



# CHEATS NEVER PROSPER

When a teacher was dismissed after leaving exam marking papers in her classroom, the Employment Relations Authority found it would have been open to the school to dismiss her. But as Paul Robertson explains, this was not the reason given for her dismissal and the procedure was found to be inappropriate.

## A TEACHER WHO LEFT A

marking schedule on her table when she left the classroom allowing students to copy down the answers has been successful with her claim against her employer.

The recent decision of the Employment Relations Authority emphasises the need to follow a careful procedure once misconduct is discovered.

The teacher was employed by an international school and was taking a class of students. All the students had failed the first assessment exam. The teacher handed back the exam papers and discussed the results.

She was called away and left on her desk the exam marking schedule. In her absence (10–15 minutes) students photographed the schedule using their smart phones. The re-sit exam was a few days later. It was modeled on the first exam.

When marking the papers, the marker noted consistent answers and suspected cheating. A student was called in and

was interviewed. The classroom teacher was present. The student alleged that the teacher had read out the answers to the first exam. He admitted photographing the exam marking schedule on a smart phone.

The teacher angrily denied leaving the schedule in the class and said that, in any event, the questions (and answers) were different for the re-sit exam. She made no comment about the allegation that she had read the first exam answers out in class.

There were further investigations and the classroom teacher was told of the results of those enquiries. She was then invited to a meeting in relation to allegations of serious misconduct. The actual misconduct was not clearly explained.

At the meeting, the employer raised a number of concerns including the teacher's dishonesty for denying that she had taken the marking schedule into the classroom. After a 45-minute meeting, the teacher was dismissed and was told to leave the premises.

## WAS THE DISMISSAL JUSTIFIED?

The Authority found that it was inappropriate of the teacher to leave the marking schedule on her desk. Leaving the schedule on the desk would have impaired the employer's trust in the teacher. It would have caused the school's reputation to be questioned by NZQA. And it would have been open to the school to dismiss the teacher based upon her decision to leave the classroom leaving the marking schedule on her desk.

However, that was not a reason given by the school when dismissing her. It focused on other allegations (not substantiated), particularly that the teacher dishonestly denied having the schedule in the classroom.

## GETTING THE PROCEDURE CORRECT


The Authority found the procedure inappropriate. Problems included:

- (a) Raising concerns in a 'ad hoc' fashion by discussing them as

- the investigation proceeded;
  - (b) Not giving the teacher a proper 'heads up' about the allegations being made; and
  - (c) Not giving the teacher time to respond to the allegations.
- The Authority also was concerned that the employer did not genuinely consider the responses given by the teacher.

## THE MONEY

The teacher had been dismissed, but rather than finding fresh employment she chose to complete her Masters degree. For this reason she was not given any money towards lost salary. She was awarded \$5000 for hurt, humiliation and distress. However, this was reduced by 50 percent because she left the marking schedule in the classroom unattended.

**Voss v Regent International Education Group [2014] NZERA Auckland 53** 

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