one occasion.
3. The CAC alleged that the conduct cumulatively amounts to serious misconduct pursuant to section 378 of the Education Act 1989 (“the Act”) and Rule 9(1)(k) of the Teaching Council Rules 2016.
4. Alternatively, it is alleged that it cumulatively amounts to conduct which otherwise entitles the Disciplinary Tribunal to exercise its powers pursuant to section 404 of the Act.
5. The Tribunal finds that the charge is not made out and determines to take no further action. There is no order as to costs.

EVIDENCE

6. In terms of evidence, the matter proceeded by way of a lengthy agreed summary of facts. That summary is set out below:

AGREED SUMMARY OF FACTS

- 1 *Rozeeta Sinel is an early childhood teacher with a full practising certificate.*
- 2 *At the relevant time she was employed as a part-time teacher at Awapuni Under Fives Community Preschool (**Centre**), located in the grounds of Awapuni Primary School in Gisborne (**Primary School**).*
- 3 *The Centre is managed by a Head Teacher and a teacher who is second in charge (**2IC**). It is governed by a Board, lead by the Board Chair and Vice-Chair.*
- 4 *The Board Chair is a registered teacher employed at the Primary School.*

Allegations 1 and 2: Failure to follow complaints procedure and approaching the Board Chair at her place of work

- 5 *On or about 15 July 2016, Ms Sinel commenced her employment at the Centre. As part of the induction procedure, Ms Sinel was informed that the Complaints Procedure was posted on the wall at the Centre and made available to all staff at the commencement of their employment. She was also informed that the Complaints Procedure would apply in the event of a complaint or concern regarding a teacher or the Head Teacher.*
- 6 *On 29 May 2018, Ms Sinel verbally raised a concern with the Head Teacher at the Centre. The concern was discussed and Ms Sinel was given an apology. This concern arose as a result of Ms Sinel expressing an interest in a role with more responsibility at her performance review. She was advised that this was unlikely at this centre and that if she wanted such a role it would be in another work place. The Head Teacher put job ads in her cubby hole thinking that she was being helpful. Ms Sinel became distressed by this as she believed they were trying to get rid of her as she was after the senior positions within the centre.*
- 7 *On 1 June 2018, Teacher A raised a concern about the conduct of the Centre's 2IC with the Head Teacher. The Head Teacher arranged a meeting between Teacher A and the 2IC, after which both reported resolving their concerns.*
- 8 *On 3 June 2018, the Chair of the Centre's Board received a Facebook message from a former teacher of the Centre, purportedly on behalf of Ms Sinel and Teacher A. The message noted that the two teachers had a complaint about the conduct of the Head Teacher and the 2IC.*
- 9 *On 6 June 2018, the Board Chair meet with Ms Sinel to discuss the message she had received.*
- 10 *At 3:30pm on 12 June 2018, Ms Sinel interrupted a staff meeting at the Primary School to speak with the Board Chair. The Board Chair said that any complaint needed to be made in writing and sent to the Board Secretary.*
- 11 *On the evening of 12 June 2018, Ms Sinel contacted the Vice-Chair of the Board via text message. The message alleged that, "these's (sic) been a lot of issues going on at pre-school" and asked for a meeting at the Vice-Chair's place of work the following day. The Vice-Chair agreed.*
- 12 *At approximately 8:00am on 13 June 2018, Ms Sinel and Teacher A went to the Primary School to speak with the Board Chair but were unable to do so.*
- 13 *At lunchtime on 13 June 2018, the Board Chair requested a letter from Ms Sinel and Teacher A outlining their complaint and reiterated that it was inappropriate to come to the Primary School to discuss the matter.*
- 14 *On the afternoon of 13 June 2018, Ms Sinel met with the Vice-Chair. Ms Sinel informed him that she had a letter of complaint "all ready" but that she did not want to give time for the letter*

to be “pre analysed (sic) by the centre management”. Following the meeting, the Vice-Chair confirmed with Ms Sinel that she must provide the Board with a letter requesting a meeting and outlining what the complaint was about.

- 15 On the morning of 14 June 2018, as children were arriving at school, Ms Sinel went to the Board Chair’s classroom at the Primary School to deliver a letter (signed by Ms Sinel and Teacher A that morning). The letter sought an urgent meeting regarding a complaint of “unethical and unprofessional (sic) behaviour” at the Centre. It did not provide any further detail.
- 16 During the conversation that followed, Ms Sinel emphasised her request for an urgent meeting to discuss the complaint. She became emotional and informed her that she was going to resign if a meeting was not called “today or tomorrow”.
- 17 The Board Chair noted that an urgent meeting could not be convened without “specific and critical reasons” for doing so. She explained that a meeting was likely but that notice needed to be given to the Board members. She also noted her frustration that Ms Sinel continued to seek her at her workplace and wasn’t listening to the advice provided to her about the complaint’s procedure.
- 18 On 15 June 2018, Ms Sinel resigned from the Centre. She gave 3 weeks’ notice.
- 19 On 18 June 2018, Ms Sinel was informed by the Head Teacher that she was not required to work out her notice period at the Centre.
- 20 Between 24 June and 2 July 2018, the Board Chair conducted interviews with staff at the Centre in relation to the complaint.
- 21 On 28 June 2018, Ms Sinel arrived at the Board Chair’s classroom immediately prior to school starting. She entered the classroom and, in front of the new entrant students, confronted the Board Chair.
- 22 Ms Sinel alleged that the Board Chair has mishandled her case and was on “[the centre management’s] side”.
- 23 The Board Chair noted that:
- (a) the school bell had rung and she had a class of students she needed to teach;
 - (b) the details of a meeting in relation to the complaint was in a letter that had been posted to Ms Sinel already; and
 - (c) Ms Sinel was to “cease coming to [the Board Chair’s] workplace”.
- 24 Track and trace information from the letter sent to Ms Sinel containing details of the meeting shows that it was picked up by the courier on 28 June 2018 at 9:20am.

25 *Following the interaction with Ms Sinel in the morning, the Board Chair filed an application for a restraining order against her. This was subsequently resolved by agreement between the parties.*

26 *On 29 June 2018, the Principal of the Primary School informed Ms Sinel that she was not to come to the Primary School to speak with the Board Chair.*

Teacher's response:

27 *In an unsworn and undated affidavit (drafted on or about 27 July 2018), responding to the Board Chair's application for a restraining order, Ms Sinel stated that:*

(a) *she felt writing a letter of complaint was "unfair and gave them ([the Board Chair] and centre management) time to analyse the complaint and have answers ready."*

(b) *In relation to seeking out the Board Chair at her place of work:*

(i) *on 12 June 2018, she was not aware that the Board Chair was in a staff meeting.*

(ii) *on 13 June 2018, she and Teacher A went to seek an urgent meeting and to "touch base of (sic) what kind of letter she wants."*

(iii) *on 14 June 2018, she briefly attended the Primary School to give the letter of complaint to the Board Chair and request an urgent meeting.*

(iv) *on 28 June 2018, she decided to go to the Primary School because she had had no contact from the Board Chair following her letter of 14 June. She went early, before the school bell had rung, "so not to interrupt her class".*

(c) *"[the Board Chair] never gave a clear guidance of what kind of a letter she wanted from me, which I had asked her for twice. As I had a letter of complaint already about centre management however I did not want to give this to her to analyse" (sic).*

28 *In a response to the Teaching Council investigator on 7 January 2019, Ms Sinel stated:*

(a) *"[the Board Chair] never gave me clear guidance throughout the whole process"; and*

(b) *"I strongly feel that I have not breached the [the Centre] policy".*

29 *In a further response to the draft summary of facts, Ms Sinel stated, in relation to the events on 28 June 2018:*

I was feeling concerned as [the Board Chair] had made no contact with me for two weeks since resigning. Around 8.15am I arrived at school early to settle my son to his classroom and also not to intrupt (sic) [the Board Chair].¹

Here, I waited outside of [the Board Chair's] class as I did not see her. A few mintues (sic) later [the Board Chair] enters her classroom from a different entrance. Here we made eye contact and smiled at each other as people do when greeting. I see that she is standing near the bookshelf peeking at me for around 2 minutes. I find this strange and decided to go in and greet her in person. I begin the conversation by expressing my concern that I have not heard from her for two weeks and if a meeting has been planned.

Here [the Board Chair's] persona completely changed. She accused of me going behind her back to see [the Vice-Chair]. I was taken by surprise by how cross she was. [the Board Chair] grinded her teeth and said angrily "Your meeting is not urgent!". At this point I feel shaken and scared. She tells me it is rude for me to come into her workplace and interrput (sic) her. I remind her that she has previously stated that both [Teacher A]and I could come in and speak to her anytime. ([Teacher A] was present on 2 ocassions (sic) to confirm this from pervious meetings with [the Board Chair]).

That day [the Board Chair] files for a restraining order (28 June 2018).

Allegation 3: Ms Sinel failed to return the keys to the Centre

- 30 *On 18 June 2018, Ms Sinel's resignation was formally accepted and she was informed that she was not required to work out her three-week notice period. She was asked by the Head Teacher to leave the Centre's keys behind when she left. Ms Sinel did not do so.*
- 31 *On 19 June 2018, the Head Teacher emailed Ms Sinel to request that the keys be returned.*
- 32 *On 27 June 2018, the Head Teacher sent a letter to Ms Sinel asking for the keys to be returned to the Centre or the Primary School's head office.*
- 33 *No response was received from Ms Sinel.*
- 34 *6 July 2018 was the last day of the Centre's term.*
- 35 *On 9 July 2018, the Head Teacher contacted Police and informed them that the keys had not been returned.*
- 36 *On 13 July 2018, Police attended Ms Sinel's home and uplifted the keys.*

Teachers Response:

- 37 *In a response to the Teaching Council investigator on 7 January 2019, Ms Sinel stated that:*
- I had every intention of returning [the keys]. However I could not as I did not have time to return them to the [Centre] because I was looking for employment as soon as I was terminated from [Centre]. I'm a solo parent and had to look for employment for my kids (sic) sake also this was when the school holidays had taken place and I was busy minding my two children. I simply did not*

¹ Ms Sinel's son attends the Primary School but is not in the Board Chair's class.

have the time and believe that was extremely inappropriate for [the Head Teacher] to send the police to collect them.

- 38 *Ms Sinel now apologises for not returning the Centre keys in a timely manner and stated that she did not recall receiving an email or letter from the Head Teacher. She also noted that, at the time, she was under pressure as a solo mother and having to address the restraining order applied for by the Board Chair. Ms Sinel stated that the failure to hand in the keys was a result of human error at a busy and stressful time.*

Additional information

- 39 *In a response to the Teaching Council investigator on 7 January 2018, Ms Sinel stated that:*

I just want to let you know that this has caused me so much pain, physically (weight loss) (sic), emotionally (exhaustion) and so on. Some of my ex colleges [redacted], [redacted], [Teacher A]) (sent you letters) (sic) also came forward about what was happening at [the Centre] and what had happened in the past. It takes a lot of strength, honesty and strong people to come forward and tell you the truth about the poor practices of [the Centre's] management. During my studies I had learnt that I'm teacher who's role is not just to teach children but to also speak up for them and stand up for their rights and that is all that I have done.

- 40 *On or about 4 July 2018, Ms Sinel attended a meeting with the Board Chair, the Board Secretary and Ms Sinel's support person. At that meeting she presented her letter of complaint which alleged mistreatment of staff and students. A copy of that letter is annexed and marked "E". Similar complaints were raised by Teacher A at approximately the same time. In a letter to the Teaching Council during the investigation, a former teacher repeated the same allegations.*
- 41 *Following the conclusion of the Centre's investigation into Ms Sinel's complaint, Ms Sinel approached the Ministry of Education, who commenced an additional investigation. Both investigations concluded with no further action being taken.*
- 42 *Ms Sinel declined to attend the Complaints Assessment Committee meeting."*

PRE-HEARING ISSUE

7. The parties agreed that the matter could proceed "on the papers." In advance of the hearing, we received written submissions from Counsel for the CAC and the respondent. Subsequently, Counsel for the CAC objected to material filed, which it was submitted, was contradictory to the agreed summary of facts. Two days before the hearing, a teleconference was convened to address this issue. The outcome of that teleconference was that it was confirmed that the Tribunal would only have regard to the agreed summary of facts, the respondent's reflective statement and the Ministry guidelines when considering whether the charge was made out.

8. If the Tribunal were to go on to consider the issue of penalty, it would consider the material filed on behalf of the respondent, but care would be taken to avoid any consideration of factual material that was contradictory to the agreed summary of facts.
9. Counsel were agreed that the Tribunal could have regard to the agreed summary of facts, the respondent's reflective statement and the Ministry guidelines at all stages of its deliberations.

THE LEGAL FRAMEWORK

10. The charge first alleges serious misconduct. The definition of serious misconduct is set out in section 378 of the Act:

***serious misconduct** means conduct by a teacher—*

(a) that—

(i) adversely affects, or is likely to adversely affect, the well-being or learning of 1 or more students; or

(ii) reflects adversely on the teacher's fitness to be a teacher; or

(iii) may bring the teaching profession into disrepute; and

(b) that is of a character or severity that meets the Education Council's criteria for reporting serious misconduct.

11. The criteria for reporting serious misconduct, referred to at s 378(b), are found in r 9 of the Education Council Rules 2016 (**the Rules**).
12. The CAC refers to rule 9(1)(k): An act or omission that brings, or is likely to bring, the teaching profession into disrepute.

THE CASE FOR THE CAC

13. The CAC submits that the respondent's conduct cumulatively constitutes serious misconduct. That is to say, when one adds up all of her admitted behaviour, what might on its own not amount to serious misconduct, becomes so.
14. The CAC then hedges its bets somewhat by suggesting that if the Tribunal does not agree with that submission for the CAC, then it might amount to conduct which otherwise entitles this Tribunal to exercise its powers pursuant to section 404 of the Act.
15. With regard to the criteria set out at section 378(a) the CAC submits the respondent's conduct reflects adversely on her fitness to be a teacher and risks bringing the teaching profession into disrepute. The CAC further submits that the respondent's conduct was contrary to the Code of Professional Responsibility and Standards for the Teaching Profession (**Code**).

16. The Code is a document based on common sense principles relating to the teaching profession. Amongst other things, it requires teachers to show integrity by acting in a fair, honest, ethical and just manner.² It also requires teachers to engage in respectful and collaborative relationships with their colleagues.³ Pursuant to the code, teachers must demonstrate a high standard of professional behaviour and integrity.⁴
17. Regarding the first particular of the charge: failing to follow the complaints procedure, the CAC submits that the respondent's failure to comply with the procedure undermined its purpose and displayed a lack of integrity and professionalism. It was submitted that the complaints procedure is a core part of ensuring that complaints are dealt with in a manner which is fair, ethical and just.
18. With regard to the second particular: approaching the Board Chair at her place of work, the CAC submits that the respondent's conduct was unprofessional and disrespectful to the Board Chair.
19. On the third particular: failing to return the Centre keys, the CAC submits that the respondent's behaviour displayed a lack of respect for her former colleagues and a lack of concern for her professional obligations. They refer to the security issues that arise when former staff members retain physical access to the workplace.
20. The overarching submission for the CAC is that the respondent's conduct, when considered as a whole, displays a lack of professionalism and integrity. It is submitted that this reflects adversely on her fitness to be a teacher and risks bringing the teaching profession into disrepute.

SUBMISSIONS FOR THE RESPONDENT

21. Via her Counsel, the respondent has candidly accepted that she managed the relationships with her seniors poorly and that she should have returned the keys at the end of her employment.
22. The respondent does not accept that her behaviour amounts to serious misconduct, or is conduct that would otherwise require the Tribunal to impose sanctions.

DECISION

23. The Tribunal considers that while the respondent let herself down with regard to some of her behaviour in this matter, it could not be described as serious misconduct. In our view, it does

² Code of Professional Responsibility, Our Values, at page 2.

³ Code of Professional Responsibility, at 1.2., page 10.

⁴ Code of Professional Responsibility, at 1.3., page 10.

not reflect adversely on her fitness to be a teacher and it does not bring the teaching profession into disrepute.

24. Based on the agreed summary of facts and the attachments to it, it is clear that the respondent had genuine concerns regarding a teacher and conduct related to them at the pre-school. The complaint primarily related to the interests of the children. In particular, the complaint alleged that there was unprofessional behaviour by a staff member or members that could affect the welfare of children or had already done so.
25. Having considered all of the material attached to the agreed summary of facts, the Tribunal is of the view that the respondent's complaint was not one that should not have been made. We do not understand anyone to be submitting this. Rather, her complaint was made the wrong way – that is, not in accordance with the complaints procedure.
26. We observe that in the context of a small workplace, making a complaint can be a difficult exercise. Often, as is the case here, the complaint must be made to the person being complained about or someone closely connected to them. This can put a complainant in a difficult position. In this case, we are of the view that the respondent can be excused for wanting to take the matter higher up the chain of command. The respondent's badgering of the Board Chair, however, was an improper response. But, in our view, the respondent's conduct in these circumstances does not adversely reflect on her fitness to be a teacher or bring the teaching profession into disrepute.
27. The respondent should have returned the keys in a timelier manner. She accepts this and has apologised. While it is sometimes the case that a failure to return keys can undermine the security of a school, we are not convinced that this was genuinely the case here. At the time, the respondent was a solo parent looking for new employment and dealing with the demands of the school holidays. There was no actual risk that the respondent would use the keys in an improper way or act negligently with them. The addition of this conduct to that relating to her complaint does not take it near the realm of serious misconduct.
28. Section 404 of the Act permits a tribunal to exercise its powers and impose penalty even if it determines that a charge of serious misconduct is not made out. In essence, if we were to determine that there was no serious misconduct, but that there was misconduct, we are permitted to impose sanctions. We decline to do so in this case.
29. In considering whether we should impose a penalty despite finding that the charge of serious misconduct has not been made out, we have been significantly influenced by the respondent's reflective statement. We have considered this in addition to her comments that have been included in the agreed summary of facts.

30. It is clear to us that this entire episode has taught the respondent a great deal. Further, having to respond to disciplinary proceedings, including a charge of serious misconduct, will also have taught the respondent a valuable lesson. We note in particular the section in her statement titled "Lessons Learned". It shows a great deal of insight and gives the Tribunal confidence that sanctions are not necessary in this matter.
31. The respondent's teaching ability has not been questioned in this case. Nor has her attitude or behaviour towards students. There is no need to impose a punishment that ensures the safety of children or rectifies deficiencies related to their education – as is often the case in matters considered by the Tribunal.
32. This matter relates to the manner in which a young teacher dealt with a complaint about those above her at her place of work. As discussed above, the behaviour was less than perfect. However, the respondent, in our view, does not need to be punished for us to be sure that there will not be a repeat of the kind of behaviour shown in this case.
33. There will be no order as to costs.

Dated at Auckland this 2nd day of June 2020

Signed:



S N B Wimsett
Deputy Chair

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

1. This decision may be appealed by teacher who is the subject of a decision by the Disciplinary Tribunal or by the Complaints Assessment Committee.
2. An appeal must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
3. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).