

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

[2011] NZERA Wellington 122
5346864

BETWEEN

SALLY ANN REAY
Applicant

AND

THE CHIEF EXECUTIVE OF
THE DEPARTMENT OF
LABOUR
Respondent

Member of Authority: P R Stapp

Representatives: Ms Reay the Applicant
Alex Leulu Counsel for Respondent

Investigation Meeting: Agreed on the papers

Submissions received: 18 July 2011

Determination: 22 July 2011

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Ms Reay has applied for an entitlement to paid parental leave. The Department of Labour decided that she was not entitled because she was not employed at the time her parental leave was to be taken.

Issues

[2] Is Ms Reay entitled to paid parental leave under the Parental Leave and Employment Protection Act 1987 (PLEPA)?

The facts

[3] Ms Reay was employed by Tower Managed Funds Limited trading as Tower Investments/Finance (Tower). Ms Reay's employment ended with Tower on 13 August 2010 because of redundancy.

[4] On 29 March 2010 an outcome of a review in her employment was finalised and this involved a decision for relocation of services and positions to Auckland. Ms Reay was affected. On 14 June 2010 Ms Reay was given notice of her employment ceasing with effect on 13 August 2010. Her last working day was 16 July 2010 and the rest of the time was taken with annual leave prior to the cessation of employment on 13 August 2010.

[5] Ms Reay had during this time made an application for paid parental leave and she listed the commencement date of her parental leave as 16 August 2010. As part of that process on 24 April 2010 she had been informed that her application had been processed by New Zealand Inland Revenue. It was confirmed that her paid parental leave would start from 16 August and continue to 21 November 2010.

[6] However, the Department of Labour informed her that she was not entitled to paid parental leave. Thus, the matter has come before the Authority for a determination. In considering mediation (under s 159 of the Employment Relations Act) I decided that mediation would not be constructive.

Determination

[7] Ms Reay ceased work with Tower on 13 August 2010. When her parental leave started on 16 August 2010 she was not employed by Tower. This does not meet the entitlement for paid parental leave because Ms Reay was not an eligible employee under the PLEPA.

[8] In addition Ms Reay was not an employee who had commenced her leave and subsequently made redundant. Thus, the exception in the PLEPA relating the redundancy does not apply.

[9] Finally considering her notice I am satisfied that Ms Reay was provided with the correct notice and that her employment ended before the commencement of her parental leave. Ms Reay accepted this.

[10] Ms Reay feels aggrieved that she had worked for Tower for 3 ½ years full time and through no fault of her own that she lost her job because of redundancy prior to commencing her parental leave. In reviewing the information I hold that the correct decision has been made on the information available in terms of applying the PLEPA. The requirements are very specific and unfortunately for Ms Reay her situation in ceasing her employment by a few days before the commencement of her parental leave means that she is not an eligible employee. There is no discretion around this. Thus, her allegation that she was deliberately given the same redundancy date that she had given as her final day before starting her maternity leave can have no bearing. Also, any possibility of her being able to work longer if she had not been going on maternity leave as she suggested, is not a relevant factor, I hold. Finally although Ms Reay has provided her impression about the reasons why paid parental leave was introduced this has to be applied in terms of the statutory rules under the PLEPA.

Orders of the Authority

[11] Ms Reay's application is dismissed.

[12] Costs lie where they fall. The Department has not sought costs.