

ATTENTION IS DRAWN TO
THE ORDER PROHIBITING
PUBLICATION OF CERTAIN
INFORMATION REFERRED TO
IN THIS DETERMINATION

**IN THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH**

**I TE RATONGA AHUMANA TAIMAHI
ŌTAUTAHI ROHE**

[2020] NZERA 418
3109772

BETWEEN

ZDF
Applicant

AND

MINISTRY OF BUSINESS.
INNOVATION &
EMPLOYMENT
Respondent

Member of Authority: Philip Cheyne

Representatives: Amanda Fitzgibbon, counsel for the Applicant
Gregory La Hood, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 23 September 2020 from the Applicant
22 September 2020 from the Respondent

Date of Determination: 13 October 2020

DETERMINATION OF THE AUTHORITY

A. Pursuant to s 71ZB of the Parental Leave and Employment Protection Act 1987, I reverse the decision by the Ministry of Business, Innovation & Employment dated 18 May 2020. ZDF is entitled to a Paid Parental Leave commencing on 1 April 2020.

Employment relationship problem

[1] ZDF's application for Paid Parental Leave was declined after it was referred to MBIE to assess her eligibility. ZDF seeks a review of the decision that she is not eligible for Paid Parental Leave.

[2] By consent, I made an order prohibiting the publication of the names of the applicant, the child, the parents and the other names and identifying details contained in the statement of problem and statement in reply.

[3] Following a case management conference, both parties provided submissions. MBIE considered it had no option but to decline ZDF's Paid Parental Leave application but does not oppose me reversing its decision. I acknowledge MBIE's position.

Determination

[4] I am obliged to resolve employment relationship problems according to the substantial merits of a case without regard to technicalities and must act as I think fit in equity and good conscience.

[5] The purpose of Part 7A of the Parental Leave and Employment Protection Act 1987 is to entitle certain persons who become the primary carer in respect of a child and who stop working or take a period of leave, to be eligible to parental leave payments out of public money. An eligible employee is a person who meets the threshold test and who is the primary carer in respect of a child.

[6] ZDF had been in fulltime employment for a considerable time immediately before the assumption of responsibility for the care of the child. ZDF met the threshold for Paid Parental Leave entitlement.

[7] ZDF commenced a period of parental leave from her work on 1 April 2020, having agreed that arrangement with her employer.

[8] The child was born in November 2019. ZDF is not the child's biological mother and the mother's entitlement was not transferred to her under the Act. ZDF qualifies as the child's primary carer under s 7(1)(c) of the Act as the person who takes permanent primary responsibility for the care, development and upbringing of

the child aged under six. To ZDF's knowledge, no-one else has received Paid Parental Leave in respect of the child.

[9] The circumstances under which ZDF became the child's permanent primary carer (my emphasis) are complex and involved other agencies, but need not be set out here. ZDF's Paid Parental Leave application refers to the child's date of birth as the date the child came into her care. While it is correct that ZDF initially started providing care for the child then, the situation was at that stage evolving and subject to change.

[10] Having regard to the uncertainties of the situation, I fix the day on which ZDF commenced parental leave (1 April 2020) as the date on which she could be reasonably regarded as the permanent primary carer of the child. That was when ZDF came to have sufficient certainty about continuing care arrangements to commence parental leave from her employment. It follows and I find that ZDF from 1 April 2020 was an eligible employee who took parental leave from her employment, meeting the requirements to be entitled to a parental leave payment under the Act.

[11] I exercise my power under s 71ZB and reverse MBIE's decision set out in its letter dated 18 May 2020. ZDF is entitled to a Paid Parental Leave commencing on 1 April 2020.

[12] There is no claim of costs.

Philip Cheyne
Member of the Employment Relations Authority