

# CONDUCT EVENTS THE SCORE

Although unfair procedures meant a teacher's dismissal was unjustified, she scored an own goal through her actions—which the Employment Relations Authority said warranted dismissal. Remedies were reduced by 100 percent, says Paul Robertson.



**THE EMPLOYMENT RELATIONS** Authority recently decided that a teacher of English as a second language was unjustifiably dismissed. However, the Authority went on to find that the conduct of the teacher was entirely inappropriate, and awarded her no compensation.

The teacher was employed in an English language school in Auckland. Within weeks of her arrival in 2008 she commented that the school's standards were, in her view, not sufficiently rigorous and she disagreed with the teaching programme and assessment methods.

The home-stay parents of one of the teacher's students contacted the school in November 2009 seeking a meeting. They explained that their home-stay student had come home from school crying and telling them she had been bullied by the teacher. She had been accused of cheating. The allegations related to help she re-

ceived from her home-stay father who happened to be a teacher by profession.

The teacher was told by the management of the school that her approach was inappropriate. Her role as a teacher was not punitive, but rather to provide guidance and support. She was told to refer any similar concerns to the management of the school.

Later that month, the same student's host mother left a message saying that the teacher had twice taken the student out of her class and confronted her about the fact her host parents had complained.

Emails were discovered between the teacher and the student where the teacher insisted upon a written apology from the home-stay parents "... for their interference with [the student's] work ... and the nonsense that they have been saying behind my back at the school." The email concluded with the teacher saying

that she would not mark any more of the student's work until she had received the apology.

The management of the school convened a meeting to discuss the complaint. The teacher was summoned and she was summarily dismissed.

The Authority accepted the school had not followed a correct procedure, making its decision without any input from the teacher. She was not provided with details of the allegations against her or an opportunity to respond. Nor was she told of her entitlement to representation.

In its defence, the school argued that the actions of the teacher amounted to serious misconduct justifying instant dismissal.

The Authority accepted that a proper process had not been followed as "... several of the fundamental elements of procedural fairness are missing" from the procedure adopted. The

dismissal was procedurally unfair and therefore unjustified.

The Authority is entitled to consider whether the conduct of an employee should be taken into account when assessing remedies. It said that the content of the email was more than inappropriate and that it could, in fact, be described as bullying.

The fact that the teacher continued to maintain she was entitled to send the email demonstrated a serious lack of insight into her own behaviour. Sending the email was, in the view of the Authority, serious misconduct.

For these reasons it accepted that the teacher's actions were sufficient to cause the school to lose trust and confidence and that dismissal was warranted. Accordingly, remedies were reduced by 100 percent. **et**

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