

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

NZTDT 2021/57

**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**

**AND** **TASI TASI**  
**Respondent**

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**TRIBUNAL DECISION**

**31 August 2022**

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**HEARING:** Held at Wellington on 2 June 2022 (by Microsoft Teams)

**TRIBUNAL:** Ian Murray (Deputy Chair), Lyn Evans and Rose McInerney

**REPRESENTATION:** S A H Bishop and A C Jeffares for the CAC  
J Brown for the Respondent.

## Charge

1. The Complaints Assessment Committee (CAC) has referred a charge of serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers to the Tribunal. In a Notice of Charge dated 1 December 2021, the CAC alleged that the respondent:
  - a) Allowed two year 11 students (Student A and Student B) to fight each other in a classroom during class time without boxing gloves; and /or
  - b) Used inappropriate language towards Student A such as:
    - i) 'Fuck you' and /or
    - ii) 'I don't give a fuck who you are or a fuck who your parents are'; and /or
  - c) Pushed Student A onto a desk and held him there.
  
2. The CAC contends that this conduct amounts to serious misconduct pursuant to s 378 of the Education Act 1989 (the Act) and rr 9(1)(1)(a), (d) and (k) of the Education Rules 2016 (the Rules); or conduct that otherwise entitles the Disciplinary Tribunal to exercise its powers under s 404 of the Act.

## Factual basis for decision

3. Before the hearing the parties conferred and submitted an Agreed Summary of Facts (ASF), signed by the respondent and counsel for the CAC. The ASF is set out in full:

### **“Background**

1. The respondent, **Tasi Tasi**, is a registered teacher who was first fully registered in 2016. His current practising certificate is due to expire on 28 November 2022.
  
2. At the time of these events, on 30 November 2018, the

respondent was employed as a teacher at Kelston Intermediate School/Te Kura Takawaenga o Kerehana (the **School**). He taught an all-boys class called Tamatoa. This class focused on students that had additional educational requirements. The respondent resigned from the school on 14 December 2018.

3. Student A had behavioural issues that were being addressed at the school at the time. He was not a permanent member of the respondent's class and was only meant to be there for the day. The respondent was not aware of Student A's behavioural issues before he arrived in his class.

### **The incident**

*Allegation one: Allowed two 11-year-old students (Student A and Student B) to fight each other in the classroom, during class time, without boxing gloves*

4. On 30 November 2018, the respondent was told by Student C that two students in his class, Student A and Student B, both 11 years old, wanted to fight. The respondent asked why. Student C said that Student B had been mocking Student A and that they were going to have a fight after school.
5. Mr Tasi spoke to the two students and said "do you guys want to put the gloves on?" Student B said "No" multiple times. Student A, on the other hand, said that he did want to fight.
6. The other students present got into a circle inside the

classroom. Student A and Student B fought for a round of 30 seconds. Students A and B were not wearing boxing gloves. After the first 30 seconds, Student B did not want to fight another round. On Student A's insistence, they fought for another round of 30 seconds.

7. During the fight, Student A punched Student B in the jaw, and Student B punched Student A in the face.
8. Student A later said that he had not wanted to fight but that he decided to because he was scared of other students mocking and laughing at him if he did not.

*Allegation two: Used inappropriate language towards Student A, including saying "Fuck you" and/or "I don't give a fuck who you are or a fuck who your parents are"*

9. After the fight, Student A became upset and pulled some students' work off the wall, threw a stick, broke a fan and kicked or flipped over tables.
10. A teacher aide who was familiar with Student A came into the room and the respondent asked him to help with Student A. The teacher aide tried to talk to Student A and calm him down but was unsuccessful and Student A swore and yelled at the teacher aide. The teacher aide restrained Student A as he went to punch the respondent.
11. The teacher aide realised his approach was not working and asked the respondent to step in. The teacher aide felt he was getting angry and left the room.
12. The respondent said to Student A, "don't wreck the class" and

“don’t wreck the brotherhood”.

13. The respondent became angry with Student A and said “fuck you” and “I don’t give a fuck who you are or a fuck who your parents are”.

*Allegation three: Pushed Student A onto a desk and held Student A there*

14. The respondent then pushed Student A down onto a desk and held him there for up to 25 seconds. He held Student A by the shoulders to talk to him. Student A eventually calmed down and got his bag and left.

#### **Teacher’s response**

15. In a written account of the incident, the respondent stated that he allowed the students to fight because he believed that they would otherwise fight after school, which could have an impact on the community. He stated that he made it clear to the students that there was to be no fight after school. The respondent said that he had previously allowed students in Tamatoa to fight in order to settle disputes.
16. Following the fight, the respondent said that he tried to calm Student A down. He said that Student A had clenched his fist and adjusted his body position to throw a punch, and so he pushed him onto the table and held him there out of “self-defence” as he believed that Student A was about to punch him. The respondent said he did not intend to cause any harm to the student. He admitted to using swear words.
17. On reflection, the respondent said that in the future they would not have boxing gloves in the classroom and he would

watch his language. He said he should have de-escalated the situation by speaking calmly and that he could have undertaken a restorative justice process with the students. He said he regretted his actions and hoped they would have no long-term negative effects on Student A.

18. At the meeting with the CAC, the respondent told the CAC that a student had previously been killed during a fight outside of the school and that this influenced his decision to allow Student A and Student B to fight in class. He said that he had boxing gloves because he was a box-fit coach, and denied ever previously allowing fighting as a means of resolving disputes.
19. The respondent told the CAC that he did not remember the actual phrase he used to Student A, but that he did say "Fuck you". He said he had been very emotional and that it was not his normal language."

4. We must be satisfied on the balance of probabilities that the CAC has proved the charge. In this case, the admissions in the summary of facts provide an adequate basis to establish the charge. Accordingly, we find that the charge is proved.

### **Serious misconduct**

5. It is for the Tribunal to be satisfied that the established conduct amounts to serious misconduct or conduct otherwise entitling the Tribunal to exercise its powers.
6. Section 378 of the Act provides:

***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*



occasions. *CAC v Grace*<sup>1</sup> and *CAC v Taylor*<sup>2</sup> are representative of the orthodox position we have taken on physical force against children. Ordinarily this type of conduct will be serious misconduct but, as with all cases, we are required to make a fact specific analysis of the amount of force used and the context in which it was used.<sup>3</sup>

12. The starting point is s 139A of the Act which has prohibited the use of force by teachers for the purposes of correction since July 1990.
13. Turning to the two-stage test in s 378 and rule 9.<sup>4</sup> The first criteria is the effect of the behaviour on students. Because the incident occurred in the school environment, involving children in the respondent's care, and involved the respondent permitting children to fight with each other, we are satisfied that the respondent's conduct was undoubtedly likely to adversely affect the wellbeing of students A and B.
14. There are a number of aspects to the respondent's conduct, all of them show poor judgement. The second and third incidents involved momentary loss of control, but nonetheless the respondent acted in a highly inappropriate way. We found the incident involving permitting children to fight each other was particularly troubling. It is the antithesis of how teachers are trained to manage children. There was a real risk of things escalating and getting out of control. Such behaviour by a teacher clearly adversely reflects on his fitness to be a teacher.
15. The test for deciding whether a teacher's actions are likely to bring the teaching profession into disrepute is informed by the conclusions of the Court in *Collie v Nursing Council of New Zealand*.<sup>5</sup> It is an objective test and requires consideration of 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

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<sup>1</sup> *CAC v Grace* (NZTDT 2017-6).

<sup>2</sup> *CAC v Taylor* (NZTDT 2017-41).

<sup>3</sup> See for example *CAC v Teacher* NZTDT 2016-50.

<sup>4</sup> *Teacher Y v Education Council of Aotearoa New Zealand* [2018] NZDC 3141 at [64].

<sup>5</sup> *Collie v Nursing Council of New Zealand* [2001] NZAR 74.



respondent's actions.

16. To decide whether the behaviour in question may bring the teaching profession into disrepute, we considered the combination of the respondent's conduct. We concluded that a reasonable member of the public informed of the facts and circumstances, would reasonably conclude that the reputation and good standing of the profession was lowered by the respondent's actions.
17. Turning to our analysis of Rule 9, it was clear that the conduct was unjustified or unreasonable physical force, the respondent by allowing the students to fight failed to protect those students. We have also already found the conduct brought discredit to the teaching profession. As a result, the criteria for reporting serious misconduct is established.

## **Penalty**

18. In *CAC v McMillan*,<sup>6</sup> we summarised the role of disciplinary proceedings against teachers as:

*... 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.*

19. Section 404 of the Act provides:

### **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:*

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<sup>6</sup> NZTDT 2016/52, 23 January 2017, paragraph 23.

- (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.*

20. In *CAC v Teacher*,<sup>7</sup> we commented that:

*We repeat as we have said in a number of cases in the past that the use of physical force – even at a lower level such as evident in this case – is unacceptable in New Zealand schools, and that any teacher who uses physical force contrary to section [139A] puts his for the following reasons or her status as a teacher in peril.*

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<sup>7</sup> *CAC v Teacher NZTDT 2014-49*, 20 May 2014.

21. The behaviour in this case troubled us so that we seriously considered cancellation. However, in the end we decided that was not necessary for the following reasons. We were impressed with the respondent's reflective statement and the insight he showed. We also recognise that there was context to the misconduct because the respondent was a beginner teacher and had been put in charge of challenging students. While this does not excuse the behaviour, it does explain it. He also has the support of his new school. As a result, we do not consider that cancellation of his registration is necessary.
22. We want to impose a penalty that acknowledges the seriousness of what occurred but one that will also assist the respondent to continue in the teaching profession. The Tribunal considers it is appropriate to make the following orders:
- a. That he is censured (section 404(1b));
  - b. That the following conditions are impose on any practising certificate subsequently issued to Mr Tasi Tasir for a period of 1 year following the Tribunal's decision (s 404(1)(c));
    - i. To provide a copy of the Tribunal's decision to any prospective teaching employer.
    - ii. To practise under the guidance of a mentor approved by the Manager of Teaching Practice at the Teaching Council.
    - iii. to attend and complete a programme related to anger management, classroom management and/or behaviour management.

### **Costs**

23. The CAC sought a contribution of 40% of its costs under s 404(1)(h). The respondent agrees with this level of costs
24. The Tribunal has previously indicated that costs of 40% will ordinarily be

appropriate in cases determined on the papers and we see no reason to depart from that approach.

25. Therefore, the Tribunal orders the respondent to pay 40% of the CAC's actual and reasonable costs under s 404(1)(h) and the Tribunal's costs under s 404(1)(i).
26. The Tribunal delegates to the Deputy Chair authority to determine the quantum of those costs and issues the following directions:
  - a) Within 10 working days of the date of this decision the CAC is to file and serve on the respondent a schedule of its costs; and
  - b) Within a further 10 working days the respondent is to file with the Tribunal and serve on the CAC any submissions he wishes to make in relation to the costs of the Tribunal or CAC.
27. The Deputy Chair will then determine the total costs to be paid

**Non-publication**

28. We make an order prohibiting publication of the name of students involved in the incident, students A and B, in accordance with the protections afforded to young persons under Rule 34 of the Teaching Council Rules 2016. We make no other suppression orders.



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Ian Murray  
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. Sections 356(3) to (6) apply to every appeal under these sections as if it were an appeal under section 356(1).