

BEFORE THE NEW ZEALAND TEACHERS DISCIPLINARY TRIBUNAL

DECISION NO: NZTDT 2024-47

UNDER THE Education and Training Act 2020

IN THE MATTER of a charge laid by a **COMPLAINTS ASSESSMENT COMMITTEE** against **PAMELA MILLER** registered teacher, of Rolleston, Christchurch (Registration Number 321558)

DECISION OF THE TRIBUNAL

Hearing: 30 July 2025

On the papers

Tribunal: Jo Hughson (Chairperson),
Nikki Parsons and Maria Johnson
(registered teachers)

Appearances: Lauren Eastlake and Bayley Kalach for the
Complaints Assessment Committee

Ms Miller

Decision: 8 August 2025

Decision of the Tribunal

- [1] Ms Miller is a fully registered, but now retired, teacher.¹ She first registered in 2010. Her last practising certificate expired on 15 April 2025.
- [2] At the relevant time in October 2022, Ms Miller was employed as a teacher at BestStart Faringdon Educare Centre in Rolleston, near Christchurch. Children enrolled at the Centre range in age from 2 years to 5 years old.
- [3] A Complaints Assessment Committee (CAC) was established to investigate a matter relating to the conduct of Ms Miller that was the subject of a mandatory report made by the BestStart Regional Office (Southern) to the Teaching Council of Aotearoa New Zealand in November 2022. At the conclusion of its investigation, the CAC laid a disciplinary charge. The Charge² alleged that on 20 October 2022, whilst employed as a teacher, Ms Miller was impaired by alcohol whilst working at BestStart Faringdon (the Centre).
- [4] This act was alleged to amount to serious misconduct as defined in section 10 of the Education and Training Act 2020 (the Act). Alternatively, it was alleged the conduct otherwise entitled the Tribunal to exercise its powers under section 500 of the Act.
- [5] The hearing proceeded on the papers. The evidence produced by the parties was an agreed Summary of Facts³. Ms Miller also provided a written reflective statement to the Tribunal⁴.
- [6] Written submissions addressing liability and penalty were received from Counsel for the CAC, prior to the hearing. Ms Miller responded in relation to her current financial situation, and she invited the Tribunal to consider suppressing her name.
- [7] After considering this material carefully, the Tribunal was unable to be satisfied the CAC had proved to the required standard, that Ms Miller was impaired by alcohol

¹ Agreed Summary of Facts dated March 2025 at [1].

² Notice of Charge dated 17 September 2024 signed by Nicole Butler in her capacity as the Chair of the CAC.

³ Summary of Facts dated March 2025 signed by Ms Miller and Counsel for the CAC.

⁴ Reflective Statement filed on or around 17 March 2025 with the Agreed Summary of Facts.

whilst she was working at BestStart Faringdon on 20 October 2022. The reasons for that conclusion follow.

[8] Although Ms Miller invited the Tribunal to consider suppressing her name, the Tribunal did not reach the point of concluding it is proper that her name is prohibited from publication. There is no presumption in favour of suppression where a charge has not been established, and Ms Miller did not raise any significant private interests that outweigh the public interest in open disciplinary proceedings and publication of the names of teachers who have been brought before the Tribunal.

[9] The names of BestStart, the Centre, and the staff members named in the evidence and in this decision, may be published.

Onus and standard of proof

[10] The onus of proving the charge was on the CAC.

[11] The Tribunal had to be satisfied to the civil standard of proof (that is, on the balance of probabilities), on the evidence, that the event alleged by the CAC was more likely than not to have occurred and that Ms Miller was guilty of the charge.

[12] The standard of proof is a static standard. However, the degree of satisfaction called for varies according to the seriousness of the allegation. This means that the more serious the allegation, the stronger the evidence must be to satisfy the balance of probabilities standard.⁵ The Tribunal tempered the standard having regard to the inherently serious nature of an allegation that an early childhood teacher had worked at an early childhood centre whilst impaired by alcohol.

Facts

[13] The Tribunal made the following findings of fact on the evidence that was received.

[14] On the morning of 20 October 2022, Ms Miller was working at the Centre. Several of her colleagues observed her behaving out of character, having slurred speech, moving unsteadily, and smelling of alcohol.

⁵ *A v A Professional Conduct Committee of the Medical Council of New Zealand* [2018] NZHC 1623 at paras [11]-[16]; *Z v Dental Complaints Assessment Committee* [2008] NZSC 55); [2009] 1 NZLR 1.

- [15] Ms Miller interacted with children and a parent of a child at the Centre during this time. These interactions involved speaking to, and picking up, several of the children at the Centre and talking with a parent in front of their child, while visibly impaired.
- [16] At 7.45am, one of the teachers at the Centre reported Ms Miller's conduct to the Centre Manager, Ms Chantel van Vollenstee.
- [17] At approximately 7.48am, Ms van Vollenstee asked Ms Miller whether she had been drinking alcohol. Ms Miller refused to respond. At the end of the conversation, Ms Miller asked Ms van Vollenstee for a hug. When Ms Miller hugged Ms van Vollenstee, Ms van Vollenstee smelt alcohol on Ms Miller.
- [18] At around 8.20am, Ms Miller left the Centre and drove home.
- [19] At 10.11am, the Area Manager for BestStart, Ms Mandy Robertson, phoned Ms Miller to discuss the matter. Ms Miller denied being under the influence of drugs or alcohol. When Ms Robertson asked Ms Miller to take a drug and alcohol test, Ms Miller refused. Ms Robertson invited Ms Miller back to the Centre for a meeting.
- [20] At midday, Ms Miller, Ms van Vollenstee and Ms Robertson met at the Centre to discuss the concern of Ms Miller being under the influence of alcohol. Ms Miller again denied being under the influence of drugs or alcohol. She also replied that she did not drink alcohol. Ms Robertson then confirmed that Ms Miller was suspended, and that a disciplinary process had begun.
- [21] On 28 October 2022, Ms Miller attended a second meeting at the Centre with Ms Robertson and Ms Stacy Kerrigan who was the Area Manager for the Centre. Ms Miller stated that she was drinking alcohol at a family event on the evening of 19 October 2022. She also stated that on the morning of 20 October 2022, she woke up feeling tired but felt normal once commencing work at the Centre. Ms Miller stated that she refused to undertake a drug and alcohol test on 20 October 2022 because she was concerned that it would test positive due to the alcohol she had consumed the evening prior. Ms Miller had a support person at the meeting.
- [22] The Centre terminated Ms Miller's employment on 1 November 2022. The following day, the Teaching Council received the mandatory report.
- [23] In her response to the mandatory report, on 28 November 2022 Ms Miller stated that she was dealing with the death of a family member and thought she was tired as she had not been sleeping well. Ms Miller, however, disputed that she was intoxicated on the morning of 20 October 2022 and wrote that she "*would never have even*

driven [her] car much less gone to work on that morning if I thought I was under the influence.”

[24] Although one of the facts Ms Miller admitted in the Agreed Summary of Facts was that she was working at the Centre on the morning of 20 October 2022 while impaired by alcohol, the Tribunal was unable to be sufficiently satisfied this fact was proved to the required standard. This may seem to be an unusual conclusion, but the Tribunal was troubled by the fact that in her previous responses to the Centre and the mandatory report, and in the reflective statement she made to the Tribunal which was filed with the Agreed Summary of Facts, while Ms Miller accepted that she made a “mistake”, there was no such admission of impairment *by alcohol* when she was at work. In her reflective statement, Ms Miller wrote:

I have read the statement of what happened that day, and I understand why my fellow teachers observed what they said about what I did in the short time I was at work, I just thought I was doing my job, as even though I felt out of sorts, and very tired, I was committed to being there.

I know that through the death of my family member, I had experienced many stressful weeks of working during the day, then going and spending time with David to support him while he was going through a painful passing away with cancer.

On the night before we as a family got together to celebrate his passing, with food and wine.

I am not a person that drinks much and I feel through this lack of knowledge, I made the wrong decision the next morning.

I just thought I was very tired due to a late night and lack of sleep. I would never have driven my car, I just thought I wasn't myself due to the death of my family member.

I would like to acknowledge how painful this has been for me to end my career as a preschool teacher in such a manner.

I was a very passionate teacher and loved working and playing with children to support their growing and learning. I went back to school and acquired my qualifications in my fifties. I wanted to have that knowledge where I could do the best for the children under my care.

I loved being an ECE teacher and through something I was dealing with in my personal life, I made a mistake. I just wanted to celebrate a life of a dear family member.

I also have not worked since I was dismissed, as I am retired and have no intention of working again in the ECE field.

- [25] The Tribunal placed weight on the fact that there was no positive alcohol or drug test available that proved that Ms Miller was under the influence of alcohol when she worked at the Centre on the morning in question.
- [26] The Tribunal was concerned by the agreed evidence that at around 8.20am, Ms Miller left the Centre and drove home. The Tribunal considered it an oddity that the Centre staff, who were concerned that Ms Miller was impaired by alcohol when she was at work that morning, allowed Ms Miller to get into her vehicle and drive home. Likewise, the invitation to Ms Miller that she comes back to the Centre for a meeting on the same day that she was suspected to be impaired by alcohol.
- [27] The Tribunal placed weight on Ms Miller's explanation about having consumed alcohol on the evening before, when dealing with the death of a family member, her fatigue associated with those circumstances, and how this likely impacted her behaviour at work on the morning of 20 October 2022. The Tribunal considered this was not an unreasonable explanation for how it was that colleagues observed her smelling of alcohol and behaving out of character that morning. However, Ms Miller did not admit as a fact that she was slurring her speech, moving unsteadily, or smelt of alcohol. In her reflective statement she stated that she felt out of sorts and was very tired due to lack of sleep. In the context of Ms Miller's admission that she had been drinking alcohol the evening before in the circumstances she outlined, there are other possible explanations for the behaviour and presentation that Ms Miller's colleagues observed on the morning in question.
- [28] The Tribunal noted that there was no evidence Ms Miller challenged her dismissal however was not satisfied that anything turned on that. There could have been several reasons why Ms Miller did not do so.
- [29] In any event, there was no evidence of any previously held concerns about alcohol use or impairment by alcohol at work, on Ms Miller's part and there was no evidence, or suggestion, that Ms Miller's response in her reflective statement that she is not a person who drinks very often, was questionable.
- [30] In short, the Tribunal was prepared to give Ms Miller the benefit of the doubts it had about whether she was in fact impaired *by alcohol* when she worked for a short period of time on the morning of 20 October 2023 at BestStart Faringdon, as was alleged by the CAC.

[31] For those reasons, the Tribunal concluded that the allegation in the Charge was not proven to the required standard. Had it been, the Tribunal would have had no hesitation concluding that such conduct was serious misconduct.

Costs

[32] The CAC's costs and disbursements were indicated to be \$7,468.33 excluding GST.

[33] Ms Miller stated that she is now retired and lives on her pension; and that with the cost of living she "*finds it very hard*". She stated she has no other options of earning extra income and that this is a very worrying situation for her. Ms Miller explained that she has lived by herself for nearly 30 years and has never had the opportunity to invest in any superannuation fund or pension savings to assist her with her retirement. She stated that as a consequence, she has never been able to build up enough savings and is concerned about replacing furnishings in her home and her heating system which is not functioning properly.

[34] The Tribunal concluded that as the Charge was not established, and no adverse finding is being made against Ms Miller, it would not be appropriate to make any costs orders. Costs are to lie where they fall⁶.

Publication of Name

[35] Ms Miller invited the Tribunal to consider suppressing her name.

[36] The Tribunal's power to make non-publication orders in respect of a teacher's name, is contained in section 500(6)(c) of the Act.

[37] Ms Miller wrote⁷:

I find this so hard to understand and accept, as I was so upset this was how my career ended. I was a very passionate teacher and absolutely loved my job. I went back to study and gained my qualifications when I was in my fifties. To do this, I worked at a full time position in a preschool and studied another twenty to thirty hours a week outside my job. I just wanted to do the best job I could with my children, fellow teachers and families. Due to circumstances that I have already outlined to you, I made poor decisions, experiencing the death of a very dear family member. It still haunts me to this day and I grieve the loss of my career in such a

⁶ The CAC's Costs Schedule indicated that the total costs of the CAC were legal costs and disbursements billed to 8 May 2025 in the sum of \$7,468.33.

⁷ Email dated Friday, 30 May 2025 from Ms Miller to Counsel for the CAC, Mr Kalach.

terrible way. I hope that you will take into consideration that I have already experienced such grief about the way I lost my career, that you will consider my wanting name suppression.

[38] In the Tribunal's opinion the matters Ms Miller has raised are not sufficient grounds, either alone or in combination, to tip the balance away from the default position that in the interests of open justice the names of teachers who are the subject of disciplinary proceedings before the Tribunal are published. The Tribunal considers it is proper and in the public interest that Ms Miller's name is published in connection with these disciplinary proceedings, notwithstanding that the Tribunal was not satisfied the Charge was established. There is no presumption in favour of a teacher's name being suppressed if a charge against them is not established and publishing Ms Miller's name will ensure that interested members of the profession and the public are aware of the Tribunal's decision and understands the reasons for it. Accordingly, Ms Miller's name may be published in connection with these proceedings.

[39] Neither BestStart nor the Centre sought any non-publication orders. There was no evidence placed before the Tribunal to support a conclusion that it would be proper to order suppression of the names or identifying particulars of BestStart, or the Centre, or any of the BestStart staff members named in the evidence and this decision. For that reason, and the fact that Ms Miller's name may be published, no non-publication orders are being made.

Result and Orders

[40] The Tribunal was not satisfied the allegation in the Charge was proven to the required standard. Accordingly, the Charge was not established.

[41] No formal orders are made under the Education and Training Act 2020.

**Dated at Wellington this 8th
day of August 2025**



NOTICE

- 1 The teacher who is the subject of a decision by the Disciplinary Tribunal made under section 500 of the Education and Training Act 2020 may appeal against that decision to the District Court (section 504(1)).
- 2 The CAC may, with the leave of the Teaching Council, appeal to the District Court against a decision of the Disciplinary Tribunal made under section 500 (section 504(2)).
- 3 An appeal under section 504 must be made within 28 days after receipt of written notice of the decision, or any longer period that the court allows (section 504(3)).
- 4 Clause 5(2) to (6) of Schedule 3 applies to an appeal under section 504 as if it were an appeal under clause 5(1) of Schedule 3.