

**IN THE EMPLOYMENT RELATIONS AUTHORITY
AUCKLAND**

**I TE RATONGA AHUMANA TAIMAHI
TĀMAKI MAKĀURAU ROHE**

[2022] NZERA 375
3172486

BETWEEN	GRACE MEREANA ROSE ANARU Applicant
AND	MINISTRY OF BUSINESS, INNOVATION AND EMPLOYMENT Respondent

Member of Authority: Alastair Dumbleton

Representatives: Applicant in person
Rochelle Hill, counsel for Respondent

Investigation Meeting: Determined on the papers

Determination: 9 August 2022

DETERMINATION OF THE AUTHORITY

The Authority determines that Ms Anaru is not eligible for paid parental leave payments.

Employment Relationship Problem

[1] The applicant Ms Grace Anaru applied under the Parental Leave and Employment Protection Act 1987 (the Act) for paid parental leave pay entitlements (PPL). At the date of her application her baby was due to be born on 11 July 2022.

[2] The application was considered by the Inland Revenue which declined it because her employment was not long enough.

[3] Ms Anaru has applied to the Authority for a review of the Inland Revenue decision. Under s 71ZB of the Act, following a review the Authority may confirm, modify or reverse the decision.

[4] Section 2 BA(4) of the Act provides the threshold test for parental leave payment. The test is a conditional one;

(a) an employee meets the parental leave payment threshold test if he or she will have been employed as an employee for at least an average of 10 hours a week for any 26 of the 52 weeks immediately preceding –

(i) The expected date of delivery of the child (in the case of a child to be born to the person or his or her spouse or partner

[5] In her application for the leave, Ms Anaru indicated 25 weeks employment, just one week short of the statutory period.

[6] She states she wishes to have her eligibility for PPL determined on the ‘merits’ of her case, rather than ‘technicalities’. The Authority understands the distinction she draws is that she considers it unjust to be declined because of what may seem to be an arbitrary and rigidly imposed qualifying period of employment, which may not seem consistent with the wider social purposes of providing for paid parental leave.

[7] The requirement to have been employed as an *employee* means that a period when Ms Anaru was receiving the job seekers benefit, cannot be considered towards making up the one-week deficit.

[8] The requirement to have been employed as an *employee* also means that employment under an employment agreement subject to the law of a country other than New Zealand, cannot be considered either. Ms Anaru had been employed in the United Kingdom for more than one week in mid-2021.

[9] Ms Anaru also has offered to put a week of her untaken paid annual holidays to make up the deficit, and she offered to consider reducing the statutory entitlement from 26 to 25 weeks to match her length of employment.

[10] Again, the Act does not allow for these alternative ways of making up the shortfall in the qualifying period of one week.

[11] Any discretion the Authority has when reviewing the Inland Revenue decision must be exercised in a principled way, and while it may seem unfair for Ms Anaru to be declined the statutory entitlement employees have been given, the law must be interpreted and applied in accordance with the intention of the legislation and the scheme of the Act. The entitlement period has been chosen as appropriate and the Authority may not re-write the legislation to suit individual cases, even where the deficit is as little as one week. Only Parliament can amend the legislation to allow a wider discretion to be exercised.

Determination

[12] The Authority confirms the decision of Inland Revenue and must decline Ms Anaru's review application.

Alastair Dumbleton
Member of the Employment Relations Authority