

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

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

[2023] NZERA 523
3237479

BETWEEN

LOUISE ODLIN
Applicant

AND

MINISTRY OF BUSINESS,
INNOVATION AND
EMPLOYMENT
Respondent

Member of Authority: Davinnia Tan

Representatives: Applicant in person
Claudia Milesi-Humm for the Respondent

Investigation Meeting: On the papers

Submissions Received: 11 September 2023 from the Applicant
12 September 2023 from the Respondent

Date of Determination: 13 September 2023

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] On 8 February 2023 Inland Revenue (IRD), the government department responsible for the administration of parental leave payments on behalf of the Ministry of Business, Innovation and Employment (MBIE), approved Ms Odlin's application for paid parental leave from 20 February 2023 to 20 August 2023 (26 weeks of paid parental leave) and Ms Odlin's request to transfer part of the payments to her husband. IRD wrote to Ms Odlin's husband on 16 February 2023 confirming it had approved the transfer for the period 6 March 2023 to 22 May 2023 (11 weeks of paid parental leave).

[2] Ms Odlin's paid parental leave began on 28 February 2023 as she had elected to receive two weeks' parental leave payments upfront. Following the end of her husband's paid parental leave Ms Odlin did not receive any payments on 6 June 2023 (the next pay cycle) as she had expected.

[3] On 16 June 2023 Ms Odlin was advised by IRD that she was not entitled to any payments because she was only entitled to transfer her payments once.

[4] On 27 June 2023 Ms Odlin lodged a statement of problem with the Authority seeking a formal review of this decision.

The Authority's investigation

[5] At a case management conference with the parties on 4 September 2023 the parties agreed to the Authority determining the issue "on the papers" based on the statement of problem, statement in reply, documents provided by Ms Odlin which included copies of letters from IRD to Ms Odlin and her husband, and submissions from both Ms Odlin and MBIE.

[6] 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.

The issues

[7] The issues requiring investigation and determination were:

- (a) Is Ms Odlin entitled to receive the remaining 13 weeks of parental leave payments under the Parental Leave and Employment Protection Act 1987 (PLEPA)?
- (b) If not, should the Authority exercise its discretion under section 71ZB(3) of the PLEPA to modify or reverse the decision?

Is Ms Odlin entitled to receive the remaining 13 weeks of parental leave payments under the PLEPA?

[8] Section 71J of the PLEPA provides that:

71J Duration of parental leave payment

- (1) A parental leave payment is payable—
 - (a) for 1 continuous period not exceeding 26 weeks; or
 - (b) if part of the entitlement is transferred under section 71E, for 1 continuous period per person, so long as the 2 continuous periods do not together exceed 26 weeks.
- (2) This section is subject to section 71DA(5)(b) (which applies to a person who becomes entitled to a preterm baby payment while receiving a parental leave payment)

[9] Section 71J(1)(b) provides that, if part of the entitlement is transferred under section 71E, a parental leave payment is payable for one continuous period per person.

[10] As Ms Odlin received two weeks of payments prior to the transfer of 11 weeks to her husband, she is prevented from receiving further payments under section 71J(1)(b). The situation would have been different had the transfer to Ms Odlin's husband occurred before she received any payments.

[11] Ms Odlin says that when she applied for paid parental leave, she had no reason to believe that by transferring some of her entitlements to her husband that she would forfeit the remainder of her entitlements. She stated that the information available online in relation to eligibility to transfer some of her payments (<https://www.employment.govt.nz/assets/Uploads/tools-and-resources/documents/parental-leave-payment-eligibility-factsheet.pdf>) “read quite straightforward” that she could transfer some of her payments according to her eligibility, and “did not provide any ‘red flags’ to investigate further.” Ms Odlin says that when she made her online application, there was no information or prompts to warn her that by transferring some of her allowance to her husband that she would forfeit the remainder or that she could not transfer any entitlements back. Ms Odlin says that while MBIE noted in their statement in reply that she did not contact them or IRD before making her application, based on the publicly available information she did not consider there would be a reason to seek further advice.

[12] In IRD's letter of 8 February 2023 confirming approval of 26 weeks of parental leave payments through to 20 August 2023, it noted that Ms Odlin could transfer some or all of her payments but it did not state that her transfer of 11 weeks to her husband meant the payments to her would not resume again for the remainder of the 26 weeks. She did not receive any notifications or correspondence from IRD to notify her of a change in her entitlements as a result of receiving two weeks of payments upfront and transferring 11 weeks of her 26 weeks of entitlement to her husband.

[13] Ms Odlin submits that based on the information available and provided to her, she understood that she was approved for 26 weeks of paid parental leave and that she could transfer some of her payments after two weeks and receive the rest following the period she transferred. This is because the approval letter stated it was for the entirety of the 26 weeks. Ms Odlin did not view this as a situation where she was seeking to transfer "back" entitlements to herself because the transfer to her husband was limited to 11 weeks. Ms Odlin says she had no reason to think she would not be paid the residual entitlements. She did not realise this was the case until she contacted IRD herself to query why payments to her had not resumed after cessation of her husband's parental leave payments, as she had expected.

[14] Upon her query IRD referred to section 71D(2) as the basis for not resuming payments which prohibits payments if the person has previously received parental leave payments in respect of that same child.

[15] MBIE has submitted, that if part of the entitlement is transferred under section 71E, section 71J(1)(b) provides that the parental leave payment is payable for one continuous period per person. Section 71D(2)(a) states that a person is not entitled to parental leave payments in respect of a child if the person has previously received parental leave payments in respect of that child. This means that Ms Odlin, who had taken some paid parental leave before transferring her entitlement to her husband, is prevented from having the payments transferred back to her and receiving the remaining 13 weeks of paid parental leave.

[16] MBIE noted that had Ms Odlin transferred her entitlements to her husband prior to receiving any payments, sections 71J(1)(b) and 71D(2)(a) would not prevent her husband

from transferring the PPL entitlement back to Ms Odlin. However, it accepts that Ms Odlin was not aware that in her circumstances she would not be able to have her paid parental leave transferred back to her or that her payments would cease entirely.

[17] Although I acknowledge the lack of transparency around the limitation of payments under section 71J(1)(b), its plain interpretation is that a parental leave payment is payable for one continuous period per person. It does not matter that Ms Odlin only received two weeks of paid parental leave up front prior to the transfer of 11 weeks to her husband. Section 71J(1)(b) applied regardless of the duration of either payment. I therefore find that Ms Odlin is not entitled to further parental leave payments.

Should the Authority exercise its discretion under section 71ZB(3) of the PLEPA to modify or reverse the decision?

[18] Under section 71ZB(3) of the PLEPA, the Authority “may confirm, modify, or reverse the decision of the department”.

[19] In support of her case, Ms Odlin submits that it is not reasonable to expect her to have read the legislation or hire a lawyer to provide advice on this matter prior to making her application. The restriction of payments to one continuous payment under section 71J(1)(b) was not set out on the application forms nor readily made available or accessible on the relevant websites. Ms Odlin says such information should have been provided up front or easy to find without requiring one to undertake an in-depth search.

[20] Ms Odlin says, which I accept, that she would have organised the transfer of her entitlements completely differently had she known this information upfront. Understandably, Ms Odlin also shared that this has caused her and her family a great amount of stress financially.

[21] There has been no evidence that Ms Odlin was forewarned that she would be ineligible for further parental leave payments if she chose to transfer some of her entitlements to her husband after being in receipt of two weeks of parental leave payments.

[22] In *Tiatia-Sefilino v Ministry of Business, Innovation and Employment*¹ the Authority accepted the plain interpretation of section 71J(1)(b), that payments can only be transferred once regardless of their duration, but it chose to exercise its discretion under section 71ZB(1)(b) to allow the parental leave payments to be transferred back to the applicant. It found it would be inequitable to deprive the applicant of parental leave payments and found the applicant would not have transferred the payments to her husband were she aware of the consequences. It was reasonable for her to expect MBIE would have warned her of these consequences when she sought to make the transfer.

[23] Similarly in *Murphy v Ministry of Business, Innovation and Employment*² the Authority exercised its discretion to allow a second transfer of payments because the applicant was incorrectly advised by IRD that payments could be transferred back to her despite having transferred two weeks to her husband after being in receipt of only one week's payment. The Authority found it would have been inequitable to prevent the transfer as the applicant received incorrect advice from IRD which she reasonably relied on and acted upon to her detriment.

[24] In these circumstances I accept that Ms Odlin would not have transferred entitlements to her husband if she had been informed prior to the transfer by IRD of the consequences or if the restrictions on transfer of entitlements were made plain to applicants. Therefore, I consider it would be inequitable to deprive Ms Odlin of what would have been her entitlement to 13 weeks of paid parental leave.

[25] Accordingly, I consider it appropriate to exercise the Authority's discretion and to reverse the decision declining Ms Odlin 13 weeks of paid parental leave.

[26] MBIE should now take the necessary steps to ensure Ms Odlin receives the parental leave payments due to her. Should Ms Odlin have returned to her employment earlier than the date originally specified, payments are to be amended accordingly.

¹ *Tiatia-Sefilino v Ministry of Business, Innovation and Employment* [2022] NZERA 235.

² *Murphy v Ministry of Business, Innovation and Employment* [2022] NZERA 211

Costs

[27] MBIE is to pay to Ms Odlin the sum of \$71.55 being the filing fee for lodging her statement of problem with the Authority. With regard to any other costs, the parties shall bear their own costs as applications under the PLEPA are not subject to the daily tariff.³

Davinnia Tan
Member of the Employment Relations Authority

³ [Practice Direction of the Employment Relations Authority Te Ratonga Ahumana Taimahi.](#)