

TEACHING COUNCIL

NEW ZEALAND | Matatū Aotearoa

Complaints Assessment Committee (CAC) v Silaumua lakopo

NZTD 2018-76

Registered teacher Silaumua lakopo was referred to the Disciplinary Tribunal for allegedly falsifying the date on a medical certificate.

The result: the Tribunal agreed that the conduct had occurred as alleged and imposed a censure, annotation of the register and a condition on Ms lakopo. She was also ordered to contribute to the CAC and Tribunal's costs. There are no non-publication orders in this case.

On 20 August 2019 the Tribunal released its decision following a hearing on the papers. On 31 March 2017 while working at an early childhood centre, Ms lakopo was tidying away toys and cleaning up after the children when she heard something “pop” in her back. Ms lakopo completed an incident form but did not seek medical treatment until the following week. She submitted the certificate to her manager who noticed that the date for recommended return to work had been altered by hand from 10 April 2017 to 18 April 2017. The manager spoke to the GP who confirmed the 10 April date.

On 20 April 2017, Ms lakopo said that the family doctor had provided a medical certificate stating that she could return to “light duties” on 10 April 2017 and the medical certificate was altered to reflect a subsequent verbal conversation with the doctor stating that she was fit to return to work on 18 April 2017. Ms lakopo admitted later in that meeting that no such conversation occurred.

Ms lakopo admitted altering the certificate and explained that she thought the doctor had put the wrong date on the certificate and corrected it to fix the mistake. At the time she did not realise this was inappropriate.

The CAC submitted that Ms lakopo’s conduct amounted to serious misconduct as honesty and integrity are fundamental qualities expected of the teaching profession. The CAC submitted that Ms lakopo’s actions are likely to bring the profession into disrepute.

Ms lakopo submitted that she acknowledged that she had changed the date and told her employers the reason why she did that. She also provided a number of positive references.

The Tribunal was satisfied that Ms lakopo’s conduct was dishonest and unprofessional as it appeared it was an attempt to get a further week’s sick leave and was therefore fraudulent. The Tribunal noted that dishonestly will not be tolerated in the teaching profession and that Ms lakopo’s conduct met the definition of serious misconduct.

The Tribunal considered that Ms lakopo fully engaged with her mentoring programme and seemed willing to accept her wrongdoing and to learn. It is also evident that she is highly and warmly regarded by her colleagues and she has a useful contribution to make to the teaching profession.

The Tribunal imposed a censure, conditions that she informs any employer of this decision for a period of two years and the register was annotated to reflect this. Ms lakopo was also ordered to contribute to the CAC and Tribunal’s costs.



BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

NZTDT 2018-76

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 **SILAUMUA IAKOPO**

Respondent

TRIBUNAL DECISION

20 AUGUST 2019

HEARING: Held at Wellington on 17 April 2019 (on the papers)

TRIBUNAL: Theo Baker (Chair)
David Spraggs and Stuart King (members)

REPRESENTATION: Mr R Belcher for the CAC
The respondent represented herself

1. The Complaints Assessment Committee (**CAC**) has referred to the Tribunal a charge of serious misconduct and/or conduct otherwise entitling the Tribunal to exercise its powers.

Charge

2. In a Notice of Charge dated 8 October 2018, the CAC charged that on or about 10 April 2017 the respondent, Ms Silaumua Iakopo falsified the date on a medical certificate and held it out to her employer Bright Sparks Childcare Centre as the date her doctor had certified that she was fit to return to work.
3. 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)(h) and (o) of the Education Rules 2016¹ (**the Rules**); or conduct that otherwise entitles the Disciplinary Tribunal to exercise its powers under s 404 of the Act.

Evidence

4. Before the hearing the parties conferred and submitted an Agreed Summary of Facts (**ASF**). The ASF is not signed by the respondent, but in a submission dated 10 April 2019 she said that she totally accepted the Summary of Facts.
5. In the ASF we were told that Ms Iakopo is a registered teacher with a full practising certificate. On 31 March 2017 while working at Bright Sparks Childcare Centre, (**the Centre**) she was tidying away toys and cleaning up after the children when she heard something “pop” in her back. Ms Iakopo completed an incident form but did not seek medical treatment until the following week.
6. On 10 April 2017, Ms Iakopo visited her General Practitioner and received a medical certificate clearing her for a term to undertake “light work” only. She submitted the certificate to her manager, Ms Hancy, who noticed that the date for recommended return to work had been altered by hand from 10 April 2017 to 18 April 2017. On 13 April 2017, Ms Hancy spoke with the medical centre which issued the certificate and confirmed that Ms Iakopo was fit to return to work on 10 April 2017.
7. On 19 April 2017, Ms Iakopo provided a further medical certificate to the Centre stating that she was unfit for work from 18 April 2017 until 25 April 2017. The medical

¹ The amendments made by the Education Council Amendment Rules 2018 do not apply to conduct before 18 May 2018. See Schedule 1 Part 2.

certificate stated that Ms Iakopo was unfit for work due to “ongoing back pain”.

8. At an investigation meeting on 20 April 2017, Ms Iakopo said that the family doctor had provided a medical certificate stating that she could return to “light duties” on 10 April 2017 and the medical certificate was altered to reflect a subsequent verbal conversation with the doctor stating that she was fit to return to work on 18 April 2017. Ms Iakopo admitted later in that meeting that no such conversation occurred and that she had been experiencing back pain for “at least two years”.
9. On 4 May 2017, Ms Iakopo received a final written warning. She was observed to show “genuine remorse”. The Centre required Ms Iakopo to hold weekly meetings with Ms Hancy and complete a teacher reflection and “all junior tot portfolios”. Ms Iakopo was advised that the Centre was required to make a mandatory report to the Education Council.
10. In a March 2019 letter to counsel for the CAC, Ms Iakopo:
 - (a) Admitted altering the certificate.
 - (b) Explained that, at the time she altered the certificate, she thought the Doctor had put the wrong date on the certificate. The certificate stated that she was fit to return to work on the same day that she went to the doctors.
 - (c) Amended the medical certificate to correct what she thought was a mistake.
 - (d) Did not realise that it was not acceptable to amend the medical certificate.
 - (e) Apologised and stated that it will not happen again.
11. Based on the agreed facts, we are satisfied that the CAC has proved the factual allegations in the charge. The respondent has admitted altering the date on the medical certificate and she submitted it to her employer, indicating that she was unfit for work for a further week. We are satisfied that the respondent falsified the date on a medical certificate and held it out to her employer Bright Sparks Childcare Centre as the date her doctor had certified that she was fit to return to work

Serious misconduct

12. Having found that the factual allegations proved, we must now decide if the established conduct amounts to serious misconduct (or conduct otherwise entitling the Tribunal to exercise its powers).
13. 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
 - (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 Education Council’s criteria for reporting serious misconduct.

14. The criteria for reporting serious misconduct are found in r 9 of the Rules. The CAC relies on rr 9(1)(h) and (o) that were in place at the time of this conduct.²

Criteria for reporting serious misconduct

- (1) *The criterion for reporting serious misconduct is that an employer suspects on reasonable grounds that a teacher has engaged in any of the following:*

...

(h) *theft or fraud*

...

(o) *any act or omission that brings, or is likely to bring, discredit to the profession.*

CAC submissions

15. For the CAC, Mr Belcher submitted that the respondent’s dishonesty and/or deceptive conduct reflects adversely on the respondent’s fitness to be a teacher in terms of the definition of serious misconduct in paragraph (a)(ii) of s 378 in the following ways:

- (a) The respondent’s conduct was contrary to the Code of Professional Responsibility and Standards for the Teaching Profession, which require teachers to (among other things):
 - i. Show integrity by acting in ways that are fair, honest, ethical and just.³
 - ii. Maintain public trust and confidence in the profession by demonstrating a high standard of professional behaviour and integrity.⁴

² Clause 3 of Schedule 1 of the Teaching Council Rules 2016 provides that possible serious misconduct by a teacher that occurred before 19 May 2018 must be reported and dealt with in accordance with the principal rules that were in force immediately before that date.

³ Code of Professional Responsibility, “Our Values” at 2.

⁴ Code of Professional Responsibility at 10.

(b) The respondent's conduct was fraudulent in that she falsified a certificate provided by another professional, securing additional days of paid leave by providing a falsified document in support.

16. Mr Belcher referred to a previous Tribunal decision *CAC v X NZTDT 2012-22*,⁵ in which we said:

It is fundamental that schools are entitled to expect teachers applying for positions are truthful in the information they provide in that context; and

Consciously providing false information in such a situation unquestionably reflects on this respondent's fitness to be a teacher and is caught by r 9(1)(h) of the New Zealand Teachers Council (Making Reports and Complaints Rules) 2004 because it amounts to a form of fraud and ... also involves a breach of the Code of Ethics.

17. Mr Belcher acknowledged that present case does not entail the same degree of pre-planning and sophistication as the cases of securing a position in paid employment or subverting the Council's processes for assessing suitability for registration (*CAC v Clark NZTDT 2017/4* at 28-29). However, it was submitted that the conduct is unquestionably dishonest and opportunistic, designed to obtain an advantage that the teacher was not entitled to, and therefore bears a similarity to the cases referred to.
18. Mr Belcher submitted that honesty and integrity are fundamental qualities that are expected of the teaching profession. Many aspects of a teacher's role (for example: assessment, learner attendance at school, fulfilment of the curriculum) rely upon the honesty and integrity of individual teachers. In the early childhood education context, the additional health and safety requirements are dependent upon the honesty and integrity of the teacher to be effective.
19. Mr Belcher further submitted that the conduct is likely to bring the teaching profession into disrepute in terms of the third definition of serious misconduct under s 378.
20. It was submitted that the respondent's conduct was fraudulent in that it was an attempt to obtain an advantage that the respondent was not entitled to (paid leave from her employment). The CAC further submitted that she failed to maintain appropriate professional standards, displayed a lack of judgment and a lack of regard for the

⁵ *CAC v X NZTDT 2012-22*, a p 11

importance of honesty, all of which brings discredit to the profession, and that the test in *Collie* is met.⁶

Respondent's submissions

21. The respondent advised that she has been working in ECE for nearly 20 years, starting when unqualified until she graduated in 1997 and started working as a qualified teacher.
22. Her explanation for events was that in April 2017 she had an accident in the Centre, and sprained her back picking up toys from the floor. She said she went to see the doctor for a medical certificate and on that day after seeing the doctor, went straight to the Centre with her medical certificate. She said that on her way there she checked the medical certificate and the first thing she noticed was the date, so instead of reading the whole information in the certificate she just said to herself, 'I went to see the doctor on the 10th but the date on the medical is the 10th. She said that she thought that the doctor had put the wrong date so she just changed the 10th to the 18th.' She said she changed the date and handed it to the lady in reception without knowing it was so unacceptable.
23. The respondent said that the same day she was called and asked about the certificate and she acknowledged that she had changed the date because it was wrong.
24. The respondent went on to say that she did not tell lies or refuse to answer any questions. She said she has honestly told them the truth and the reason why she did it.
25. She went on to say that she fully agreed with all the processes of this matter. She confirmed that she attended weekly meetings, wrote self-reviews, portfolio and programme planning as part of her action plan.
26. Ms Iakopo also provided some references which are discussed below.

Discussion

27. We must be satisfied that the respondent's conduct meets one of the definitions of serious misconduct in s 378 of the Act, and that it is of a character or severity that meets the criteria for reporting serious misconduct contained in r 9.

⁶ The test is that 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 (*Collie v Nursing Council of New Zealand* [2001] NZAR 74 (High Court) at [28]).

28. We accept the CAC's submissions. We agree that this conduct was dishonest and unprofessional. It was an attempt, as Mr Belcher says, to get a further week's sick leave, and was therefore fraudulent.
29. Dishonesty will not be tolerated in the profession because:
- (a) The effective functioning and quality of the education system relies on the utmost integrity from the teaching profession, throughout all aspects of qualification, registration, employment, assessment, endorsement and administration. If teachers lie, the safety and quality of the education of children and young people may be undermined.⁷
 - (b) Teachers are expected to be role models for their students. At the time of these events, the Code of Ethics for Certified Teachers was in place.⁸ It stated that the "professional interactions of teachers are governed by four fundamental principles", one of which is "Truth: to be honest with others and self. Under the heading, "Commitment to society", teachers strive to:

teach and model those positive values which are widely accepted in society and encourage learners to apply them and critically appreciate their significance.
30. We agree that it meets the second two limbs of the definition of serious misconduct under s 378, that is that the conduct reflects adversely on her fitness to be a teacher and is likely to bring the teaching profession into disrepute.
31. We also agree that the conduct meets the two criteria in r 9. It was fraud under r 9(1)(h) and was conduct likely to bring discredit to the profession under r 9(1)(o). We find that 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.⁹

⁷ Section 377 of the Act provides: *The purpose of the Teaching Council is to ensure safe and high quality leadership, teaching, and learning for children and young people in early childhood, primary, secondary, and senior secondary schooling in English medium and Māori medium settings through raising the status of the profession.*

⁸ This was replaced by the Code of Professional Responsibility and Standards for the Teaching Profession, which took effect on 30 June 2017.

⁹ The test in *Collie*, above note 6

Penalty

32. 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:*
- (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.*

33. The ASF included some further information that is relevant to our consideration of penalty. We were told that when the Council investigator spoke with Ms Hancy she explained that following the conduct the Centre had initiated an “action plan” for two months. It was focussed on honesty, wellbeing of children, and following of procedures. Ms Hancy advised the investigator that Ms Iakopo was an “asset” and that she was disappointed that Ms Iakopo was moving to Australia. Ms Hancy further stated that she had been mentoring Ms Iakopo and that she was a “great teacher”. The internal disciplinary process had led to weekly meetings with Ms Iakopo including reflections and achieving goals set at the beginning of the year. Throughout the process, Ms Iakopo was challenged to look “deep within herself both morally and

spiritually and has changed her approach of being professional at all times under her Code of Ethics and her standards”. Ms Hancy noted that Ms Iakopo had expressed “genuine remorse”.

34. The respondent has since returned to New Zealand and is teaching at an early childhood centre in Onehunga.

CAC submissions

35. For the CAC, Mr Belcher referred to three cases:

- (a) *CAC v Green* NZTDT 2015/25.
- (b) *CAC v Jenkinson* NZTDT 2018/14.
- (c) *CAC v Sharma* NZTDT 2018/51.

36. The *Green* case was one which was adjourned part-heard. In fact, following a resumed hearing we issued a further decision, in which we found that the CAC had not proved that the respondent was not unwell when she was absent from school. The charge was dismissed.¹⁰

37. In *Jenkinson* students discovered pornographic material on the respondent’s personal mobile phone when using it as a calculator during class. To support his explanation that his telephone had a virus, the respondent produced a letter on Vodafone letterhead describing a purported examination of the phone and explaining that a virus was the reason for the presence on the phone. This letter was fraudulent. The teacher was censured, suspended for six months, directed to provide a copy of the decision to future employers, and ordered to pay costs. The register was annotated for three years. We said:

The respondent’s attempt to mislead the school is behaviour that strikes at the heart of the expectation of honesty and integrity that the profession and the public have of practitioners.

38. Ms Sharma (NZTDT 2018/51) provided false information in her written application and resume, provided false references and lied to her prospective employer. We said that “Fraudulent behaviour of this type is the antithesis of the standard of honesty expected of teachers”. In that case the teacher’s registration was cancelled.

¹⁰ See supplementary decision *CAC v Green* NZTDT 2015/25, 26 April 2018.

39. The CAC accepted that the conduct in the cases of *Jenkinson* and *Sharma* involved additional elements of dishonesty, preparation/planning and execution not present in the current case. Therefore in the absence of additional aggravating factors, a penalty of cancellation is not required. The CAC submitted the following penalty is appropriate:
- (a) Censure;
 - (b) Annotation of the register for two years; and
 - (c) A condition that the respondent informs any employer of this decision for two years.
40. It was submitted that the penalty was sufficient to ensure public protection, deterrence and the maintenance of professional standards, having regard to the following mitigating features:
- (a) The conduct was isolated to one instance and can properly be described as a “one off”;
 - (b) The respondent has shown insight into her conduct through the acceptance of her conduct both during the employment investigation and these proceedings; and
 - (c) The respondent has undertaken mentoring.

Respondent’s submissions

41. In her submission to the Tribunal, the respondent said:

I went straight to school to take my medical certificate. On my way there, I checked the medical certificate and the first thing I got my eyes on was the date, so instead of reading the whole information on the certificate, I just said to myself, ‘I went to see the doctor on the 10th, but the date on the medical is the 10th.’ What (it) comes to mind, my doctor put the wrong date on the medical so I just changed the 10th to the 18th of April...and handed in to the lady in the reception without me knowing that was so unacceptable...that same day, Shellee called me and asked me about the certificate and I did tell her “yeah I changed the date because it is wrong.” I know what I did was wrong and not acceptable, but it was my understanding and not reading it properly.

I did not tell lies or refuse to answer any questions the management asked me. I have honestly told them the truth and the reason why I did it. I did not purposely do it. It is just my misunderstanding of what was written on the medical certificate.

42. Ms Iakopo went on to say that to be an honest and trusted teacher, she is responsible for her own actions and that as an educator, she has to understand the process of amending documents. She fully agreed with the process of the matter.
43. Ms Iakopo provided several references. One, dated 2015, described her as kind-hearted, generous, hard-working and dedicated to helping children achieve the best results possible in their learning. A second referee similarly speaks of Ms Iakopo in glowing terms but did not seem to understand that the respondent fully accepts her wrongdoing, as the referee expresses a concern that she was a victim of unfair play. That is quite contrary to Ms Iakopo's position. There is an incomplete, unsigned reference from Ms Hancy, but the contents are consistent with her support of the respondent to stay teaching at the Centre.

Discussion

44. We do note the various inconsistent explanations the respondent has provided for her conduct. In her investigation meeting, she initially said the medical certificate was altered to reflect a subsequent verbal conversation with the doctor stating that she was fit to return to work on 18 April 2017, but she admitted later in that meeting that no such conversation occurred and that she had been experiencing back pain for at least two years. Her explanation to the Tribunal does not make sense to us: that she misread the certificate and therefore changed it.
45. That said, we agree with the penalty proposed by the CAC. In particular, we note that as soon as the respondent was questioned about these events she immediately acknowledged that she had altered the medical certificate. There was no attempt to try to cover that up. Although unacceptable, this conduct is at the lower end of the scale for serious misconduct. The respondent has fully engaged with her mentoring programme and seemed willing to accept her wrongdoing and to learn. It is also evident that the respondent is highly and warmly regarded by her colleagues and she has a useful contribution to make to the teaching profession. We therefore impose the following penalty:
- (a) The respondent is censured under s 404(1)(b);
 - (b) Under s 404(1)(c), for a period of two years from the date of this decision, it is a condition that the respondent informs any employer of this decision.
 - (c) Under s 404(1)(e) the register is annotated for two years.

Costs

46. The CAC sought a contribution of 40% of its costs under s 404(1)(h).
47. 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).
48. The Tribunal Secretary has submitted a schedule of estimated costs, totalling \$1145, of which 40% is \$458. We therefore order the respondent to pay \$458 under s 404(1)(i).
49. The Tribunal delegates to the Chairperson authority to determine the quantum of the CAC 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
 - b) Within a further 10 working days the respondent is to file with the Tribunal and serve on the CAC any submissions she wishes to make in relation to the costs of the CAC.
50. The Chairperson will then determine the total costs to be paid.

Non-publication

51. Neither party made an application for non-publication.
52. There is a letter from the respondent's current employer asking for her to have name suppression because the case could have an adverse effect on their business, would be unfair on their profile, and could affect the reputation of their existing teachers.
53. Section 405(3) of the Act provides that hearings of this Tribunal are in public. This is consistent with the principle of open justice. The provision is subject to subsections (4) and (5) which allow for whole or part of the hearing to be in private and for deliberations to be in private. Subsection (6) provides:
- (6) If the Disciplinary Tribunal is of the opinion that it is proper to do so, having regard to the interest of any person (including (without limitation) the privacy of the complainant (if any)) and to the public interest, it may make any 1 or more of the following orders:*

...

(c) an order prohibiting the publication of the name, or any particulars of the affairs, of the person charged or any other person.

54. Therefore, in deciding if it is proper to make an order prohibiting publication, the Tribunal must consider the interests of the applicants, as well as the public interest. If we think it is proper, we may make such an order.
55. The respondent's name was not suppressed before this hearing. Therefore in the absence of a change of circumstance or a significant matter that had not previously been brought to our attention, it is not proper to grant name suppression at this stage.
56. In any event, there is nothing in that application that persuades us that it is proper to make an order prohibiting her name. The grounds advanced apply to many cases that come before us. Employers are worried about their reputation and the impact on staff. However, as we have noted above, the respondent has taken appropriate steps to address her behaviour. It has not affected their decision to employ her. It is an historic issue. The application for non-publication of the respondent's name is declined.



Theo Baker
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. Section 356(3) to (6) applies to every appeal under this section as if it were an appeal under section 356(1).