

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON OFFICE**

BETWEEN Fonterra Co-Operative Group Limited (Applicant)

AND New Zealand Dairy Workers Union (Respondent)

REPRESENTATIVES Rose Alchin for the applicant
Garry Pollak for the respondent

MEMBER OF AUTHORITY P R Stapp

SUBMISSIONS On the papers

DATE OF DETERMINATION 30 May 2005

DETERMINATION OF THE AUTHORITY

Employment relationship problem

1. The applicant and respondent are parties to the Fonterra Dairy Workers Collective Agreement 2004–2006. The agreement provides coverage from 1 September 2004 until 31 August 2006.
2. An employment relationship problem has arisen in regard to an employee’s entitlement as a “*support caregiver*”. The problem involves the application, interpretation and operation of the parental leave policy attached as Appendix 3 to the agreement. This provides for paid parental leave for “*support caregiver*” and “*primary caregiver*”. Both are defined in the policy. Under para.2.5 on page 11 of the agreement the appendix is regarded as part of the agreement. It was previously included in the 2003-2004 agreement as well.
3. In particular the issue relates to the number of times a “*support caregiver*” can utilise the policy.
4. The parties have agreed following a mediation held on 30 November 2004 to apply to the Employment Relations Authority for a determination to resolve the problem. The Dairy Workers Union sees the problem as being that a “*support caregiver*” is entitled to leave pursuant to the applicant’s parental leave policy and being able to utilise that entitlement more than twice. The Company’s position is that the applicable leave entitlement is limited in its availability (i.e. twice) as is the entitlement for a “*primary caregiver*”.

The current problem has arisen at the Hawera site of the Company

5. It involves Mr D who is an employee who has taken in recent times, two paid parental leave periods, under the “*support caregiver*” category of the agreement, and applied for a third period of leave. The applicant has denied him this third period of leave. Mr D has been given leave but it has been categorised as annual leave in an undertaking given to him and the Union. The undertaking also extends to, depending on the outcome of this particular matter, it being recalculated.

The analysis

6. It is accepted that paid leave available to a “*primary caregiver*” is only available to be used twice (under clause 14) – “*Paid Parental Leave is only available twice (parental leave under the Act is available thereafter)*”. The same provision makes it clear that once a “*primary caregiver*” has exhausted the two periods of paid leave available pursuant to the agreement (Appendix 3), any further periods of parental leave, will only be paid pursuant to the provisions available under the Parental Leave and Employment Protection Act. There is provision for some transferability but no provision for paid leave of right for a spouse (section 71E).
7. The relevant provision for a “*support caregiver*” in the agreement is defined as:

“Either the parent or partner (of the child that this application relates to) of the primary caregiver. Partner refers to any person whose relationship to the primary caregiver is in the nature of marriage, irrespective of marital status, gender or sexual orientation.

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Provisions

1. *In the case of rostered employees, 14 days paid leave at 100% of salary at time of leave. These 14 days are inclusive of rostered days on and rostered days off.*
2. *This leave may commence on any date, following agreement between the employee and the company.*
3. *This leave may be taken within one month prior to the expected date of delivery or adoption or within one month after the actual date of delivery or adoption.*
4. *This leave can not be accrued.*
5. *In extreme/special circumstances, any further paid leave should be assessed on an individual needs basis at the discretion of, and approval of the relevant Site Manager.*
6. *Special paid leave shall be granted at the discretion of the employee’s manager with regard to attending pre-natal consultations or other requirements/demands at that time specifically relating to the partner’s pregnancy.*

7. *Special paid leave shall be provided for interviews/court appearances etc. associated with the adoption process. Note: the company has the right to review any application and suggest alternative dates for the leave.*

The parties' positions

8. The focus of the Company's argument is that the parental leave agreement must be read in its entirety but applies to two divisions that relate to different circumstances for "*primary caregivers*" and "*secondary caregivers*" for meaning. In essence the Company submits that the policy applies overall with a restriction. To provide more than two entitlements to the "*support caregiver*" would seem unreasonable considering the "*primary caregiver*" has a limit of two occasions and the policy is more advantageous than the Parental Leave and Employment Protection Act.
9. The Union says that the words say what they mean and they should be interpreted on their plain meaning. It is submitted that there is no ambiguity or that there would be an absurd or irrational result. In essence the respondent says that the *support caregiver* can utilise the entitlement without a restriction on the number of applications because there is no corresponding entitlement to paid parental leave under the Act as there is for the *primary caregiver*.

The determination

10. The words are plain in the agreement. The provision for paid leave restricts the *primary caregiver* to paid parental leave twice under the terms of the agreement and thereafter the provisions of the Parental Leave and Employment Protection Act apply. There is no restriction for *support caregivers* under the agreement. In addition the paid leave entitlements for the two categories in the agreement differ. The separate categories each have mutually inclusive provisions under the separate headings of *primary caregiver* and *support caregiver*. Even though the Company argues, that an entitlement for *support caregivers* to get more than two periods of paid leave under the agreement, would be unreasonable, this is not ambiguous or nonsense. Applying the provision existing for *primary caregivers* would be to import words under a separate head of provisions for *support caregivers* so as/and to infer a meaning not provided.

11. Therefore on the plain meaning of the words of the agreement the provision enables *support caregivers* to apply more than twice for the leave entitlement.

12. Costs are reserved.

P R Stapp
Member of Employment Relations Authority