

INTERIM NON-PUBLICATION ORDERS

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2024/35

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	JULIE MARGARET TAIT (Registration No. 152972) Kaiurupare / Respondent

Hei Māngai Appearance	E McCaughan for the CAC. J Whyte for the Respondent.
Tribunal	C Garvey (Deputy Chair), G Ashworth and M Johnson

DECISION

20 December 2024

Introduction

- [1] The respondent, Julie Tait, is a highly experienced teacher with an unblemished disciplinary record until the events the subject of this charge. The CAC alleges that Mrs Tait is guilty of serious misconduct in relation to an incident involving physical contact with a student on 26 May 2023 while Mrs Tait was relief teaching.
- [2] By consent, the matter proceeded by way of a hearing on the papers on 29 November 2024 with an Agreed Summary of Facts (the summary of facts) and submissions from both parties. Mrs Tait also furnished several character references. Following the hearing, the Tribunal issued a Minute giving an indication of its findings on liability and penalty and sought clarification from counsel on behalf of Mrs Tait as

to her position on non-publication orders, as the submissions were silent in this regard. This decision now sets out the reasons for the Tribunal's findings.

The Notice of Charge

- [3] The incident occurred at ACG Strathallan in Auckland (the school). The Principal of the school made a mandatory report to the Teaching Council on 7 June 2023. Mrs Tait cooperated with the Complaints Assessment Committee (CAC) investigation, including meeting with the CAC on 16 May 2024. A notice of charge was laid on 12 July 2024. The particulars of the charge read as follows:

The CAC charges that Julie Margaret Tait, registered teacher, of Auckland on 26 May 2023:

- (a) made physical contact with a learner by:
 - (i) putting her arm around a learner's neck; and/or
 - (ii) ruffling a learner's hair;
- (b) whilst making physical contact with a learner, encouraged other students of the class to "get him."

The Agreed Summary of Facts

- [4] The parties signed the summary of facts on 2 October 2024. The following facts are taken from this, with some additional background information gleaned from material filed in relation to penalty on behalf of Mrs Tait.
- [5] Mrs Tait first registered in 1975 and taught for almost 50 years. On 26 May 2023 Mrs Tait was providing relief cover at the school. Mrs Tait had previously worked for ACG in various roles and intended to continue relieving and invigilating examinations for a further few years until she was ready to fully retire.
- [6] Mrs Tait noticed that Student A was off task during the lesson. Immediately prior to the incident Student A was walking towards the front of the classroom and Mrs Tait asked Student A to put his things on his desk and listen to instructions. Student A did not respond to the instruction so:
- 8. Mrs Tait placed her arm around his neck in a type of "head lock" and ruffled his hair. Mrs Tait thought that she was doing so in a joking manner and did not feel as though she had applied force.

9. While she was doing so Mrs Tait encouraged other students of the class to “get him” as a joke. Some of the class responded.¹
10. Student A became visibly upset and repeatedly asked Mrs Tait to let him go. Mrs Tait did not hear him say this, but soon noticed that Student A was becoming upset. Mrs Tait let go of Student A at this point.
11. Mrs Tait asked Student A if he was upset and apologised to him in front of the class. Student A told her that he had a sore neck. Mrs Tait then took him outside the class to talk to him and offered to take him to the school nurse when she learnt that Student A was suggesting that he had a neck injury. Student A declined to see the school nurse.
12. Eventually Student A returned to the class. Mrs Tait requested Student A to provide her with his mother’s phone number so that Mrs Tait could contact her.
13. After the lesson had finished Mrs Tait called Student A’s mother and told her what had happened. She offered to pay for medical bills resulting from the incident.

[7] The parents of Student A complained to the school. Following a prompt investigation the principal submitted a mandatory report on 7 June 2023. Mrs Tait had already been advised as a consequence of the incident that she would no longer be offered relief teaching or exam supervision work at the school. Mrs Tait was willing to apologise in person to Student A and his parents but did not have an opportunity to do so. From the outset, Mrs Tait acknowledged that she should not have touched Student A, even in jest. The summary of facts records that Student A’s father was satisfied with how the complaint was handled and had received a letter from Mrs Tait with an apology which he accepted showed genuine remorse.

Liability – Principles and Submissions

[8] Section 10 of the Education and Training Act 2020 defines serious misconduct as conduct by a teacher:

- (a) that:

¹ The summary of facts does not elaborate on what this response was.

- (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) is of a character or severity that meets the Teaching Council criteria for reporting serious misconduct.

- [9] This is a conjunctive test requiring that at least one of the limbs of s10(a) is engaged, as well as the conduct meeting one or more of the criteria for reporting under r 9 of the Teaching Council Rules 2016. The CAC relies on r 9(1)(a), being the use of unreasonable or unjustified force; and r 9(1)(k), referring to an act or omission that brings or is likely to bring the teaching profession into disrepute.
- [10] Also relevant is s98 of the Act, which prohibits corporal punishment in schools (that is, the use of force for the purpose of correction or punishment).
- [11] The Code of Professional Responsibility outlines the standards expected of teachers. Clause 2.1 of the Code refers to the expectation that teachers will work in the best interests of learners by promoting the wellbeing of learners and protecting them from harm. The commentary to clause 2.1 contained in the Examples in Practice specifically refers to "*inappropriate handling such as physically grabbing, shoving or pushing, or using physical force to manage a learner's behaviour*" as conduct that does not meet the expected standards.
- [12] Counsel for the CAC submits that the present case is distinguishable from those involving force where a teacher has acted out of frustration or anger in response to student behaviour. The CAC accepts that Mrs Tait "*did not lose her cool*" with Student A. Nonetheless the CAC submits that the conduct is still to be considered serious and refers to *CAC v Teacher H*², in which the teacher engaged in play-fighting with a year 12 student during a fundraising activity. The play-fight got out of hand and the teacher landed a jab and a slap on the student. The teacher was immediately remorseful, attended a restorative hui, and accepted various consequences imposed by his employer. The Tribunal said:

² *Complaints Assessment Committee v Teacher H* NZTDT 2019-119.

Ordinarily striking a student in this way raises significant issues about a teacher's fitness to practice. This is so whether or not it results from a loss of self-control or in anger. While acting in such a way as a result of the loss of self-control or in anger might be regarded as increasing the likelihood of an adverse finding on fitness to teach, if there is no evidence that there was a loss of self-control or anger so that the striking was deliberate, the inference must be that the striking was deliberate so a similarly adverse finding must result. The respondent has not admitted to a loss of self-control or anger so we must conclude the "jab" and the "slap" were deliberate. We conclude that the incident does not reflect adversely on the respondent's fitness to practice.³

- [13] The CAC submits that the conduct reaches the threshold for serious misconduct, reflecting adversely on Mrs Tait's fitness because it involved physical contact with Student A for a corrective purpose. The CAC relies on the lack of warning to Student A, evidence that he was (or may have been hurt), the fact other students were jokingly encouraged to participate which risked ridiculing Student A, and the evidence of Student A's immediate upset. He was noted to still be upset when he arrived home after school. For these reasons the CAC submits that the conduct engages r9(1)(a).
- [14] The CAC also submits that the conduct is likely to bring the profession into disrepute, being conduct that was not appropriate in the classroom and which would not be expected by the public.
- [15] On behalf of Mrs Tait, it is conceded that the threshold for serious misconduct is met, on the basis that the well-being of Student A was adversely affected and the force used was unreasonable or unjustified. In terms of severity, however, counsel submits that the conduct is "*firmly at the least severe end of the spectrum*" because:
- (a) Mrs Tait acted with good intentions, in a joking manner, and immediately apologised when she recognised how her conduct was experienced by Student A.
 - (b) any impact on Student A, while not minimised, was short-lived.

³ Above n2 at [27].

- (c) the level of force used was minimal and far less than in cases relied on by the CAC. This case does not involve hitting or slapping such as in *CAC v Teacher NZTDT 2014/49*, or roughness as in *Teacher H*.

[16] The respondent submits that the distinguishing features of the case mean it is marginal whether the second and third limbs of s10(1)(a) are engaged.

Liability-Findings

[17] We agree that the conduct outlined in the summary of facts is sufficient to establish serious misconduct. We accept that this reflects a one-off misstep by Mrs Tait, out of character and with no ill-intention. The Tribunal has previously held that the absence of aggression or anger or frustration will not avoid an adverse finding where the contact is unnecessary and for a corrective purpose.

[18] The reasons we consider the threshold is met can be briefly stated:

- (a) Student A was sufficiently upset to repeatedly ask Mrs Tait to stop, to leave the classroom for a period of time, and to complain to his parents.
- (b) the incident went on long enough for some students to join in (noting paragraph 9 of the summary of facts, quoted above). The risk of humiliating the student in front of their peers is clear.
- (c) the use of force for a corrective purpose is not permitted under s98. The physical contact was unnecessary and amounts to an unjustified use of force for the purposes of correction, thereby engaging rule 9(1)(a).

Penalty - Submissions

[20] Having found the charge proved the Tribunal is required to consider an appropriate penalty under s500 of the Act. Disciplinary proceedings, and the penalties that flow from an adverse finding, are intended to protect the public, maintain professional standards and maintain public confidence in the teaching profession. The Tribunal should impose the least restrictive penalty that is available in the circumstances, and one that is comparable to those imposed in similar cases.

[21] It is usual to take into account any relevant aggravating and mitigating factors. The CAC quite properly emphasised the factors that tell against a penalty at the more serious end of the spectrum, acknowledging:

- (a) Mrs Tait's previously unblemished record over a very long career.
- (b) Mrs Tait's apology to Student A made in front of the class, and letter of apology.
- (c) that Mrs Tait recognised Student A was upset and took him from the classroom to check with him in private whether he required further assistance from the school nurse.
- (d) that Mrs Tait contacted Student A's mother on the same day to disclose what had happened.
- (e) Mrs Tait's cooperation with the investigations into the incident.

[22] Taking these matters into account, the CAC submit that an appropriate penalty is censure, conditions requiring a disclosure to any current or prospective employer and that Mrs Tait undertake further professional development in behaviour management, and annotation of the register for 12 months.

[23] On behalf of Mrs Tait, it is submitted that a censure is "*necessary and appropriate*" and suffices as an appropriate response in the circumstances of this case. Referring to the Supreme Court in *Z v Dental Complaints Committee*⁴, the respondent emphasises that the purpose of disciplinary proceedings is "*not to punish, but to ensure that appropriate standards of conduct are maintained ...*"⁵. Reference is made to Mrs Tait's long career, that she does not deserve the "*ignominy of any additional penalties*":

Penalties must be justified and proportionate to serve the Tribunal's purposes. There is simply no need or good reason for the Tribunal to order Mrs Tait to undertake further professional development in behaviour management. She has been praised for her longstanding excellence in managing behaviour and it would serve no use. She also fully appreciates how she erred in this instance and what she would do differently in future. She poses no risk.

⁴ *Z v Dental Complaints Committee* [2008] NZSC 55.

⁵ Above n4 at [97].

- [24] The reference to Mrs Tait being praised is to the character references submitted from former colleagues. These references were indeed very positive, speaking to Mrs Tait's integrity, compassion, professionalism and rapport with staff and students alike. Mrs Tait's Reflective Statement also shows her insight into the incident, the steps she took immediately afterwards, and repeats her apology. Mrs Tait states that this matter has also deeply affected her personally and she is concerned that her career not be overshadowed by this event.
- [25] While Mrs Tait is not currently engaged in any teaching capacity, her Reflective Statement explains that she would like the opportunity to return to relief teaching and providing exam supervision before fully retiring.

Penalty - Findings

- [26] We are satisfied that Mrs Tait's conduct was out of character, and we accept the content of her Reflective Statement, and commend the professionalism that she showed in her immediate response to Student A, his family and the school. We see no reason that Mrs Tait should be hindered in immediately taking on relief teaching and/or invigilating examination roles if she wishes to do so.
- [27] We consider the following penalties are appropriate:
- (a) Censure
 - (b) A condition on Mrs Tait's current practising certificate requiring that she discloses the Tribunal's decision to a current or prospective employer in relation to a teaching position, for a period of 12 months.

- [29] The Tribunal accepts the submissions on behalf of Mrs Tait that annotation of the Register is not required in this case. We have sufficient confidence based on the evidence of Mrs Tait's conduct to date and her Reflective Statement that she will meet this disclosure requirement without the additional 'back stop' of annotation.

Costs

- [30] The Tribunal may make an order for costs in favour of a party pursuant to s500(1)(h) of the Act. The CAC seeks an order for costs amounting to a contribution of 40% of the costs that have been incurred at the investigation stage and in the prosecution of the charge. This reflects the usual practice, following the Tribunal's Practice Note

of Costs, that the starting point is 50% with a reduction in the vicinity of 40% where a teacher has admitted a charge and cooperated to expediently resolve the matter.

- [31] The CAC's Costs Schedule sets out costs in the sum of \$5093.94, of which 40% is \$2,037.58. There is no suggestion that this is an unreasonable quantum.
- [32] On behalf of Mrs Tait, a further reduction to a 30% contribution is proposed, on the basis that Mrs Tait is on a fixed income as a superannuitant, and has been unable to work as a teacher since the incident.
- [33] Costs are not part of the penalty (although almost inevitably will feel punitive to a teacher), and factors that are relevant to mitigating the penalty imposed are not typically matters that impact on the appropriate level of costs. The Tribunal requires something more than a bare assertion of limited financial means, and/or evidence that the costs incurred by the CAC are not reasonable, in order to justify a departure from the accepted position of a 40% contribution. Such evidence has not been produced in this case. Accordingly, we make the order as sought by the CAC.
- [34] The Tribunal may also order a contribution towards the fees incurred by the Teaching Council on behalf of the Tribunal, pursuant to s500(1)(i) of the Act. The current fee for a hearing on the papers is \$1455, of which 40% is \$582.

Non-Publication

- [35] The presumption of open justice applies to disciplinary hearings. The starting point is that hearings are to be held in public. Pursuant to s501(6), the Tribunal has the ability to order non-publication of names and identifying particulars as well as in relation to evidence produced to it, if it is of the opinion that it is proper to do so.
- [36] The CAC applied for an order in relation to the name and identifying particulars of Student A. The Teaching Council Rules are clear that children, young people and other vulnerable people must be given special protection⁶. The Tribunal routinely orders non-publication of the identity of any learners or students who are connected to proceedings. We consider it is proper that such an order is made in this case. The privacy interests of Student A clearly outweigh any possible public interest in his identify being publicised.

⁶ R34 Teaching Council Rules 2016.

- [37] No order for permanent non-publication was sought by Mrs Tait, and no application was made on behalf of the school.

Orders

- [38] Accordingly the Tribunal makes the following orders under s500:

- (a) Censure pursuant to s500(1)(b).
- (b) A condition pursuant to s500(1)(c) on Mrs Tait's practising certificate that she brings this decision to the attention of a current or future employer in the teaching profession for a period of 12 months.
- (c) Costs to be paid to the CAC pursuant to s500(1)(h) in the sum of \$2,037.58.
- (d) Costs to be paid to the Teaching Council pursuant to s500(1)(i) in the sum of \$582.

- [39] The Tribunal makes the following orders for permanent non-publication pursuant to s501(6) of the Act:

- (a) the name and identifying particulars of Student A.



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

NOTICE - Right of Appeal under Section 504 Education and Training Act 2020

1. The teacher who is the subject of a decision by the chairperson or the Disciplinary Tribunal made under section 498(2) or 500 may appeal against that decision to the District Court.
2. The Complaints Assessment Committee may, with the leave of the Teaching Council, appeal to the District Court against a decision of the chairperson or the Disciplinary Tribunal made under section 498(2) or 500.
3. An appeal under this section must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows.
4. Clause 5(2) to (6) of Schedule 3 applies to an appeal under this section as if it were an appeal under clause 5(1) of Schedule 3