

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2022] NZERA 211  
3165941

BETWEEN

CLAIRE MURPHY  
Applicant

AND

THE MINISTRY OF BUSINESS  
INNOVATION  
AND EMPLOYMENT  
Respondent

Member of Authority: Sarah Kennedy

Representatives: Claire Murphy for the Applicant  
Jessica Ellison, counsel for the Respondent

Investigation Meeting: On the papers

Date of Determination: 24 May 2022

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Claire Murphy applies to the Employment Relations Authority for a review of the decision to decline her application for the remainder of her paid parental leave under the Parental Leave and Employment Protection Act 1987 (the Act). For the reasons that follow, the Authority reverses the decline decision of the Ministry of Business Innovation and Employment (MBIE) and orders it to take the necessary steps to ensure that Ms Murphy receives the parental leave entitlements she would have received had the wrong advice not been given, as soon as practicable.

## **The Facts**

[2] The facts are not in dispute. On 16 November 2020, Ms Murphy called Inland Revenue (IR) to enquire about applying for and transferring her parental leave payments to her husband. It is accepted by IR and MBIE that the advice she received was incorrect and that led to the parental leave payments ceasing two weeks after they had been transferred to her husband.

[3] There is no dispute that Ms Murphy qualified for paid parental leave payments because in the year prior to her child's birth Ms Murphy had worked as an employee for the required amount of time and met the threshold test set out in s 2BA(4) of the Act.

[4] Ms Murphy had contacted IR to enquire whether she could receive the first week's paid parental leave payment and then transfer the payments to her husband for two weeks. After that she wished to transfer the remaining weeks of entitlement back to herself, once her husband went back to work. Ms Murphy was advised by IR that she could do this. However, unbeknown to her, the advice was incorrect as there is no provision in the Act which allows a person to transfer the paid parental leave payments between primary care givers more than once.

[5] Relying on IR's incorrect advice, Ms Murphy made the application to transfer the paid parental leave payments to her husband for two weeks. On 16 March 2021, Ms Murphy called IR to check up on her paid parental leave payments because she had only received one. On 19 March 2021, IR advised her that she should check her husband's account as the entitlements should have been transferred to him. On 1 April 2021, Ms Murphy called IR again to get the paid parental leave payments transferred back to herself. She was advised that the payments could be transferred back and would resume in her account in the next pay run.

[6] Then on 7 April 2021, IR advised Ms Murphy that only one transfer is allowed, and because her husband had returned to work on 6 April 2021, the entitlements would cease which meant Ms Murphy and her husband had only received three weeks of payments out of the total of 26 that they were entitled to based on their length of service in their employment. The matter was referred from IR to MBIE to see whether a transfer back to Ms Murphy could take place. On 6 May 2021, MBIE emailed Ms Murphy advising that the second transfer could not take place because of how the law operates. On 4 June 2021 there is correspondence from IR to

Ms Murphy where it is accepted, she was given incorrect advice. That correspondence is confirmation that IR acknowledges it provided incorrect information to Ms Murphy regarding her application for paid parental leave entitlements and specifically transferring her entitlement to her partner.

[7] MBIE have submitted that in light of that correspondence from IR to Ms Murphy, MBIE does not oppose the Authority exercising discretion pursuant to s 71ZB(3) of the Act to modify or reverse the decision that the payments to Ms Murphy could not be transferred back to her after the initial transfer had taken place, based on incorrect advice.

### **Discussion**

[8] MBIE accepts and agrees that Ms Murphy was incorrectly advised by IR. Ms Murphy's application for transfer of her paid parental leave payments back to her was declined by IR on 30 April 2021 and she lodged proceedings in the Authority on 8 March 2022, within the 12-month timeframe.<sup>1</sup>

[9] This is a situation outside of Ms Murphy's control because she received incorrect advice from IR which she had reasonably relied on and acted upon to her detriment. Had she been given the correct advice at the material time, she would most probably have made different arrangements such that she would have received parental leave payment for the full period of entitlement.

### **Conclusion**

[10] Accordingly, I consider it is appropriate to exercise the Authority's discretion<sup>2</sup> and to reverse the decision made by MBIE that Ms Murphy could not transfer the payments back to herself. MBIE should now take the necessary steps to ensure that Ms Murphy receives the paid parental leave payments due to her as soon as practicable.

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<sup>1</sup> Parental Leave and Employment Protection Act 1987, s 71ZB(2).

<sup>2</sup> Above n1, s 71ZB (3).

**Costs**

[11] Ms Murphy was self-represented, so costs are limited to reimbursement of the Authority's filing fee of \$71.56. That is payable given Ms Murphy's success. She can reasonably recover this amount from MBIE which is to be paid by 4.00 pm on 20 June 2022.

**Sarah Kennedy**  
**Member of the Employment Relations Authority**