

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2022] NZERA 522
3181679

BETWEEN

UELLA WATSON
Applicant

AND

MINISTRY OF BUSINESS,
INNOVATION AND
EMPLOYMENT
Respondent

Member of Authority: Michael Loftus

Representatives: Applicant in person
Oscar Upperton, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: 26 September and 6 October 2022 from the Applicant
4 October 2022 from the Respondent

Date of Determination: 11 October 2022

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] The applicant, Uella Watson, having had her application for paid parental leave declined by the Ministry of Business, Innovation and Employment (MBIE) seeks to have that decision reviewed and reversed by the Authority pursuant to s 71ZB of the Parental Leave and Employment Protection Act 1987 (the Act).

[2] MBIE asserts the position it has taken is correct as Ms Watson does not satisfy the eligibility criteria that would entitle her to paid parental leave (PPL) under the Act.

This Determination

[3] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Discussion

[4] Ms Watson was expected to give birth on 6 July 2022 and in preparation for that she applied for PPL on 8 June 2022.

[5] The application, which is made to the Inland Revenue Department, was declined by that department on 14 June 2022. The reason was that while Ms Watson was indisputably the primary carer of the child, she did not meet the parental leave payment threshold test.¹

[6] That test requires that if an employee an applicant for PPL had to have been employed for at least an average of ten hours a week in any 26 of the 52 weeks immediately preceding date of delivery. Conversely, and if self-employed, the test requires an applicant for PPL be self-employed for an average of at least ten hours a week, again in any 26 of the 52 weeks immediately preceding the expected date of delivery.

[7] In this instance Ms Watson had, in the 52 weeks preceding date of delivery, been engaged as both an employee and a self-employed person. While there is no issue with regard the requirement she work 10 hours a week there was an issue with the number of weeks she worked. In the 52 weeks prior to the expected date of birth Ms Watson had, according to MBIE, worked at a tertiary institution as an employee for 24 weeks. Again according to MBIE's figures she subsequently worked at another tertiary institution performing a not dissimilar role for a period of 19 weeks but as a contractor. Here I note Ms Watson cited different figures (22 and 13 weeks respectively) but I have used MBIE's as they formed the basis for its decision. While they are more beneficial than Ms Watson's I also record the difference would not have mattered.

[8] Ms Watson immediately challenged the Inland Revenue Department's decision (15 June) and provided further details of those two engagements. That led to Inland Revenue

¹ Sections 71CA and 2BA(4) of the Act.

reviewing its 14 June decision and on 22 June it wrote to Ms Watson advising: “*We have approved your paid parental leave from 1 July 2022 to 29 December 2022 and your request to transfer payments to your partner*”. The letter then goes on to specify what payments would be made and how.

[9] The transfer is permissible under s 71E of the Act and Ms Watson and her husband were considering that option as he was then facing the prospect of redundancy. No issues arise from this.

[10] Therefore, and on the basis of the approval, Ms Watson’s husband accepted his employer’s redundancy proposal in order to take up the role of primary care giver and made the appropriate applications to the Inland Revenue Department.

[11] Ms Watson says that shortly thereafter she received a call informing her that the application was being transferred to MBIE to clarify “minor details”.

[12] That led to a letter from an MBIE Labour Standards Officer dated 15 July 2022 and advising:

Your application was referred to this office from Inland Revenue to clarify your eligibility for parental leave payments. The reason for this referral was because there was a question regarding the weeks you had worked and whether this was sufficient to meet the parental leave payment threshold test ...

Unfortunately, after considering all evidence obtained, I have found that you are **not eligible to receive parental leave payments**. In making this decision I have taken into account ...

(Highlighting is MBIE’s)

[13] The letter then advised Ms Watson of her ability to review the decision through the Authority and, as already said, this she has chosen to do.

[14] The answer conveyed by MBIE’s letter of 15 July is clearly the correct one according to the letter of the Act. It is correct because Ms Watson did not meet the threshold for entitlement as either an employee or self-employed and the Act contains no facility to combine the two. However, and notwithstanding that, I conclude it was not appropriate to reverse this decision in the circumstances.

[15] That is because this turn of events has come about as a result of some form of internal peer review. While such an approach is laudable I consider errors found as a result should be

treated as lessons learnt for future application and, for two reasons, not grounds for reversing a decision already advised.

[16] The first is that there is nothing in the Act that facilitates this process. The second and by far the more important is that even if incorrectly, Inland Revenue advised Ms Watson her application had been approved. She, in concert with her husband, then acted on the advice and made “pivotal life decisions” which saw him give up employment that he could have retained.

[17] Furthermore she was, at the time, entitled to rely on that advice coming, as it did, from the government department charged with administering the PPL scheme and making payments and act as she did. This means both Departments are effectively estopped and should not be capable of then reversing the decision.

Conclusion and Orders

[18] For these reasons I conclude Ms Watson’s application should be granted and order that her entitlement to paid parental leave, as approved by the Inland Revenue Department on 22 June 2022, be reinstated. I further order that the transfer of that payment to her husband pursuant to s 71E of the Act also proceed.

[19] Ms Watson was self-represented and there is therefore no evidence of recoverable costs. It follows there shall be no order in this regard.

Michael Loftus
Member of the Employment Relations Authority