

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2012] NZERA Wellington 132  
5385572

BETWEEN

VANESSA PETROWSKI  
Applicant

AND

THE CHIEF EXECUTIVE OF  
THE MINISTRY OF  
BUSINESS, INNOVATION  
AND EMPLOYMENT  
(formerly the Chief Executive of  
the Department of Labour)  
Respondent

Member of Authority: P R Stapp

Representatives: Graeme Ogilvie, Advocate for Applicant  
Alex Leulu, Counsel for Respondent

Investigation Meeting: On the papers

Submissions Received by: 29 August 2012

Date of Determination: 26 October 2012

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1] This is a claim for paid parental leave made by Ms Petrowski. The claim was previously declined by the Ministry of Business, Innovation and Employment (formerly the Department of Labour) (“MBIE”). The applicant has applied for a review of the Ministry’s decision about the parental leave payment under s 71ZB of the Parental Leave and Employment Protection Act 1987 (PLEPA). The application has been made within 12 months after the date on which the decision was notified to the applicant.

**Issues**

[2] The issues are:

a. *Is Vanessa Petrowski entitled to paid parental leave?*

[3] Her claim has been declined by MBIE (formerly Department of Labour) because her applicable period of employment was limited to her time employed on her last fixed term employment agreement as a day-to-day reliever that meant she was only employed for four (4) months up to her expected date of delivery. MBIE says she is not entitled to paid parental leave because she would not have been employed by the same employer for six or twelve months before her expected date of delivery (EDD).

(b) *Has Ms Petrowski taken parental leave, if she is an eligible employee?*

[4] MBIE says Ms Petrowski would not be entitled because she has not taken parental leave and the fixed term employment agreement may have ended either before or after her specified date for commencement of maternity leave.

**The facts**

[5] Ms Petrowski has worked at Queen Margaret College at Wellington since 2008 as a relieving teacher. She worked from May 2011 to 31 July 2011 as a relief teacher, 1 August 2011 to 9 December 2011 on a fixed term contract, and 28 January 2012 to 3 June 2012 relief teaching. She did not work during the normal school holidays, but was paid holiday pay. She did not return because her baby was born. She submitted a "Paid Parental Leave Application for an Employee" dated 20 April 2012 with her expected date of delivery of her baby being 3 June 2012. The college completed the employer section of the application for paid parental leave. The matter of her paid parental leave took an unusual course because of the college's uncertainty about her circumstances and the need for further information. It took three months before the Department of Labour issued its opinion denying the claim.

[6] Her last day of work at Queen Margaret College was 31 May 2012 and her baby was born on 3 June 2012. She says her hours exceeded 10 hours per week.

[7] MBIE notified her of its decision on 11 May 2012. Ms Petrowski filed her statement of problem in the Authority on 14 June 2012.

**Determination**

[8] I am satisfied that Ms Petrowski worked continuously for the College and worked in excess of 10 hours per week. She had been in the employment of the same employer for at least an average 10 hours per week over the immediately preceding 12 months given the nature of the different employment agreements that she had in place during that time. Apart from the 4 months fixed term contract she was employed for the rest of the preceding 12 months under a 26 November 2010 relief teaching contract that applied to “all subsequent relieving appointments”. The test applies to “being in employment of the employer”. Ms Petrowski’s arrangement was ongoing and she was working on a regular basis for the same employer. I am supported in this by the following:

- a. That Ms Petrowski worked with the same employer, ie Queen Margaret College during the entire time.
- b. That the 26 November 2010 agreement made provision for “all subsequent relieving appointments” and that Ms Petrowski was employed;
- c. That the 19 May 2011 long term relieving arrangement continued the arrangements;
- d. That Ms Petrowski was paid holiday pay that covered the holidays in accordance with usual teaching arrangements;
- e. That Ms Petrowski returned to work on 28 January 2012 until 31 May 2012.

[9] She was in employment upon notifying her employer for paid parental leave. I accept that the applicant notified the college in plenty of time that she wanted paid parental leave and that was the nature of the leave that she took. This matter is distinguished by separate employment arrangements, but with continuous employment including school holidays, and with the same employer throughout and in each engagement. I am satisfied Ms Petrowski meets the requirements under s71 of the Parental Leave and Employment Protection Act for paid parental leave as an eligible employee. Also I am satisfied that she has taken maternity leave under the terms of her employment, notified her employer and applied accordingly, and any

irregularity in the timing and nature of the application is hereby waived as a technicality under s 68 of the PLEPA. It is a matter of natural justice that the applicant be allowed to proceed with the application when she and her employer completed an application for paid parental leave. The hold up for completion of the application was caused by incomplete information and uncertainty.

### **Conclusion**

[10] Ms Petrowski is entitled to paid parental leave in accordance with the PLEPA.

[11] Costs are reserved (as requested in submission from the applicant's representative dated 27 July 2012).

P R Stapp  
Member of the Employment Relations Authority