

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2022/09

IN THE MATTER of the Education Act 1989

AND

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

BETWEEN **COMPLAINTS ASSESSMENT COMMITTEE**

Referrer

AND **VANDA NOELINE CAMERON (Registered
Teacher No 326628)**

Respondent

DECISION OF THE TRIBUNAL ON CHARGES

2 April 2023

HEARING: Held on 25 January 2023 on paper via Teams

TRIBUNAL: Rachael Schmidt-McCleave (Deputy Chair)
John Ruge and Celeste Harrington (members)

REPRESENTATION: R W Belcher/L R van der Lem for the Complaints Assessment
Committee

Janette Brown, NZEI Te Riu Roa for the respondent

Hei timatanga kōrero – Introduction

1. In accordance with section 401 of the Education Act 1989 (the “Act”),¹ the Complaints Assessment Committee (the “CAC”) referred the mandatory report provided by BestStart Educare Limited (the “Centre”) about the conduct of Vanda Noeline Cameron (the “respondent”) to the Tribunal.
2. The CAC charges that the respondent has engaged in serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers.
3. The charge alleges that the respondent, a registered teacher of Whanganui, on 2 August 2019:
 - (a) Lunged at a child (“Child Z”) and/or;
 - (b) Reached out for Child Z and made physical contact with him; and/or
 - (c) Used a raised voice when talking to Child Z.
4. The CAC alleges that the conduct above separately and/or cumulatively amounts to serious misconduct pursuant to section 378 of the Act and Rules 9(1)(a) and/or (k) of the Teaching Council Rules 2016 or, alternatively, amounts to conduct which otherwise entitles the Tribunal to exercise its powers pursuant to section 404 of the Act.
5. The matter was heard on the papers via Teams on 25 January 2023.

Ko te hātepe ture o tono nei – Procedural History and Preliminary Matters

6. A pre-hearing conference (“PHC”) was held on 14 October 2022. The parties agreed to various timetabling matters. An interim name suppression order was made in respect of the respondent, to stay in place until the charge is disposed of. An interim suppression order was also made over the name of the Centre.

Kōrero Taunaki - Evidence

Agreed Summary of Facts

¹ The Education Act 1989 applies, as the mandatory report initiating the disciplinary process was submitted prior to the Education and Training Act 2020 coming into force.

7. The ASoF is set out in full below:

Background

1. *The respondent, **VANDA NOELINE CAMERON**, is a fully registered teacher. Her current practising certificate is due to expire on 22 June 2025.*
2. *She is currently employed at BestStart Harrison Street early childhood education centre ("the Centre"), and has worked there since 2010.*

Incidents

3. *As of 2 August 2019, the Centre had an approximate roll of 75 children aged 0-6 years. One of the children at the Centre that day was a boy aged [REDACTED] ("Child Z"). Ms Cameron was working that day with several other teaching staff.*
4. *At approximately 11:00 am, that day [sic] Child Z and Ms Cameron were inside the Te Awa inside area of the Centre, when Child Z knocked play materials off of a table in the classroom with sufficient force to carry the materials out of an adjacent door and onto the deck outside. Ms Cameron was on the deck, and as Child Z ran past her, Ms Cameron lunged towards him and attempted to grab hold of him by the hand. Ms Cameron's intention was to stop Child Z from leaving, so she could direct him to clean up the toys that he had just knocked over. Ms Cameron was unable to grab hold of Child Z, but hurt her own arm when she reached out towards him. Her arm had already been stiff from having slept badly on it the night before.*
5. *Child Z continued to display challenging behaviours through the morning which included being disruptive, hitting children and pushing them over.*
6. *Later on, at approximately 12:30 pm Ms Cameron and Child Z were both inside the Te Awa classroom. While Ms Cameron was sitting down on a stool at a table, she reached out, grabbed hold of Child Z's clothing as he stood nearby and pulled Child Z in close to her. She then yelled at him.*
7. *Ms Cameron then led Child Z outside of the classroom and onto the deck so that he could calm down. Child Z came willingly. After approximately 5 minutes, the two re-entered the classroom. Ms Cameron then spoke to him about why they went out there. Child Z then settled into play and watched a movie with his peers.*

Response

8. *On 9 August 2019 Ms Cameron met with the Centre's management to discuss the incidents. She volunteered that during the morning on 2 August she had seen Child Z knock play materials of a table while working with another teacher, and that having seen that, Ms Cameron lunged at Child Z as he ran past her. The CAC had not known of that interaction prior to Ms Cameron's admission. During that meeting Ms Cameron advised that Child Z was "being disruptive, hurting children, hitting and pushing them over" that day.*

9. *She denied having grabbed Child Z or any other child that day, but accepted her voice was raised with Child Z at certain points.*
10. *In her response to the CAC Investigator's draft report Ms Cameron maintained that she never grabbed hold of Child Z. She noted that Child Z had high additional learning needs, and accepted that her relationship with Child Z (before he left the Centre in October 2019 to attend primary school) had its moments. She said that the purpose for taking Child Z outside was so that he could have privacy to regulate his emotions without being ridiculed by his peers and that as a teacher she was still a learner and she had taken on board comments about the centre environment's noise level being too loud for children and calling out to children rather than approaching and speaking quietly.*

Te Ture - The Law

8. Section 378(a) of the Act defines serious misconduct:

serious misconduct means conduct by a teacher –

(a) *that –*

- (i) *adversely affects, or is likely to adversely affect, the wellbeing 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 Teaching Council's criteria for reporting serious misconduct.*

9. As confirmed by the District Court, the test under section 378 is conjunctive, meaning that as well as meeting one or more of the three adverse consequences, a teacher's conduct must also be of a character or severity that meets the Teaching Council's criteria for reporting serious misconduct, pursuant to Rule 9 of the Teaching Council Rules 2016.
10. The criteria for reporting serious misconduct are found in the Teaching Council Rules 2016 (the "Rules"). The Tribunal also accepts the CAC's submission that, if established, the respondent's conduct would fall within the following sub-rules of Rule 9(1):
 - (a) Rule 9(1)(a): using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so; and

(b) Rule 9(1)(k): an act or omission that that brings, or is likely to bring, the teaching profession into disrepute.

11. The Tribunal accepts that the test under Rule 9(1)(k) will be satisfied if reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and standing of the profession was lowered by the respondent's behaviour.² The CAC has highlighted several aspects of the Code which illustrate this principle, including an example of behaviour that does not promote the wellbeing of learners and protect them from harm (as required by clause 2.1) being:

“Inappropriate handling such as physically grabbing, shoving or pushing, or using physical force to manage a learner’s behaviour...”

Ngā Kōrero a te Kōmiti – CAC and Respondent Submissions

CAC submissions

12. In summary, the CAC submits that each of the section 378(1)(a) limbs of the serious misconduct test are made out:
- (a) Section 378(1)(a)(i): The CAC says the welfare of Child Z was likely to be affected by Ms Cameron's use of force as a corrective tool. The attempt to grab hold of Child Z as he ran around Ms Cameron during the first incident presented a risk of injury. The second act of pulling Child Z by his clothing and yelling at him is likely to have negatively impacted Child Z's well-being and undermined the trust, respect and cooperation between a teacher and her student.
- (b) Section 378(1)(a)(ii): The CAC points out that the Tribunal has consistently held that the use of force, even at a lower level, will impact upon a teacher's fitness to be a teacher. In this case, the respondent's conduct towards Child Z, on two occasions, demonstrates the use of inappropriate behaviour management techniques in response to challenging behaviour.
- (c) Section 378(1)(a)(iii): The CAC says that, although the respondent's conduct was in response to challenging behaviour, it may bring the wider profession into

² *Collie v Nursing Council of New Zealand* [2001] NZAR 74 at [28]; *CAC v Collins* NZTDT 2016/43, 24 March 2017.

disrepute. Reasonable members of the public would very likely conclude that the reputation and good standing of the profession are lowered when a teacher in the respondent's position uses, or attempts to use, force as a way of moderating the behaviour of a child in an ECE context. Indeed, submits the CAC, it is the exact circumstances in which appropriate behaviour management techniques are required.

13. The CAC also submits that Rules 9(1)(a) and (k) of the Rules are made out for similar reasons as above. The CAC points out also that the respondent's conduct is not justified by section 139A of the Act, because her use of force (and attempt to use force) was as a corrective tool.
14. The CAC points to a number of previous authorities it says are relevant. These are discussed below in the Tribunal's decision.

Respondent submissions

15. The respondent, via her representative's submissions, accepts that the two incidents central to the charge are poor practice, and submits that it is for the Tribunal to determine whether the conduct amounts to misconduct of serious misconduct.
16. The respondent says that the first incident, lunging at Child Z but not making contact, was not retaliatory, motivated by anger or designed to punish. She submits that it is not of the character or severity to be serious misconduct, and is unlikely to be misconduct.
17. In the second incident, the respondent acknowledges that it is likely Child Z got a fright, and that this conduct may be of the character or severity to be serious misconduct. She submits that the first incident is distinct from the second incident and, cumulatively, they are not part of a wider pattern of habitually grabbing children. She contends that the first incident adds little if anything to the second incident.
18. The respondent also provided a reflective statement, and a number of references, as well as a plan for Behaviour Management Planning.
19. In her reflective statement, the respondent outlines the training she has undertaken since the incidents the subject of the charge, including 2019 Ministry of Education training in supporting children's social and emotional wellbeing by understanding their behaviour;

2019 Child Protection training provided by Best Start; Ministry of Education resource He Mapuna te Tamaiti; a series of workshops in 2020 online provided by Best Start on social and emotional wellbeing; 2021 Child Protection training provided by Best Start; 2021 Making Teaching and Learning Visible provided by Best Start; 2022 Te Kororero to support oral language provided by Best Start; and 2022 Developing a Teacher Response Plan.

20. The respondent also advises that, currently as head teacher at the Centre, she leads an immediate teaching team consisting of up to five teachers and at times relievers covering absences. She describes the approach she now takes to developing behaviour management plans for children with challenging behaviours, and for engaging with children. She ends her reflective statement by confirming that the incident the subject of the charge has caused her and her team to reflect on their behaviour and how it can be experienced by the children and those who visit the Centre.
21. The respondent also provided a number of positive references. The Tribunal confirms it has considered those, and the respondent's reflective statement, carefully when formulating its decision.

Kupu Whakatau – Decision

22. The Tribunal finds both particulars set out in the notice of charge are established to the requisite standard.
23. The Tribunal considers that, cumulatively and for the reasons discussed below with respect to the legal position, the established particulars do not (by a narrow margin) meet the standard required for serious misconduct but do amount to conduct otherwise entitling the Tribunal to exercise its powers, pursuant to section 10 of the Act, and rules 9(1)(a) and (k) of the Rules (i.e. misconduct).
24. The Tribunal has emphasised many times that the use of force for correction, even if minor, is unacceptable. In terms of the first incident, while the respondent may not have actually made contact with Child Z, if she had the consequences could have been serious, causing the child to be injured or to fall. As with the second incident, reacting in this way demonstrated a lack of control on the part of the respondent and a lack of insight into other ways to respond to challenging behaviours. It is to the respondent's credit that she has

now realised this and is actively training and working to put into practice other mechanisms to respond.

25. Further, the Tribunal is troubled by the raised voice used by the respondent when dealing with Child Z. The Tribunal has said on many occasions that the impact on learners of yelling and raised voices can be significant and will not be tolerated. Again, the Tribunal is heartened by the steps the respondent has taken to use a different approach in such circumstances.
26. The Tribunal has no difficulty in concluding that the respondent's conduct, as set out in the charge and summary of facts, breached professional standards and is likely to bring the profession into disrepute. Reasonable members of the public, looking at the respondent's conduct objectively, would consider that the reputation and good standing of the teaching profession was lowered by the conduct, especially in the context of an ECE centre teaching very young children.
27. The Tribunal notes the following analogous cases.
28. In *CAC v Carmen*,³ the teacher concerned picked up a two-year-old child by her top and let her go, causing her to fall to the floor. On that occasion, seen by this Tribunal as more serious than the conduct here, the Tribunal had no difficulty in finding there to be serious misconduct established. In *CAC v Riza*,⁴ the teacher on two separate occasions mishandled two one-year-old children by dragging the children by, respectively, an arm and a leg. The Tribunal found this conduct to amount to serious misconduct. Finally, in *CAC v Dhaliwal*,⁵ the teacher addressed a crying child with a raised tone and lifted him up to remove him from the room. There, like the respondent here, the teacher had accepted responsibility for her actions and had demonstrated insight and the Tribunal found there to be misconduct rather than serious misconduct.

³ *CAC v Carmen* NZTDT 2018/21

⁴ *CAC v Riza* NZTDT 2019-33

⁵ *CAC v Dhaliwal* NZTDT 2019/80

Whiu - Penalty

29. Having determined that this case is one in which we find misconduct to be established, the Tribunal must now turn to consider what is an appropriate penalty in the circumstances:

404 Powers of Disciplinary Tribunal

- (1) *Following a hearing of a charge of serious misconduct, or a hearing into any matter referred to it by the Complaints Assessment Committee, the Disciplinary Tribunal may do 1 or more of the following:*
- (a) *any of the things that the Complaints Assessment Committee could have done under section 401(2):*
 - (b) *censure the teacher:*
 - (c) *impose conditions on the teacher's practising certificate or authority for a specified period:*
 - (d) *suspend the teacher's practising certificate or authority for a specified period, or until specified conditions are met:*
 - (e) *annotate the register or the list of authorised persons in a specified manner:*
 - (f) *impose a fine on the teacher not exceeding \$3,000:*
 - (g) *order that the teacher's registration or authority or practising certificate be cancelled:*
 - (h) *require any party to the hearing to pay costs to any other party:*
 - (i) *require any party to pay a sum to the Education Council in respect of the costs of conducting the hearing:*
 - (j) *direct the Education Council to impose conditions on any subsequent practising certificate issued to the teacher.*
- (2) *Despite subsection (1), following a hearing that arises out of a*

report under s 397 of the conviction of a teacher, the Disciplinary Tribunal may not do any of the things specified in subsection (1)(f), (h), or (i).

(3) *A fine imposed on a teacher under subsection (1)(f), and a sum ordered to be paid to the Teaching Council under subsection (1)(i), are recoverable as debts due to the Teaching Council.*

30. We note that, in determining penalty, the Tribunal must ensure that the three overlapping principles are met, that is, the protection of the public through the provision of a safe learning environment for students and the maintenance of both the professional standards and the public's confidence in the profession.⁶ We refer to the decisions of the superior Courts which have emphasised the fact that the purpose of professional disciplinary proceedings for various occupations is actually not to punish the practitioner for misbehaviour, although it may have that effect.⁷
31. In *Mackay* we looked at the principles the Tribunal must turn its mind to when considering penalty following a finding entitling it to exercise its powers:
- (a) Protecting the public;
 - (b) Setting the standards for the profession;
 - (c) Punishment;
 - (d) Rehabilitation;
 - (e) Consistency;
 - (f) The range of sentencing options;
 - (g) Least restrictive;
 - (h) Fair, reasonable and proportionate.

⁶ *CAC v McMillan*, NZTDT 2016/52.

⁷ *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97]; *In re A Medical Practitioner* [1959] NZLR 784 at p 800 (CA).

32. The Tribunal does not intend to repeat what we said in that decision, other than to note that we have turned our mind to these principles in reaching our decision on penalty.
33. In its submissions on penalty, the CAC, after noting the cases with respect to penalty, submitted that a penalty of suspension or cancellation is not required and the respondent has remained teaching at the Centre without issue since the day of the incident.
34. The CAC refers to the cases already discussed above by the Tribunal and notes that in each case a penalty short of suspension was imposed, except in the *Riza* case where the teacher involved had failed to engage fully with the disciplinary process.
35. The CAC then submits that, in light of those cases and the fact the respondent has engaged fully with proceedings, has expressed insight and remorse, and has completed several professional development courses and workshops, the appropriate penalty is a combination of censure and conditions. The CAC states its view that, since several years have elapsed since the conduct without incident, annotation is not required. The CAC notes the usual conditions imposed in cases like this, but submits also that in view of the considerable professional development which the respondent has already engaged in following her conduct, it would be open for the Tribunal to consider that the imposition of a condition requiring that she complete further professional development may be superfluous.
36. The respondent accepts the CAC's approach to penalty. She emphasises that the events central to the charge occurred over three years ago and there has been no repeat. Since then, she has undertaken extensive professional development and has demonstrated that she is a lifelong learner and is willing to update her practice. She submits she is a well-respected head teacher at her ECE Centre and has used her learning to upskill her colleagues about dealing with children exhibiting challenging behaviours calmly and developing behaviour management plans.
37. The respondent refers to the case of *CAC v Crump*,⁸ where a teacher who misused physical force against a troubled student was censured. This teacher was well-regarded and had shown insight and undertaken professional development. The incident was also somewhat historic. The Tribunal in that case turned its mind towards imposing a condition

⁸ *CAC v Crump* NZTDT 2019/12

for a year but, because the matter had occurred two years previously, the Tribunal censured the teacher and imposed no condition on her practising certificate.⁹

38. The Tribunal has taken into account both sets of submissions carefully and considered the cases referred to by both parties. The Tribunal is particularly mindful both of the length of time that has elapsed since the incident, as well as the impressive level of insight shown by the respondent, and the professional development she has undertaken since the incident. The Tribunal encourages the respondent to continue to be mindful of the need to undertake continuing professional development in the way she has been doing.
39. Bearing in mind the above, as well as the obligation upon us to impose the least restrictive penalty in the circumstances, pursuant to section 404(1) of the Act, we therefore order as follows:
- (a) A censure under section 404(1)(b) of the Act;
 - (b) A condition on the respondent's practising certificate that she show a copy of this decision to any employers for a period of two years from the date of this decision.

Utu Whakaea – Costs

40. The CAC submits that a 40% contribution to the CAC's overall costs is appropriate. This reflects a discount from the starting point of 50% to acknowledge the respondent's cooperation.
41. The Tribunal sees no reason to depart from the usual principles and therefore orders 40% costs in favour of the CAC. The CAC has filed a Costs Schedule which sets out the total costs as \$1,618.94, with 40% of that being \$647.58.
42. The respondent is also ordered to pay 40% of the Tribunal's costs pursuant to section 404(1)(i). The Tribunal's total costs are \$1455.00, 40% of which is \$582.00.

⁹ The respondent refers to the similar approach taken by the Tribunal in *CAC v Treanor* NZTDT 2019/39

He Rāhui tuku panui – Non-publication

43. There is an interim order for non-publication. The CAC seeks an order for permanent non-publication in respect of the name and identifying details of Child Z. That order is granted.

R. C. Schmidt-McCleave

Rachael Schmidt-McCleave
Deputy Chair

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

1. This decision may be appealed by the 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).