

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023-30

RARO TE MANA O TE
UNDER THE

MŌ TE TAKE
IN THE MATTER OF

I WAENGA I A
BETWEEN

ME
AND

the Education and Training Act 2020
(the Act)

of a charge referred to the Tribunal

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**

Kaiwhiu | Prosecutor

NARTARSHA CAITLIN-ANN IKIUA
(Authorisation 332008)

Kaiurupare | Respondent

Hearing

27 August 2024 (on the papers)

Hei Māngai | Appearance

R Scott, Harbour Chambers for the CAC.
D King, NZEI Te Riu Roia for the Respondent.

Tribunal

C Garvey (Deputy Chair), N Coe and D Shaver

DECISION ON LIABILITY, PENALTY AND NON-PUBLICATION

19 September 2024

Introduction

- [1]

The respondent, Nartarsha Ikiua, faced a disciplinary charge in relation to allegations of dishonest conduct around sick leave between September and November 2021. Ms Ikiua was employed as Head of Arts at Westland High School (the School).
- [2]

The conduct alleged in the notice of charge led to Ms Ikiua’s dismissal in November 2021, and a mandatory report to the Teaching Council. Following

investigation, a Complaints Assessment Committee (CAC) laid the charge in May 2023. The Tribunal dealt with this matter on the papers on 27 August 2024,¹ with an Agreed Summary of Facts (the summary of facts), bundle of documents and submissions from counsel on behalf of the CAC and on behalf of Ms Ikiua.

The Notice of Charge

[3] The Notice of Charge alleges that the respondent's conduct amounts to serious misconduct under s10 or conduct otherwise entitling the Tribunal to exercise its powers under s500 of the Education and Training Act 2020 (the Act). The particulars of the charge read:

1. The CAC charges that Natarsha Caitlin-Ann Ikiua, registered teacher, of Australia:
 - (a) On 14 and 16 September 2021, Ms Ikiua claimed to be unwell and took sick leave so that she could attend training sessions for nurses as an actor.
 - (b) Between 17 September and 25 November 2021, Ms Ikiua acted dishonestly regarding her sick leave, including:
 - (i) Deceiving and/or misleading the School and its Board of Trustees about her sick leave and the events leading up to the training sessions for nurses; and
 - (ii) Asking a third party (■■■■■ ■■■■■) [Ms J] to email the School falsely corroborating Ms Ikiua's timeline and version of events.
 - (c) On 25 November 2021, deleted school learning resources/websites without authorisation.

[4] The charge pleads a breach of rules 9(1)(g) and/or (k) of the Teaching Council Rules 2016.

The Agreed Summary Of Facts

[5] Ms Ikiua signed the summary of facts on 29 April 2024. This is lengthy and we do not reproduce it in full. Ms Ikiua's practising certificate expired in June 2023,

¹ The hearing was initially scheduled for 17 June and then 4 July and adjourned, first to provide an extended timetable for submissions and subsequently at the respondent's request for time to file medical evidence.

and at the time of preparing the summary of facts she was no longer residing in New Zealand.²

- [6] We infer that Ms Ikiua was on the books of [REDACTED] (the company), which provides actors for professional role-play. On or about 2 August 2021 the company director, Ms J, emailed Ms Ikiua about a paid assignment with a Primary Health Organisation (PHO) to deliver training to rural nurses. The respondent confirmed her interest the same day and received confirmation of the job from Ms J on 9 September 2021. These arrangements came to light after the respondent's dismissal, when the emails between Ms Ikiua and Ms J were discovered in her classroom.³
- [7] Rather than arrange unpaid leave or decline the acting role Ms Ikiua contacted the School Principal Iain Murray on 13 September 2021 and said she was unwell and would not attend the following day. She worked as an actor on 14 and 16 September in Westport and Franz Josef respectively.⁴ On 14 and 15 September Ms Ikiua texted Mr Murray to the effect that she was still unwell.⁵
- [8] Ms Ikiua was recognised at the Westport session by someone who reported seeing her to a senior teacher.⁶ Mr Murray contacted the PHO and Ms J to confirm that the respondent was at the training sessions^{7, 8}. Neither were aware [if] Ms Ikiua was unwell. Mr Murray wrote to Ms Ikiua advising that he would bring the matter to the attention of the Board of Trustees.⁹
- [9] Rather than be upfront, Ms Ikiua unfortunately exacerbated the situation:
- (a) by stating that she was first approached by Ms J on 14 September.
 - (b) procuring a medical certificate dated 21 September in which the doctor wrote that she was *"seen by me today and the history I have obtained is that the illness has been sufficient that the patient has been unable to attend work since 13/09/21 and should be able to return on 17/09/21."*

² Agreed Summary of Facts at [29].

³ n2 at [22].

⁴ n2 at [5].

⁵ n2 at [5], [6] and [7].

⁶ n2 at [9].

⁷ n2 at [10].

⁸ n2 at [11].

⁹ n2 at [12].

- (c) asking Ms J to corroborate her story that she was approached to participate in the role-play session on 14 September for that day, and 15 September for the second session, and that she was not paid. Ms Ikiua drafted an email for Ms J to this effect on 22 September, suggesting that the School was mainly concerned whether the work was voluntary.¹⁰ A similar request that the work be described as voluntary with the fee going to charity, was emailed to Ms J on 24 September.¹¹
- (d) At a disciplinary meeting with the Board on 29 September Ms Ikiua stated¹²:
 - (i) she was first contacted about the acting role on 14 September.
 - (ii) the role was voluntary, and there was no agreement about payment or travel reimbursement.
 - (iii) she was able to participate while sick as she was seated during the role-play, unlike when she was engaged in teaching dance and drama at the School.
 - (iv) she was helping out a friend.
 - (v) given the above she was a “little confused” why there was an issue.
- (e) Ms Ikiua instructed her representative to reiterate these or similar responses following a request for clarification from Mr Murray.¹³ She instructed that she could not find an email from Ms J prior to 14 September.¹⁴
- (f) Ms Ikiua repeated these responses at a second meeting with the Board on 20 October 2021.¹⁵

[10] Following a further meeting the Board terminated Ms Ikiua’s employment on 25 November 2021.¹⁶ Ms Ikiua promptly deleted four learning websites containing

¹⁰ n2 at [23](a) and (b).

¹¹ n2 at [23](d) and (e).

¹² n2 at [16].

¹³ n2 at [18].

¹⁴ n2 at [18](b).

¹⁵ n2 at [19].

¹⁶ n2 at [20].

resources for students and teaching materials, which were the intellectual property of the School.¹⁷ The resources were recovered with IT input, but the School incurred cost in doing this, and students were without the resources for at least several days.¹⁸

Liability Principles

[11] The burden of proof rests on the CAC to prove the charge on the balance of probabilities. Section 10(1) of the Act sets out a conjunctive test for serious misconduct. First, the Tribunal is required to consider whether one of the limbs of s10(1)(a) are engaged, namely that the teacher's conduct:

- (a) adversely affects or is likely to adversely affect the well-being or learning of 1 or more students; and/or
- (b) reflects adversely on the teacher's fitness to be a teacher; and/or
- (c) is an act or omission that may bring the teaching profession into disrepute.

[12] It is well-established that "likely" in s10(1)(a)(i) means a real, appreciable or substantial risk of occurrence. For the purposes of s10(1)(a)(ii), fitness is not confined to conduct within the classroom or school but more broadly encompasses any conduct that may have an impact on whether the teacher is viewed as meeting the standards expected under the Code of Professional Responsibility (the Code). The CAC relies on cl 1.1 of the Code, which expects teachers to show commitment to the profession by demonstrating a high standard of professional behaviour and integrity, and cl 2.1 which expects teachers to promote the wellbeing of learners and to protect them from harm.

[13] Section 10(1)(a)(iii) is an objective assessment, whether a reasonable member of the public informed of the relevant circumstances would consider that the teacher's conduct lowers the reputation or good standing of the profession.

[14] The second limb of the test, under s10(1)(b), is to consider whether the conduct warrants reporting under r 9 of the Teaching Council Rules 2016. The CAC pleads a breach of rr 9(1)(g) and/or (k). Rule 9(1)(g) refers to a teacher acting dishonestly in relation to their professional role, or committing theft or fraud. Rule

¹⁷ n2 at [24] and [25]. See also [27], referring to the timing of the deletion being 11.46am on 25/11/21.

¹⁸ The timeframe is not stated specifically but was the week following the respondent's dismissal.

9(1)(k) refers to an act or omission that is likely to bring the teaching profession into disrepute.

Liability – Discussion

[15] The CAC submits that the respondent's conduct is in breach of the Code, and was deliberate, calculated and intended to deceive. Counsel refers to several cases of serious misconduct involving dishonesty by a teacher with their employer or the Council.

- (a) *CAC v Clark*¹⁹ - the teacher was convicted under the Crimes Act for forgery and using a document in the context of fraudulently preparing a letter and signing an endorsement in the name of his principal on an application to renew his practising certificate. The Tribunal was concerned that this conduct was an attempt to subvert one means by which the Council can assure the suitability of its registered teachers. The teacher did not engage with the disciplinary proceedings. Cancellation was imposed.
- (b) *CAC v Nandigam*²⁰ - the teacher digitally altered details on a flyer for a professional development course to obtain paid leave during a school day, rather than when the course was actually to take place. He also misled his employer to obtain leave on one other occasion, ostensibly for professional development. The conduct was distinguished from cases involving falsifying references (or similar), as it did not undermine the integrity of the registration system. The Tribunal imposed censure and a disclosure condition.
- (c) *CAC v Quinnell*²¹ - the teacher presented his employer with five false medical certificates in order to get paid sick leave she was not entitled to. The Tribunal discussed the importance of honesty and integrity, and of teachers' role modelling these attributes. The Tribunal imposed censure and cancellation in the absence of meaningful engagement by the teacher.

¹⁹ *Complaints Assessment Committee v Clark* [2017] NZTDT 4 (18 September 2017).

²⁰ *Complaints Assessment Committee v Nandigam* [2019] NZTDT 72, (3 December 2020).

²¹ *Complaints Assessment Committee v Quinnell* [2018] NZTDT 61 (9 October 2019).

- (d) *CAC v Leach*²² - the respondent, a principal completed a false appraisal, of her own performance, and falsely used her husband's electronic signature on these when she provided them to her employing Board. The Board relied on this in endorsing an application for the respondent's practising certificate. The Tribunal found that the conduct was in breach of the (then) Code of Ethics and misled the Board and the ERO, against the obligations of honesty and integrity. The Tribunal imposed cancellation and censure.

[16] In relation to Ms Ikiua, the CAC submits that all three limbs of s10(1)(a) are engaged. We agree. In short:

- (a) Deleting teaching and student resources was likely to adversely affect students, particularly when nearing end of year assessments, through lack of access to learning materials and by hindering the staff who took over.
- (b) The sustained nature of the deception reflects adversely on Ms Ikiua's fitness. She had the opportunity at several junctures to be honest but misled the principal and the Board repeatedly, in breach of the Code. Teachers are entitled to legitimate absences when sick so there is nothing inherently adverse about this, but the conduct showed a disregard for Ms Ikiua's students and colleagues. On balance we find she did not simply take advantage of being too unwell to be in a classroom to 'help out a friend' but instead used the excuse of being sick to take on the paid acting role.
- (c) For the same reasons, primarily the persistent misconduct and attempt to involve Ms J in the dishonesty, we find that the respondent's actions are likely to lower the reputation of the profession in the eyes of an objective member of the public armed with the relevant facts.

[17] With regard to r 9(1)(g), the summary of facts clearly supports a finding that the respondent was dishonest in her professional role, given that she misled the Principal about her leave on 14, 15 and 16 September and in her subsequent communications with Mr Murray and the Board. The CAC further submits that

²² *Complaints Assessment Committee v Leach* [2016] NZTDT 66 (26 April 2017).

this conduct reaches the threshold of fraud. We are not required to find this given the phrasing of the rule, and we consider it is not sufficiently clear whether in fact the respondent gained an unjust advantage. None of the evidence determines that she accepted payment for her acting attendances.

- [18] The respondent's conduct in relation to sick leave and the deletion of materials that were required for teaching and learning, also engage r 9(1)(k).

Penalty

- [19] Having found the charge proved, the Tribunal may impose a penalty under s500 of the Act. Penalty is intended to meet the purposes of protecting the public, and maintaining professional standards and public confidence in the teaching profession. The Tribunal should impose the least restrictive penalty appropriate in the circumstances, and one that is fair, reasonable and proportionate. We should aim for consistency with similar cases.
- [20] The CAC seek censure and cancellation of the respondent's registration, and a contribution of 40% of the CAC's investigation and prosecution costs. A detailed schedule of costs has been filed outlining costs in the sum of \$1800 for the CAC investigation and \$9540 for the prosecution.
- [21] In brief submissions filed on behalf of Ms Ikiua, it is submitted that censure alone is appropriate because the circumstances in this case are less serious than others, notably *CAC v Clark*. There was no criminal charge or conviction, and Ms Ikiua did not mislead the Teaching Council. Ms King submits that the Ms Ikiua was helping a voluntary organisation, that she was in fact sick (evidenced by the medical certificate) and that there was "*no prohibition per se*" on her carrying out other activities while on sick leave. It is also submitted that Ms Ikiua "*unwell emotionally and felt unsupported by the school.*"
- [22] None of the grounds submitted on behalf of Ms Ikiua are supported by the evidence. The company was not a voluntary organisation, and the summary of facts supports that Ms Ikiua could expect to be paid, whether or not she was. Donating her fee to charity was only raised after the fact. As submitted by the CAC in reply, the medical certificate is based on self-report, again, after the fact. Finally, there is no evidence that the respondent's mental well-being had an impact on her actions. Other than Ms King's submission, the only reference to

mental health is the CAC's record of the respondent's statement that she did not want to "*relive or rehash anything that had me so desperate and so low.*"²³ The hearing of this matter was delayed at the respondent's request to enable her to obtain relevant medical evidence however this was not forthcoming.

- [23] As Ms Ikiua does not hold a current practising certificate, the Tribunal is limited in the available penalties we may impose. This is an unfortunate case, because of the aggravating conduct after Ms Ikiua's sick leave was questioned, and because further engagement with the CAC may have led to a less serious outcome. We have no evidence on which to base a rehabilitative approach. Accordingly, we find the only available outcome is cancellation of registration, and censure.
- [24] We also have no basis on which to depart from an order for costs reflecting a 40% contribution of the CAC's costs, taking into account Ms Ikiua's cooperation with the proceedings.²⁴

Non-Publication Application and Orders

- [25] No application for non-publication was made on behalf of Ms Ikiua or the School.
- [26] Counsel for the CAC submitted that the Tribunal might consider it appropriate to suppress the name and details of Ms [REDACTED] (Ms J) noting that the CAC has not had any contact with her regarding these proceedings. We are satisfied that it is proper not to publish the name of Ms J and the company, [REDACTED]; and details of the emails at paragraphs [23](a) and (c) of the summary of facts which we have summarised to provide sufficient context for our decision.

Orders

- [27] Accordingly, the Tribunal makes the following orders pursuant to section 500 of the Act:
- (a) Ms Ikiua is censured, pursuant to s500(1)(b).

²³ n2 at [29].

²⁴ This reflects the Practice Note on Costs April 2022, and *Professional Conduct Committee v Brown* [2024] NZHC 990 at [93].

- (b) Ms Ikiua's registration is cancelled, pursuant to s500(1)(g).
- (c) Ms Ikiua is to pay costs reflecting 40% of the CAC's reasonable costs, amounting to \$4,536.00, in reliance on s500(1)(h).
- (d) Ms Ikiua is to pay a contribution to the Teaching Council in relation to the Tribunal's costs, pursuant to s500(1)(i) in the sum of \$582.

[28] Pursuant to s501(6) the following orders for non-publication are made:

- (a) The name of [REDACTED].
- (b) The name of the company [REDACTED]
- (c) The content of the emails set out at paragraph [23](a) and (c) of the Agreed Summary of Facts.



Catherine Garvey
Deputy Chair of the New Zealand Teacher's
Disciplinary Tribunal