

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

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

[2024] NZERA 437  
3274379

BETWEEN ANNA JAN MEARNES  
Applicant

AND MINISTRY OF BUSINESS,  
INNOVATION, AND  
EMPLOYMENT  
Respondent

Member of Authority: Geoff O'Sullivan

Representatives: Dr Mearns in person  
Rochelle Hill, counsel for the Respondent

Investigation Meeting: On the papers

Submissions Received: Up to and including 22 April 2024

Determination: 22 July 2024

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Anna Mearns is the biological mother of a child whose expected date of delivery was 8 September 2023. On 1 September 2023, Dr Mearns applied for parental leave payments. Inland Revenue (IR) declined Dr Mearns' application on 12 September 2023 because Dr Mearns had not worked 26 weeks out of the 52 weeks before her expected date of delivery. In other words, IR declined the application because it says Dr Mearns did not meet the parental leave payment threshold test set out in the Parental Leave and Employment Protection Act 1987 (the PLEP Act).

[2] Dr Mearns' statement of problem named IR and MBIE as the respondents. After considering a memorandum of counsel and discussions with Dr Means it was acknowledged that as IR, in considering and declining the application for parental leave, was acting under the delegated authority of the Chief Executive of MBIE pursuant to

71ZA of the PLEP Act and s 41 of the State Sector Act 1988, it was inappropriate that IR remain as a party.

[3] In its statement in reply, MBIE says the decision to decline Dr Mearns' application for parental leave payments was correct.

### **Background**

[4] Dr Mearns is a New Zealand citizen and a New Zealand trained doctor. She is currently completing specialty training in anaesthesia. Dr Mearns commenced specialty training in 2016. I am told, and accept, that in the Auckland region, there is a consistent expectation that those wishing to secure a position as a specialist at the end of their training, need to complete a one-year period of work overseas in a "fellowship" before doing so.

[5] Accordingly, Dr Mearns ended her employment with Te Whatu Ora Counties Manukau on 29 January 2023, moving to Sydney, Australia to complete a one year fulltime fellowship working at St Vincent's Public Hospital.

[6] Before leaving for Australia, Dr Mearns was offered employment back in New Zealand, which was conditional on several matters, but not it seems on her completing her year overseas. The effective start date of employment was to be 1 April 2024.

[7] Dr Mearns' due date for the birth her of child was 8 September 2023. This means under the legislation, Dr Mearns needed to have worked in New Zealand for at least 26 weeks of the preceding 52 weeks.

### **Analysis**

[8] In both her statement of problem and in her application for paid parental leave, Dr Mearns acknowledged that she had worked just under the required 26 weeks in New Zealand preceding her due date. She emphasised the fact, however, that she had always been in fulltime continuous work over the last 12 months and was completing a job rotation which was essential for her training and ability to maintain ongoing employment in New Zealand by working at St Vincent's Hospital in Australia.

[9] The Court noted in the *Ministry of Business, Innovation, and Employment v Wenting Duan*, the requirements concerning a person's eligibility and entitlement to

receive paid parental leave payments from public money, contained in Part 7A of the PLEP Act, are rigid and do not allow a great deal of autonomy for parents to arrange parental leave matters, including parental leave payments, in a way that they consider best suits their family without putting those entitlements to risk.<sup>1</sup> The Court set out a roadmap of the approach that should be taken. The first step commences with eligibility.

[10] 71CA of the PLEP Act provides a two-limb test for a person to come within the definition of an “eligible employee” under Part 7A. An “eligible employee” means a person who:

- (a) Is the primary carer of a child; and
- (b) Meets the parental leave payment threshold.

[11] In this case, Dr Mearns fails the eligibility test set out in Step 1. This is because although she is the primary carer of her child, s 2BA(4) of the PLEP Act, provides that an employee meets the threshold if they 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 before the due date of their baby, or the date they or their partner becomes the primary carer of a child under six years permanently. Dr Mearns acknowledges that her expected date of delivery was 8 September 2023. Accordingly, the 52-week period relevant to the parental leave payment threshold test, was 9 September 2022 to 8 September 2023.

[12] Within that relevant 52-week period, Dr Mearns was employed for 21 weeks by Te Whatu Ora (until 29 January 2023), then worked in Australia from 6 February 2023 to 11 August 2023. Dr Mearns’ employment in Australia does not count because it is not employment in New Zealand. To qualify, Dr Mearns needed to be employed in New Zealand.

[13] It follows, therefore, that Dr Mearns fails to meet the Step 1 eligibility requirement. I cannot take into account her employment in Australia as there is an insufficient connection to New Zealand.

[14] I accept MBIE’s submission that the Authority has a discretion to confirm, modify, or reverse a decision of the Department. However, the Court has made it clear that this discretion is limited to circumstances where the irregularity is a matter of form,

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<sup>1</sup> *Ministry of Business, Innovation, and Employment v Wenting Duan* [2023] NZEmpC 232 at [24].

such as the making of a late application or applying in a manner other than that prescribed in the regulations. IR's decision to decline Dr Mearns' application because it did not meet the statutory eligibility criteria, is a matter of substance, not form. The Authority should not be invited by its general power to make determinations that are contrary to express prescriptive provisions of the PLEP Act.

### **Conclusion**

[15] Although I have sympathy for the position Dr Mearns finds herself in, for the reasons given above, I confirm the decision of the Department to decline Dr Mearns' application for parental leave payments on the basis she does not meet the parental leave payment threshold.

### **Costs**

[16] Applications under the Parental Leave and Employment Protection Act 1987 are one of the categories of matters that are not subject to the Authority's daily tariff and each party will bear their own costs.<sup>2</sup>

Geoff O'Sullivan  
Member of the Employment Relations Authority

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<sup>2</sup> For further information about the factors considered in assessing costs see:  
[www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1](http://www.era.govt.nz/determinations/awarding-costs-remedies/#awarding-and-paying-costs-1)