

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI Ā TARA ROHE**

[2022] NZERA 162
3149382

BETWEEN

TERELL LAMBERT
Applicant

AND

MINISTRY OF BUSINESS,
INNOVATION AND
EMPLOYMENT
Respondent

Member of Authority: Sarah Kennedy

Representatives: Terell Lambert for the Applicant
Rochelle Hill, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 14 January 2022 from Applicant
25 January 2022 from Respondent

Determination: 22 April 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Terell Lambert sought review of a decision that she was not entitled to parental leave payments because she had not worked for 26 weeks out of the 52 weeks before her baby was due. The decision was made by an Inland Revenue officer exercising powers delegated by the chief executive of the Ministry of Business, Innovation and Employment (MBIE).

[2] The Parental Leave and Employment Protection Act 1987 (the Act) allows the Employment Relations Authority to review decisions¹ to decline applications for paid

¹ Parental Leave and Employment Protection Act 1987 s 71ZB.

parental leave payments (PPL). The Authority is able to confirm, modify or reverse the decision of Inland Revenue.

[3] Ms Lambert and MBIE agreed this review could be determined ‘on the papers’, comprising of Ms Lambert’s statement of problem, MBIE’s statement in reply, further information provided by Ms Lambert confirming her circumstances, including correspondence from Inland Revenue about her application and written submissions from MBIE.

[4] The Authority sought confirmation of Ms Lambert’s notice period and was provided with the relevant exert from her employment agreement.

Ms Lambert’s situation

[5] During her pregnancy, Ms Lambert was employed in fashion retail and her daughter was in day care. In November 2020, the day care centre closed for repairs because it had been heavily affected by the Napier floods. Ms Lambert was unable to find alternative childcare. This left her in a position where she had to resign from her job, earlier than anticipated, to take care of her daughter. She also provided information indicating she had exhausted all alternative childcare options at the time.

[6] Ms Lambert had commenced her permanent employment on 26 May 2020 and gave notice of her resignation on 14 November 2020 and she had a two week notice period which means her last day of employment was 29 November 2020. In her final pay she received payment for 43.7 hours annual and alternative leave in lieu of taking that leave.

[7] The eligibility test in s2BA(4) of the Act sets out that she must work 26 weeks out of 52 weeks before the expected date. The relevant 52-week period is 16 June 2020 to 16 June 2021. In March 2021, she also worked for an additional week at a Kohanga Reo and her Inland Revenue records confirm this. With the additional weeks’ work at a Kohanga Reo, Ms Lambert’s total period of work is 25 weeks.

[8] Having finished employment on 29 November 2021, she had worked a total of 25 weeks which means she is one week short of qualifying and on this basis Inland Revenue declined Ms Lambert’s parental leave application because she had not worked for long enough.

[9] Because Ms Lambert is short of meeting the threshold test for eligibility by a small margin, the question was asked by the Authority as to whether the annual leave paid out in lieu of taking leave at the end of employment would be able to be considered for the purposes of meeting the eligibility test. If that leave can be taken into account in terms of the 26-week threshold, Ms Lambert would be only a few hours short of qualifying for parental leave under the eligibility test.

Ms Lambert's eligibility

[10] MBIE's submissions correctly identify that s72A of the Act permits an employee to be deemed to be working while on annual leave, for the purposes of calculating the number of weeks worked but it only applies to a continuing employment relationship. This means the payment of leave on termination of employment cannot extend the period of Ms Lambert's employment.

[11] The scheme of the Act was intended by Parliament to provide support to families of new babies, and this applies directly to Ms Lambert and her family. The Act sets the criteria for eligibility at 26 weeks work in the 6-month period before the due date of the baby.

[12] The short point is that the threshold for eligibility is based on the number of weeks in employment and cannot extend past the date an employment relationship ends. Even if Ms Lambert had taken the leave that was owing to her before resigning, although that would have extended her final day of employment, she would likely still have been just under the threshold for eligibility of paid parental leave.

[13] Ms Lambert's resignation date has impacted on her eligibility under the Act, because the requirement in the Act is 26 weeks in employment in order to qualify. In these circumstances I consider that the specified statutory requirement for eligibility cannot be overlooked. While it is unfortunate Ms Lambert's resignation date has impacted on her eligibility for paid parental leave, grounds advanced by Ms Lambert are not sufficient for the Authority to reverse the decision of the department.

Outcome

[14] For the reasons given, I confirm the decision to decline Ms Lambert's application for parental leave payments.

Sarah Kennedy
Member of the Employment Relations Authority