

**BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL**

**NZTDT 2023-35**

RARO TE MANA O TE  
UNDER THE

the Education and Training Act 2020  
**(the Act)**

MŌ TE TAKE  
IN THE MATTER OF

of a charge referred to the Tribunal

I WAENGA I A  
BETWEEN

**COMPLAINTS ASSESSMENT  
COMMITTEE (CAC)**

Kaiwhiu | Prosecutor

ME  
AND

**[REDACTED]**

Kaiurupare / Respondent

---

**DECISION OF THE TRIBUNAL**

**25 March 2024**

---

Hearing | Te Rongonga

20 February 2024 (on the papers)

Representation | Hei Māngai

T Panchal for the CAC  
Respondent self-represented

Tribunal panel | Pae Taraipiunara

T J Mackenzie (Deputy Chair), D Spraggs, C Harrington

## Introduction

- [1] The respondent has been charged with Serious Misconduct by the Complaints Assessment Committee pursuant to s 497 Education and Training Act 2020.
- [2] The charge alleges that the respondent whilst teaching at an early childhood centre was drinking alcohol and under the influence of alcohol.
- [3] The respondent agrees with the facts. We will determine whether this is serious misconduct and if so what orders should follow.

## Agreed facts

- [4] Below we will insert the facts as agreed between the parties:

1. The respondent, [REDACTED], is a registered teacher. [REDACTED] was first registered as a teacher on 12 December 2017. [REDACTED] currently holds a practising certificate, which expires on [REDACTED].
2. Between February 2019 and 17 March 2022, [REDACTED] was employed at [REDACTED] (the Centre) as an early childhood teacher. [REDACTED] had also previously been employed by the Centre between November 2017 and March 2018.
3. On 3 March 2022, the Teaching Council (the Council) received a mandatory report (MR) filed by [REDACTED], owner of the Centre following [REDACTED] dismissal on 17 March 2022.
4. The MR alleged that on 26 January 2022, [REDACTED] consumed alcohol while working at the Centre.
5. [REDACTED] has previously been before the CAC for two convictions for driving with excess breath alcohol on 27 July 2018 and 26 June 2020. The CAC found that these convictions amounted to misconduct and [REDACTED] was censured on 29 September 2020.

Particular 1(a) and (b): [REDACTED] drank alcohol at the Centre while responsible for the care of children / was under the influence of alcohol while at the Centre, including while she was responsible for the care of children

6. On 26 January 2022, [REDACTED] left the Centre's premises during her lunch break and purchased a 1.25L bottle of 'Nitro' vodka and guarana drink (the Alcohol) (7% alcohol). [REDACTED] poured this drink into a Gatorade bottle before returning to work with it.

7. At approximately 1 pm, [REDACTED] returned to work. At several points throughout the afternoon, [REDACTED] was observed consuming the Alcohol, including when she was supervising children playing outside with another teacher from the Centre. When [REDACTED] was asked what she was drinking, she said the Alcohol was “a new sugar-free flavour” of Gatorade.
8. Later in the afternoon, [REDACTED] was under the influence alcohol while at the Centre. She presented as “happier” and “chattier” than normal.
9. At about 5pm, after [REDACTED] finished work, she went to her car and consumed more of the Alcohol before returning for a staff meeting at approximately 5:30pm.
10. At the staff meeting, [REDACTED] was observed to be unsteady on her feet and her demeanour was described as “very over the top” from her normal self. [REDACTED] appeared to be uncharacteristically happy and greeted other teachers in an overly friendly manner. During the staff meeting, [REDACTED] slurred her words, and was unfocussed, disruptive, and confused. She was also fidgety and was swaying in her chair.
11. [REDACTED] continued to sip the Alcohol during the meeting.
12. Towards the end of the meeting, [REDACTED] realised she was drunk, and tipped the remaining Alcohol down the drain and put it in the bottle into the recycling bin.
13. At approximately 6:30pm, after the staff meeting, [REDACTED] struggled to walk straight and open the gate. She also attempted to drive home but was stopped by another teacher (Teacher). The Teacher then asked [REDACTED] if she had been drinking. [REDACTED] became upset and explained it was the anniversary of her partner’s death. The Teacher called an Uber to take [REDACTED] home.
14. After [REDACTED] left, the Teacher went to [REDACTED] car and found the empty Alcohol bottle in the gutter.

Centre investigation and teacher response

15. The Teacher reported the matter to the Centre’s management.

16. On 11 March 2022, a meeting was held with Centre management. [REDACTED] stated that:
  - a. She was struggling on 26 January 2022, as it was the [REDACTED]. [REDACTED] accepted that she should have taken the day off.
  - b. That on that day, she went to her car in her lunch break. [REDACTED] broke down in an anxiety attack. She attempted to call her mother, however her mother did not answer as she was out and had left her phone at home.
  - c. She drove to the store during her lunch break, purchased the Alcohol and poured it into the Gatorade bottle, in the hope that it would help calm her in case she had another anxiety attack.
  - d. She took the Alcohol into the Centre and consumed it.
  - e. She consumed the Alcohol during work hours and while she was responsible for caring for the children.
  - f. She did not believe she was intoxicated during her teaching hours as she had only had a few sips around lunchtime and had started drinking more consistently near the end of the day.
  - g. She acknowledged that at the workplace meeting at 5:30pm, she was disruptive and visibly intoxicated.
17. [REDACTED] apologised to Centre management and expressed her remorse for her actions. [REDACTED] accepted that she should have shared how she was feeling with the Centre owner and her colleagues how she had been feeling, and that she should have sought support.
18. In her response to the mandatory report on 13 May 2022, [REDACTED] explained the changes she had made to her life. [REDACTED]:
  - a. began weekly counselling with an alcohol and other drug counsellor on 30 January 2022;
  - b. was referred to Wahine Wai Ora, a group for women struggling with alcohol and drug addiction; and

## FINAL NON PUBLICATION ORDERS MADE REGARDING THE NAME OF THE RESPONDENT AND THE NAME OF THE EARLY CHILDHOOD CENTRE

- c. on 1 April 2022, she had begun taking Antabuse to help manage her alcohol use.
19. On 26 January 2023, ██████████ advised that she continued her weekly appointments (with a counsellor from City Mission) and that she remained using Antabuse to manage her alcohol use.
20. An impairment report was completed on 23 December 2022. This report recorded that ██████████ had been experiencing anxiety and depression, and was also struggling with alcohol management.
21. ██████████ is currently attending Alcoholics Anonymous and completed a 30- day residential rehabilitation programme in July-August 2023.

### **Liability – serious misconduct**

- [5] There can be no doubt that this meets all of the tests for serious misconduct.<sup>1</sup> The behaviour was likely to adversely affect students, reflects adversely on the respondent's fitness, and brings the profession into disrepute.
- [6] We also consider that the Teaching Council Rules 2016 criteria for reporting serious misconduct are met, in particular rules 9(1)(h) (impaired by alcohol whilst responsible for learners) and 9(1)(k) (disrepute).
- [7] Any teacher who consumes alcohol and is under the influence whilst teaching – especially in an early childhood setting – is likely to have a finding of serious misconduct made against them. Such a finding is appropriate here.

### **Penalty**

- [8] The CAC suggests that an appropriate penalty is made up of a censure, conditions and annotation of the register for 8 months. The conditions proposed are:
- i. For a period of 1 year, to provide a copy of the Tribunal decision to any current and future employers, and provide evidence of same to the Manager of Professional Responsibility at the Teaching Council; and
  - ii. For a period of 12 months, to provide 6-monthly updates to the Manager of Professional Responsibility regarding ██████████ rehabilitation and ongoing relationship with alcohol, as well as her mental health.
- [9] We note the two previous and recent drink driving convictions (2018 and 2020) and the subsequent finding of misconduct by the CAC in September 2020 for those.

---

<sup>1</sup> Section 10 of the Act.

FINAL NON PUBLICATION ORDERS MADE REGARDING THE NAME OF THE RESPONDENT AND THE NAME OF THE EARLY CHILDHOOD CENTRE

- [10] It is a serious concern to us that in January 2022, less than 18 months after the CAC dealt with these convictions, the respondent's alcohol problem has seen her consuming alcohol at her workplace and being under the influence whilst in charge of young children.
- [11] Given that combination, as a starting point we would consider cancellation of registration is likely in these circumstances for this conduct.
- [12] We turn to consider the position of the respondent. We note the several steps mentioned in the agreed facts regarding the steps taken by the respondent to try and quash her alcohol dependence. We also note the further information we have received including confirmation from her doctor and from WINZ that she is not fit to work at present due to alcohol dependence and mental health issues including anxiety and depressive disorder.
- [13] We also take into account the respondent's acceptance of the facts and acceptance of all proposed outcomes.
- [14] Taking all information into account, we consider that we can step back from cancellation. However, we consider that more thorough conditions are required to ensure that all has been done to minimise the risk of such events occurring again, particularly as they have now in this instance transgressed into the classroom.
- [15] The penalties we impose are as follows:
- 1) A censure for this conduct, per section 500(1)(b) of the Act.
  - 2) Annotation of the register for two years from the date of this decision (section 500(1)(e))
  - 3) That any future practising certificate issued within five years from the date of this decision to have the following conditions (section 500(1)(j)):
    - I. To provide a copy of this decision to any teaching/education related employer and to provide proof of this to Manager of Professional Responsibility at the Teaching.
    - II. That during the currency of any practising certificate issued within five years from the date of this decision, for the respondent to provide six monthly updates to the Manager of Professional Responsibility regarding her rehabilitation from and relationship with alcohol, as well as her mental health.

## FINAL NON PUBLICATION ORDERS MADE REGARDING THE NAME OF THE RESPONDENT AND THE NAME OF THE EARLY CHILDHOOD CENTRE

Such updates should include reference to whomever the respondent is working with (e.g. counsellors, mentors, sponsors, and any health professionals), their details, and consent for the Manager to contact and verify any such information with these third parties. The updates should be in writing by email and contain a short summary of steps being taken and progress.

- III. That within ten working days of the issuing of a practising certificate the respondent will also provide an update in terms of (II) above.

[16] The respondent should take note that conditions like these, short of cancellation, are at the limit of what the Tribunal can do. If there are any future issues, whilst a matter to be decided if and when that occurs, the respondent may likely find that the Tribunal takes a less optimistic view and cancels the respondent's registration. The Tribunal hopes that that day does not come.

### **Non Publication**

[17] The respondent seeks an order for permanent non publication of her name. This is based on her mental health and dependence issues, as outlined earlier.

[18] The starting point is a presumption of open justice. That however can be displaced by the interests of any person including the respondent.

[19] The respondent has taken significant steps in her rehabilitative journey. Many have failed in that journey before. We consider that any potential publication would risk seriously derailing the respondent. We consider that the public interest in assisting her rehabilitation back to being a fit and healthy teacher outweighs the public interest in open justice in this case.

[20] We therefore make a final order for non-publication of the respondent's name and any details identifying her.

[21] We extend that to the name of the Early Childhood Centre involved as to otherwise name them could potentially undermine this order.

### **Costs**

[22] Having been found liable in serious misconduct, the respondent is required to meet some of the costs of this case.

FINAL NON PUBLICATION ORDERS MADE REGARDING THE NAME OF THE  
RESPONDENT AND THE NAME OF THE EARLY CHILDHOOD CENTRE

[23] Fortunately the CAC have not used external lawyers, so the costs are quite modest.

The CAC only seeks internal costs, as follows:

Complaints Assessment Committee Costs Amount  
Legal costs for the Complaints Assessment  
Committee (GST exclusive)  
\$2,839.00  
TOTAL COSTS \$2,839.00

TOTAL COSTS SOUGHT (40%) \$1,135.60

[24] Tribunal costs in addition are \$1455. 40% is \$582.

[25] The total costs order would be \$1717.60. Given the limited financial circumstances of the respondent we reduce that further to \$1250 in total.



---

**T J Mackenzie**  
Deputy-Chair of the New Zealand Teacher's  
Disciplinary Tribunal