

Application No: 0078
Application by: Austen John Mason
Respondent: Secretary of State for Education and Employment
Hearing date: 12 September 2001

Application

Mr A J Mason appeals under Regulation 13(1)(a) of the Education (Restriction of Employment) Regulations 2000 against a direction by the Secretary of State for Education and Employment dated 6 February 2001 prohibiting or restricting his relevant employment.

Preliminary

The President of the Tribunal gave directions prior to the hearing which included the following:-

- (a) that the press and the public should be excluded from the hearing
- (b) that a restricted reporting order should apply until the close of the hearing

At the hearing the Tribunal extended the restricted reporting order so that no report may be published which might lead to the identification of the child in this case.

Facts

1. Mr Mason who was born on the 5th April 1975 is a qualified teacher. At the material time he was on a permanent contract at P High School, having been in post since September 1998. Whilst at the school Mr Mason had taught mathematics to all years.
2. Pupil X had been a pupil in Mr Mason's Year 11 Mathematics class. After taking examinations pupil X together with the rest of the year 11 stopped attending school.
3. Mr Mason told the Tribunal that there was a meeting in July 1999 when pupil X came back into school to discuss with him the possibility of her attending a skiing trip. During the course of this meeting Mr Mason invited pupil X to accompany him and a friend to the cinema.

4. During the summer 1999 school holidays the relationship became sexual. At this time pupil X was 16 her date of birth being November 1982.
5. P High School caters for children between the ages of 11 and 16. There is situated on the same site P College which caters for older students. We understand that the Head Teacher at P School, Mr F, was also in charge of the College and that teachers who taught at the School also taught at the College. This included Mr Mason himself. Mr Mason said that he did not know until September that pupil X was going to the College.
6. The relationship between Mr Mason and pupil X continued after September 1999. Although Mr Mason did not teach pupil X, he would see her occasionally during school hours and in addition was giving her private tuition outside school, to help her with her "A" level physics.
7. Mr Mason stated that although he felt the relationship might not have been given general approval he was in a strange situation because pupil X's parents were aware of the situation and did not disapprove of the relationship. He had attended a number of family functions. Pupil X herself did tell some friends about the relationship, albeit not the friends who attended P College, and she seemed happy for the relationship to continue.
8. It was acknowledged by Mr Mason that his mother had advised him that the relationship was wrong and that he might lose his job. Further that when it was known that pupil X was going to attend P College, he should have stopped the relationship. Mr Mason said that he tried to establish what his position was by speaking to friends and by seeking information on the internet, but was unable to obtain any advice. It did not occur to him to contact the local education authority. He accepted that he had been given a staff handbook which contained a Code of Guidance. However he had not paid much attention to the book, considering large parts of it to be out of date. On 18 November 1999 pupil X told a member of the teaching staff that she thought that she was pregnant and that Mr Mason was the father. It subsequently transpired that in fact pupil X was not pregnant. The matter was investigated by Mr F, which investigation included an interview with Mr Mason. A copy of Mr F's statement of events and a note of his interview with Mr Mason were contained within the Tribunal papers. Mr Mason was suspended and told that he should not contact anyone at the school or pupil X. It was Mr F's recommendation that Mr Mason be dismissed on the grounds of gross misconduct.
9. In the event Mr Mason did see pupil X and her parents. Mr Mason stated that it was important to see pupil X's parents, prior to their meeting Mr F, in order

that he could make them aware of “ the full story”, in particular that his relationship with their daughter had become sexual.

10. A formal disciplinary process was initiated and a disciplinary hearing took place on 2 December 1999. Mr Mason verbally tendered his resignation at that meeting. He subsequently indicated that he had not been aware up until that point that he was able to resign. Had he been aware that this was an option open to him, he would have resigned earlier, as he realised that he could not continue to teach at P School. Mr Mason confirmed his resignation in a letter dated 6 December 1999 addressed to Mr F which was accepted by the local education authority, to take effect from 31 December 1999. Mr Mason confirmed that his relationship with pupil X continued into January/February 2000.
11. The circumstances of Mr Mason's resignation were passed to the Secretary of State for Education and Employment for him to consider whether to bar or restrict Mr Mason from engaging in “relevant employment” on the grounds of misconduct. The Secretary of State gave Mr Mason the opportunity to provide an explanation of the matter, to make representations and to attend an informal interview. Mr Mason provided a letter from himself, a letter from his mother Mrs S L Mason, and testimonials from Mr Paul Pritchard, a P.E teacher and member of the senior management team at Rudheath High School, and Mr P M Hayhurst, the Head Teacher at Rudheath High School.

Mr Mason, accompanied by his mother, attended an informal meeting with members of the Secretary of State's Teachers Misconduct Team on 5 October 2000. The interview was conducted by Mr Michael Battle. A note of the interview was taken by Mr Battle's colleague Mr Hewittson. The notes taken by Mr Hewittson form part of the papers that were subsequently submitted to the Secretary of State for his decision; they were also contained within the Tribunal papers. Mr Mason complained that the notes did not accurately reflect what was said at the meeting and further that the testimonial from Mr Hayhurst that had been passed to Mr Battle was not placed before the Secretary of State when he considered the matter.

Mr Battle in his witness statement indicated at paragraph 10 that the notes taken by Mr Hewittson were not a verbatim record, but was a true and accurate summary of the interview. At the Tribunal hearing Mr Battle acknowledged that the interview had not been tape recorded, nor had any attempts been made to verify Mr Hewittson's notes with Mr Mason before the papers were passed to the Secretary of State.

It was also accepted by Mr Battle that due to an administrative oversight at the DFEE Mr Hayhurst's testimonial was not included with the paperwork accompanying the submission to the Minister.

12. In or about January 2001 Mr Battle submitted the papers to the Minister for School Standards (to whom the Secretary of State had delegated his powers to make a decision on Mr Mason's suitability to teach). On 6 February 2001 a letter was sent to Mr Mason indicating that a direction had been made on the grounds of Mr Mason's misconduct that he might not be appointed to or employed in relevant employment. The letter set out the matters that the Secretary of State had taken into account in reaching that decision. Mr Philip Coppel of Counsel, appearing on behalf of the Secretary of State, submitted that the purpose of restricting a person's employment was firstly for the protection of children and secondly to maintain confidence in the system. In this case, the Secretary of State having satisfied himself that Mr Mason had been guilty of misconduct, it was appropriate for Mr Mason's employment to be restricted.

Mr Coppel said that legislation did not set out the criteria which the Secretary of State should use in reaching his decision, but there were various factors which could be taken into consideration.

13. The first of the factors was the age of the pupil concerned. In this case pupil X had been 16 years of age. It was acknowledged that pupil X was over the legal age of consent and therefore that no criminal act had been committed by Mr Mason. Nevertheless age alone was not an indication of maturity.

The Secretary of State whilst not seeing Mr Mason as a risk in terms of non-consenting relationships with other pupils, was nevertheless concerned that Mr Mason might follow the same course of conduct again, should the opportunity arise.

Mrs Mason told the Tribunal that pupil X's parents had not asked for counselling for their daughter or made any formal complaint about the relationship. They had allowed the relationship to continue, even after they knew that it was sexual.

14. The second factor suggested by Mr Coppel was the proximity of the teacher/pupil relationship. It was suggested that this could go from an extreme situation where the teacher taught the pupil to a situation where there was no direct teaching relationship at all. It might be said that this case fell in the middle of those extremes in that Mr Mason had not taught pupil X while she was at P College. However, P School and P College should be treated as one establishment given that they are on the same site and have the same head teacher. An assumption should have been made by Mr Mason in the summer

holidays of 1998 that pupil X was going to attend P College in September until such time as she had clearly indicated that she was not.

Mr Mason rejected this view. He believed that once pupil X had completed her examinations at the end of year 11, she had effectively left the school. He was not teaching pupil X at the time when the personal relationship was going on.

15. The third factor was the duration, degree and nature of the relationship. The longer the relationship continued, the more pressing the need for the teacher concerned to have his or her employment restricted. Mr Coppel said that the relationship between Mr Mason and pupil X had continued for 4 months and therefore Mr Mason had time to reflect on his position, seek advice and to turn away from the course on which he had embarked, which he had not done.

Mr Mason in response said that at an early stage he had considered resigning and in retrospect he should have resigned much earlier than he did. However he had various concerns about this course of action including his professional commitment and how the school would be affected.

Mr Coppel said that the Secretary of State was aware that in certain circumstances "true romance" could develop where it might be appropriate to take a different view of a relationship, but in such cases it would be expected that teachers would remove themselves to another school at the earliest opportunity.

16. The fourth factor was whether the teacher or the pupil had instigated the initial relationship and the sexual contact that followed. Mr Mason accepted that he had instigated the initial relationship, but said that it was difficult to say how the sexual relationship had started.
17. The fifth and final factor was the question of remorse. Mr Coppel contended that Mr Mason did not appear to appreciate the potential damage that could be done where an improper relationship existed, both in respect of the pupil and also in respect of the parents and the wider school community. Mr Mason referred to the comments that he had made in his interview with Mr Battle, in particular those recorded at paragraph 28 of the notes of that interview. Mr Mason told the tribunal that he considered his actions to be out of character and with hindsight he realised that the relationship with pupil X should never have started. He had learnt from his mistake. These comments were endorsed by Mrs Mason who told the tribunal that her son now fully understood that what he had done was wrong and that he would not do it again.
18. In his Notice of Appeal Mr Mason submitted that the Secretary of State had given insufficient consideration to Mr Mason's previous and subsequent good character and had not given sufficient weight to the character references that he had

submitted. Mr Mason had taught at Rudheath High School as a supply teacher in the year 2000. Mr Hayhurst had indicated that he would be happy to re-employ Mr Mason.

Mr Mason complained about the way in which his case had been handled procedurally by the Secretary of State and his officials. In particular he complained that insufficient time had been given by the Secretary of State himself to consider the case, the notes of Mr Mason's interview with Mr Battle did not accurately represent what was said at that interview, and Mr Hayhurst's testimonial was not submitted to the Secretary of State with the other case papers.

Conclusions with Reasons

In reaching its conclusion the tribunal carefully considered all the evidence given at the hearing and the papers which the parties submitted to the tribunal in advance. Our conclusions are:-

- (a) The Education (Restriction of Employment) Regulation 2000 gives the Secretary of State for education and employment the power to restrict the employment of a teacher or worker with children. This is a power that the Secretary of State may exercise if he is satisfied that one of the grounds set out in paragraph 5(1) of the regulations exists. In this case the Secretary of State relies on Mr Mason's misconduct.
- (b) The Secretary of State found that Mr Mason had had an inappropriate and sexual relationship with pupil X and that that constituted misconduct. Indeed, this is not disputed by Mr Mason. It is accepted by Mr Mason that he initiated the relationship which started in or about July of 1999. Although at that time pupil X was not required to come into school, having completed her examinations, nevertheless she had met Mr Mason on school premises for the purposes of discussing a skiing trip with him in his capacity as a teacher. It was during this discussion that Mr Mason asked her to accompany him to the cinema.
- (c) The sexual relationship began during the 1999 summer holidays. Although Mr Mason said at the tribunal hearing that it was difficult to say who instigated the sexual part of the relationship, in his interview with Mr Battle Mr Mason is reported at paragraph 18 of the notes of that meeting as saying "he had asked pupil X whether she was comfortable with the idea" of a sexual relationship.
- (d) Mr Mason said that he considered that in the summer holidays there was no longer a teacher/pupil relationship between himself and pupil X because she had left school, but we can find no evidence of pupil X having made a definite decision in August whether or not to continue her education by attending P College in September. Mr Mason appears to have taken no steps to clarify the position at

that time or indeed to appreciate the significance of the issue. Even if we accept that technically there was no teacher/pupil relationship during the summer holidays the position had clearly changed by September 1999 when pupil X enrolled as a student at P College. P School and College are on the same site,

under the same head teacher, Mr F. Although Mr Mason did not directly teach pupil X he did teach other students at the College and we have no hesitation in finding that there was a teacher/pupil relationship.

- (e) Mr Mason acknowledges having received a staff handbook when he started at P School which contained a Code of Conduct for teachers. A copy of this handbook was supplied to the Secretary of State by the local education authority and was included in the tribunal papers. That code states at paragraph 3.3 under the heading “sexual contact” as follows:-

“there is no acceptable behaviour that has either explicit sexual connotations or innuendo”.

At paragraph 3.9(a) under the heading “social contact” it states that:-

“social contact with pupils, other than that which is school based and organised by the school, should be positively resisted.”.

We therefore have no difficulty in finding that Mr Mason’s conduct towards to pupil X was misconduct.

- (f) Having established that misconduct has taken place the next question the tribunal needs to address, as does the Secretary of State, is whether it is appropriate for restrictions to be placed on Mr Mason’s employment as a teacher, in other words whether he should be put on what is known as “list 99”. We can find nothing in the legislation or regulations to indicate the appropriate criteria on which this decision should be based.

Mr Coppel submitted that the overriding purpose of restricting someone’s employment was firstly for the protection of children and secondly for the maintenance of confidence in the education system, and we take the view that that is the correct approach. Mr Coppel then went on to suggest a number of factors which should be taken into account. Clearly the facts of every case are different, and neither the Secretary of State nor this tribunal should adopt hard and fast rules which fetter discretion. However, in Mr Mason’s case we believe that the factors suggested by Mr Coppel are relevant and appropriate.

- (g) The next point for the tribunal to consider was how much weight should be given to each of those factors and what, if any, mitigating circumstances exist in this case.

We are concerned about the way in which Mr Mason behaved in a number of areas.

Firstly, it was Mr Mason who initiated the relationship with pupil X and in our view it is likely it was also Mr Mason who encouraged pupil X to embark on a sexual relationship. Whilst pupil X was not actually attending school at the time the

said in such an interview is to be used as part of the decision making process, it does seem to us that every attempt must be made to ensure that it is accurate. Clearly this can be done in a number of ways, either by a tape recording, or having a verbatim note taken or at the very least ensuring that any notes that are made are checked for accuracy with the person whose alleged misconduct is in question. Mr Battle told the tribunal that changes have since been made in the way in which these matters are handled. The Tribunal has in any event had the benefit of seeing Mr Hayhurst's testimonial and hearing Mr Mason's comments about what he said in the interview with Mr Battle and has taken this into account

- (j) In considering all the factors in this case we are of the view that Mr Mason's employment should at the present time be restricted and that his name should remain on list 99. We have no doubt that Mr Mason now realises that he made a serious error of judgement in his relationship with pupil X. However, we were not convinced that Mr Mason has yet developed the maturity to understand fully why certain rules regarding teacher/pupil relationships exist and to know the boundaries that should be set and how or where to obtain appropriate advice should difficulties occur. The apparent consent of a pupil of whatever age does not necessarily indicate that the pupil has a full understanding of the implications of the relationship or is free from the influence inherent in a teacher's position and status as such. The fact that the pupil's parents may be aware of the relationship and do not openly object to it again cannot be said to give any legitimacy to the situation. The purpose of issuing codes of guidance is to assist teachers to know the dangers of their position, and how they should behave, and teachers ignore that guidance at their peril.

Order

The appeal is dismissed.

Stewart Alexander Hunter