

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2023/04

UNDER
WĀHANGA
IN THE MATTER
MŌ TE TAKE
BETWEEN
I WAENGA I A

the Education and Training Act 2020
of a charge referred to the Tribunal

**COMPLAINTS ASSESSMENT
COMMITTEE (CAC)**
Prosecutor/Referrer | Kaiwhiu

AND
ME

HELEN BETTY CHESTER
Respondent | Kaiurupare

Hearing | Te Rongonga:

13 September 2023 (on the papers)

Representation | Hei Māngai:

H M L Farquar, Counsel for the CAC
No appearance for respondent

Tribunal Members:

T J Mackenzie (Deputy-Chair), C Harrington, R
McInerney

DECISION OF THE TRIBUNAL ON CHARGE, PENALTY, AND PUBLICATION

7 November 2023

Background | Tāhuhu kōrero

[1] The New Zealand Teachers Disciplinary Tribunal convened on 13 September 2023 to consider a charge of serious misconduct brought by the Complaints Assessment Committee (CAC) against Ms Chester. The allegation involves four instances of unauthorised personal spending on her employer's credit card.

[2] This is our decision on liability for the charge and penalty.

The charge | Te/Ngā Hāmene

[3] The Charge reads as follows:

The CAC charges that Helen Betty Chester, registered teacher, of Lower Hutt, between 15 January 2021 and 30 May 2021:

a. Used a company credit card for unauthorised personal expenses, totalling \$577.24.

Ms Chester's position

[4] Ms Chester has had little engagement in the proceeding. She has not partaken in the three pre hearing conferences that the Tribunal conducted.¹

[5] Without formal engagement from Ms Chester it is not clear whether the charge is accepted or denied. The Tribunal will therefore need to consider whether the charge is proven.

[6] The CAC have filed material in support of a submission that the Tribunal should proceed whether Ms Chester engages or not. They have provided an account of a number of emails with Ms Chester where she accepts the alleged facts and wishes the matter to advance, and doesn't see a need for her involvement beyond that.

[7] Having considered all of that information the Tribunal considered it appropriate to proceed with this case. Ms Chester is aware of the case and does not seem to wish to be involved in it to any great degree.

Evidence / Taunaki

[8] It is evident from the material filed that there was agreement to the summary of facts, with Ms Chester going as far as discussing the practicalities of signing it electronically. We will therefore adopt the summary of facts in our decision as the accepted facts.

¹ 13 April 2023, 15 June 2023, 27 July 2023.

[9] They are as follows:

Background

1. The respondent, **HELEN BETTY CHESTER**, is a registered teacher. Ms Chester was first registered on 26 October 2006. Her full practising certificate expires on 9 May 2024.
2. At the time of the conduct detailed below, Ms Chester worked as Centre Manager at Active Explorers Lower Hutt (the **Centre**), an early childhood education centre in Lower Hutt connected to Evolve Education Group.

Inappropriate use of company credit card

3. In her role as Centre Manager, Ms Chester had responsibility for the Centre credit card.
4. On four occasions between 15 January 2021 and 30 May 2021, Ms Chester used the Centre credit card to pay for personal expenses. The Centre did not authorise Ms Chester to use the Centre card for her personal expenses. Ms Chester did not provide receipts to the Centre for this personal spending for reconciliation.
5. The four unauthorised personal transactions made by Ms Chester on the Centre card totalled \$577.24 and were as follows:
 - a) on 15 January 2021, Ms Chester paid \$90.56 to Two Degrees New Zealand for her home internet bill;
 - b) on 4 March 2021, Ms Chester paid \$181.12 to Two Degrees New Zealand for her home internet bill;
 - c) on 8 March 2021, Ms Chester paid \$215.00 to Contact Energy Ltd for her home power bill; and
 - d) on 30 May 2021, Ms Chester paid \$90.56 was paid to Two Degrees New Zealand for her home internet bill.
6. Ms Chester did not inform the Centre of her personal spending on the Centre credit card. She resigned from the Centre in June 2021.
7. On 13 July 2021 the accounts team at Evolve Education Group noticed the unusual credit card transactions on the Centre card, as they had not received any receipts for the transactions.
8. The Centre sent a letter and its bank account details by email to Ms Chester on 9 November 2021 requesting repayment of \$577.24 by 31 January 2022.

Teacher's Response

9. When the Centre met with Ms Chester on 3 August 2021 to discuss the four transactions on the credit card detailed above, Ms Chester accepted that the transactions were for personal expenses.

10. On 30 September 2021, Ms Chester emailed the Centre confirming she was willing to pay back what had been classified as personal use. She explained that at the time the transactions were made, she was not coping and was under considerable stress.

11. In response to the investigation carried out by the Teaching Council on 24 August 2022, Ms Chester explained that she had had a rough time being Centre Manager at the Centre and was under a lot of stress at the time of the transactions. Ms Chester said her passion was teaching and said she would not take on a management role again, and advised that she would organise a payment plan with the Centre.

12. As at 8 November 2022, Ms Chester had not repaid the \$577.24. Ms Chester advised that the money had not been repaid because she had not seen the letter with the repayment details. She said she was receiving many emails and it was overwhelming.

The legal principles / Ngā mātāpono ture

[10] Section 10 of the 2020 Act defines “serious misconduct” as follows:

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 Teaching Council's criteria for reporting serious misconduct

[11] Regarding the first aspect of this test (adverse affect(s)). In *CAC v Marsom* this Tribunal said that the risk or possibility is one that must not be fanciful and cannot be discounted.² The consideration of adverse effects requires an assessment taking into account the entire context of the situation found proven.

[12] The second limb (fitness) has been described by the Tribunal as follows:³

We think that the distinction between paragraphs (b) and (c) is that whereas (c) focuses on reputation and community

² *CAC v Marsom* NZTDT 2018/25, referring to *R v W* [1998] 1 NZLR 35.

³ *CAC v Crump* NZTDT 2019-12, 9 April 2020 (referring to the test in the 1989 Act, which used different paragraph references).

expectation, paragraph (b) concerns whether the teacher's conduct departs from the standards expected of a teacher. Those standards might include pedagogical, professional, ethical and legal. The departure from those standards might be viewed with disapproval by a teacher's peers or by the community. The views of the teachers on the panel inform the view taken by the Tribunal.

[13] The third limb of the test (disrepute) is informed by the High Court decision in *Collie v Nursing Council of New Zealand*.⁴ The Court considered that the question that must be addressed is an objective one: whether reasonable members of the public, informed of the facts and circumstances, could reasonably conclude that the reputation and good standing of the profession is lowered by the conduct of the practitioner. We take the same approach.

[14] Section 10(b) of the serious misconduct test refers to reporting criteria. The Court of Appeal (discussing the same wording from the former Education Act 1989) has affirmed that this reporting criteria limb creates a conjunctive test for serious misconduct.⁵ That is, one of the three limbs of (a), and one of the criteria from (b), must both be met for serious misconduct to be made out.

[15] The Teaching Council Rules 2016 describe the types of behaviour that must be reported by an employer as part of the serious misconduct test. The CAC relies on rule (9)(1)(k) as follows:

9 Criteria for reporting serious misconduct

(1) A teacher's employer must immediately report to the Teaching Council in accordance with section 394 of the Act if the employer has reason to believe that the teacher has committed a serious breach of the Code of Professional Responsibility, including (but not limited to) 1 or more of the following:

(a) using unjustified or unreasonable physical force on a child or young person or encouraging another person to do so:

(b) emotional abuse that causes harm or is likely to cause harm to a child or young person:

(c) neglecting a child or young person:

(d) failing to protect a child or young person due to negligence or misconduct, not including accidental harm:

(e) breaching professional boundaries in respect of a child or young person with whom the teacher is or was in contact as a result of the teacher's position as a teacher; for example,—

(i) engaging in an inappropriate relationship with the child or young person:

⁴ *Collie v Nursing Council of New Zealand* [2001] NZAR 74, at [28].

⁵ *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZCA 637.

(ii) engaging in, directing, or encouraging behaviour or communication of a sexual nature with, or towards, the child or young person:

(f) viewing, accessing, creating, sharing, or possessing pornographic material while at a school or an early childhood education service, or while engaging in business relating to a school or an early childhood education service:

(g) acting dishonestly in relation to the teacher's professional role, or committing theft or fraud:

(h) being impaired by alcohol, a drug, or another substance while responsible for the care or welfare of a learner or a group of learners:

(i) permitting or acquiescing in the manufacture, cultivation, supply, offer for supply, administering, or dealing of a controlled drug or psychoactive substance by a child or young person:

(j) an act or omission that may be the subject of a prosecution for an offence punishable by imprisonment for a term of 3 months or more:

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

[16] Here, the CAC relies on rules (g) (j) and (k) (which we have italicised above).

[17] The obligation rests on the CAC to prove the charge. While the standard to which the alleged facts must be proven is the balance of probabilities, the consequences for the respondent that will result from a finding of serious professional misconduct must be borne in mind.⁶

Finding on liability / Kupu mō te taumahatanga

[18] Ms Chester was trusted as the Centre Manger. On four occasions spanning a period of five months she breached that trust. It is of little moment that the sums might not be significant (although we would say they are not insignificant). The small sums taken is really just the absence of something which might have aggravated the situation even more.

[19] Ms Chester did not own up to the conduct until after it was discovered. Repayment was requested later in 2021 and as at the date of hearing this matter no repayment had occurred. We will address the repayment issue again later in this decision when considering penalty.

[20] We consider that stealing from an employer in these circumstances – four times – is serious misconduct. We consider that this dishonesty against her employer reflects adversely on Ms Chester's fitness to be a teacher. We also consider that it brings the profession into disrepute. In terms of the reporting rules, each of the rules relied on by the CAC is triggered here by this conduct. We accept in that finding that

⁶ *Z v Dental Complaints Assessment Committee* [2009] 1 NZLR 1 (SC).

this conduct could have been the subject of a criminal prosecution for offences punishable by maximum penalties of three months' imprisonment or more.⁷

Penalty – legal principles

[21] In *CAC v McMillan* this Tribunal summarised the role of disciplinary proceedings in this profession as:⁸

... to maintain standards so that the public is protected from poor practice and from people unfit to teach. This is done by holding teachers to account, imposing rehabilitative penalties where appropriate, and removing them from the teaching environment when required. This process informs the public and the profession of the standards which teachers are expected to meet, and the consequences of failure to do so when the departure from expected standards is such that a finding of misconduct or serious misconduct is made. Not only do the public and profession know what is expected of teachers, but the status of the profession is preserved.

[22] The primary motivation is to ensure that three overlapping purposes are met. These are:⁹

- I. to protect the public through the provision of a safe learning environment for students;
- II. to maintain professional standards; and
- III. to maintain the public's confidence in the profession.

[23] The Tribunal is required to arrive at an outcome that is fair, reasonable and proportionate in the circumstances in discharging our responsibilities to the public and profession.¹⁰

[24] The Act provides for a range of different penalty options, giving this Tribunal the ability to tailor an outcome to meet the requirements that a proven case presents. Penalties can range from taking no steps, to cancellation of a teacher's registration.

[25] In *CAC v Fuli-Makaua* this Tribunal has noted that cancellation may be required in two overlapping situations:¹¹

- a) Where the conduct is sufficiently serious that no outcome short of deregistration will sufficiently reflect its adverse effect on the teacher's fitness to teach and/or its tendency to lower the reputation of the profession; and
- b) Where the teacher has insufficient insight into the cause of the behaviour and lacks meaningful rehabilitative prospects. Therefore, there is an apparent ongoing risk that leaves no option but to deregister.

⁷ Section 228 Crimes Act 1961, ss 219 and 223(c) Crimes Act 1961.

⁸ *CAC v McMillan* NZTDT 2016/52, 23 January 2017, (at [23]).

⁹ *McMillan*.

¹⁰ See *Roberts v Professional Conduct Committee of the Nursing Council of New Zealand* [2012] NZHC 3354, at [51].

¹¹ *CAC v Fuli-Makaua* NZTDT 2017/40, at [54], citing *CAC v Campbell* NZDT 2016/35 (at [27]).

Decision on penalty

[26] We issued a Minute on 13 September 2023 noting our finding of serious misconduct (with reasons to follow). We gave Ms Chester an opportunity to advance information relevant to penalty. We also asked the parties to inform us regarding any repayment, as this appeared relevant to us for penalty considerations.

[27] On 14 September 2023 the (former) employer reported that no payment or attempt at repayment had been made. This was passed on by the CAC to the Tribunal and Ms Chester.

[28] On 25 September 2023 Ms Chester contacted the Tribunal. Ms Chester stated in an email:

Hello

I have set up automatic payment to be made regularly till money is paid. Starting this Wednesday. Even though I have moved I will still ensure money is paid.

I still feel that I'm a great teacher, I having been working really hard to turn things around. I have included some comments from parent from my farewell post.

[29] Ms Chester included some positive comments made about her (on what appears to be a social media page) that are attributed to parents of children that she taught at the Centre.

[30] On 27 September 2023 Ms Chester made a deposit of \$100 to the bank account of the centre, as advised by the former employer to the CAC and passed on to the Tribunal.

[31] On 31 October 2023 the Tribunal sought an update from the parties. The CAC has confirmed that there have been no further payments made. The Tribunal has received no further contact from Ms Chester since the email of 25 September (above).

[32] Turning to our penalty decision. The conduct on its own in this case could be amendable to outcomes short of cancellation. Much would depend on the teacher's insight, remorse, and responsibility. To maintain Ms Chester's position as a registered teacher we would at the very least want to be able to conclude, on a solid evidential foundation, that this was a one off incident in extenuating circumstances. We would want assurance that there was no risk of a future occurrence.

[33] When we consider all of the information before us, we are not confident that Ms Chester has reached that territory. Ms Chester did not make any payment or attempts at payment for nearly two years. She had minimal engagement with this disciplinary process (although we note that she did accept the facts). However, Ms Chester appeared content to leave the stolen money unpaid at the time of our hearing in September. Since then she has assured the Tribunal that payment was occurring via an automatic payment. But we are left questioning the sincerity and credibility of that claim. Nearly two months on only one payment has been made, of \$100. Or

rather, over two and a half years since the money was first taken.

[34] No other contact has been received by the Tribunal although any further assurances would have now weighed little. We consider that Ms Chester has had more than enough chances to make amends and improve her position.

[35] We consider that the original conduct, the lack of engagement, and the minimal and very delayed repayment all combine to lead us to a position where we conclude that cancellation is the only appropriate outcome. We consider that it would be entirely wrong for a teacher to continue as a registered teacher in the present circumstances.

[36] We therefore order cancellation of Ms Chester's registration per section 500(1)(g) Education and Training Act 2020.

Non Publication

[37] We confirm that any earlier interim orders are discharged. There are no non publication orders in this case.

Costs

[38] Tribunal and CAC costs will be payable by Ms Chester. These will be determined in a subsequent decision. The CAC is asked to submit its costs schedule within five working days.



T J Mackenzie

Deputy Chair

New Zealand Teacher's Disciplinary Tribunal /

Te Upoko Tuarua o Te Rōpū Whakaraupapa

o Aotearoa