

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA ROHE**

[2025] NZERA 555
3321840

BETWEEN

NEW ZEALAND
PROFESSIONAL
FIREFIGHTERS UNION
Applicants

AND

FIRE AND EMERGENCY
NEW ZEALAND
Respondent

Member of Authority: Sarah Kennedy-Martin

Representatives: Peter Cranney, counsel for the Applicant
Geoff Davenport, counsel for the Respondent

Investigation Meeting: 5 June 2025

Submissions: 5 June 2025

Determination: 5 September 2025

DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] New Zealand Professional Firefighters Union (NZPFU) and Fire and Emergency New Zealand (FENZ) are parties to the Collective Agreement for Uniformed and Communications Centre Employees (the Collective).¹ They have not been able to agree on the application of a clause in the Collective that provides a contractual incentive payment (the incentive payment) to workers who return from parental leave and continue their duties for a further six months.

¹ Collective Agreement for Uniformed and Communications Centre Employees, 1 July 2021 to 30 June 2024.

[2] NZPFU say the wording of the clauses in the Collective mean all workers returning from parental leave, who continue to be employed for a further six months, qualify for the incentive payment so long as they return to work within 12 months of their period of parental leave. Put simply it is not limited to only those who were granted a full year of parental leave.

[3] FENZ take the position that only individuals granted a full 12 months parental leave are eligible for the incentive payment.

BACKGROUND

[4] The relevant clauses in the Collective provide the following:

Parental Leave

1.4.2 Parental Leave as special leave without pay shall be granted to a pregnant female worker, or the partner of a pregnant female worker where they have transferred their entitlement to parental leave under the Parental Leave and Employment Protection Act 1987. It is not to be granted as sick leave on pay. An application for leave under this heading must be supported by a medical certificate.

1.4.2.1 Leave of up to twelve months is to be granted to workers with at least one year's service at the time of commencing leave.

1.4.2.2 For those with less than one year's service, parental leave up to six months is to be granted.

1.4.2.3 Where a worker returns to duty before the expiration of twelve month leave without pay and completes a further six month service, they qualify for a payment equivalent to thirty working days on pay (calculated at the rate payable for the thirty working days immediately following the cessation of duty). For coloured watch workers it is equivalent to 8.5 weeks' pay, for yellow watch workers it is equivalent to 7.5 weeks' pay, and for black watch workers it is equivalent to 6 weeks' pay.

[5] Workers with up to one year's service are eligible for a period of unpaid parental leave up to 12 months and workers with less than one year's service are eligible for a period of parental leave for up to 6 months. Clause 1.4.2.3 provides a contractual entitlement to the one-off payment equivalent to six weeks wages if an NZPFU member returns from parental leave and completes a further six months' service. The contractual entitlement payment was intended to encourage return to work following periods of parental leave and has appeared consistently in successive agreements between the parties since 1987.

[6] FENZ also says it was intended to only incentivise those who took long periods of parental leave to return to work, specifically those granted 12 months parental leave.

[7] The parties agree there are no restrictions in the Collective on how much parental leave must be taken (as opposed to being granted) before returning and qualifying for the incentive payment. There is, however, a requirement that a minimum of three months parental leave must be taken to qualify for the incentive payment in a later policy that was implemented by FENZ in 2023, after the Collective was settled. That policy was designed to enable FENZ to be able to offer periods of less than six months parental leave to its workers. Of note, the 2023 policy expressly provides the incentive payment is to be applied to periods that are a minimum of three months' parental leave.

[8] Only a handful amendments have been made to the wording now recorded in parental leave clauses in the Collective. For example, replacing the phrase "maternity leave" with "parental leave" and incorporating references to "partners". These amendments were consistent with changes to the Parental Leave and Employment Protection Act (PLEPA) to broaden statutory parental leave entitlements to include the ability to transfer parental leave entitlement to partners.

[9] Bargaining did not resolve the dispute and the parties' agreement to continue work on updating the parental leave provisions in the Collective including to clarify the application of the incentive payment were recorded in the terms of settlement as follows:

Parental leave

25. The parties have agreed to update the current Parental leave provisions in clause 1.4 of the CEA to

- Use terminology consistent with the legislation and
- Clarify the application of the 30 days payment on return from parental leave 1.4.2.3
- To provide for the payment of average earnings for pregnant firefighters undertaking light duties where previously ordinary pay applied 1.4.5
- To increase the number of days off provided as special paid leave available on birth or adoption of a child (clause 1.4.15)), to provide a "full set off" for coloured watch, or 5 days off for black watch, meaning everyone is entitled to receive a clear paid week off in these circumstances. This translates to an increase in paid leave of one additional shift for operational coloured watch staff and two additional days for Black Watch.

[10] Of particular relevance, since the Collective was settled, is the introduction by FENZ of the policy referred to above, implementing a shorter period of three months parental leave to which the incentive payment is said to apply so long the worker is a NZPFU member, who applied for and took a minimum of three months unpaid parental leave and completes a further six months service following the return from parental leave.

[11] Nonetheless the parties have not been able to agree on how the contractual entitlement clause is to be applied and NZPFU lodged a statement of problem in the Authority seeking to have the dispute about the interpretation and application of the relevant clauses resolved.

The Authority's investigation

[12] For the Authority's investigation the parties' representatives provided oral and written submissions together with copies of relevant documents and the correspondence between the parties that set out their respective positions.

The issue

The issue is who qualifies on return from parental leave for a contractual incentive payment equivalent to six weeks wages, under cl 1.4.2.3 of the Collective Agreement.

Interpretation principles

[13] The principles of interpretation relating to contracts also apply to employment agreements.² The proper approach is an objective one with the aim being to ascertain the meaning the written agreement would convey to a reasonable person having all the background knowledge reasonably available to the parties at the time of the agreement. The objective meaning is taken to be that which the parties intended. The context provided by the agreement as a whole and any relevant background informs meaning. Considering context is a necessary step in the interpretive process, and the focus is on interpreting the document as a whole, rather than particular words, but the text remains centrally important.³

² *New Zealand Air Line Pilots' Assoc Inc v Air New Zealand Ltd* [2017] NZSC 111 at [74]-[78].

³ *Firm PI 1 Ltd v Zurich Australasian Insurance Ltd* [2014] NZSC 147 at [60]-[63].

[14] In *Television New Zealand Limited v E tu Incorporated* the Employment Court stated the test as follows:⁴

The approach is objective. The aim is to ascertain the meaning which the agreement would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the agreement. This objective meaning is taken to be that which the parties intended. While the meaning of a clause in an agreement may appear clear, meaning is informed by context. A provisional conclusion as to meaning is to be cross-checked against the context provided by the agreement as a whole, and any relevant background.

The parties have differing views on the meaning of the words in the Collective

[15] NZPFU's starting point is that any period of parental leave can be approved up to a limit of 12 months if the worker has at least one years' service. FENZ agrees with that. NZPFU says the reference to twelve months in the incentive payment clause (1.4.2.3) has no special significance and can mean any period of parental leave up to 12 months. Because of that the application of the incentive payment is not limited to only workers who were granted parental leave for the maximum 12 month period.

[16] While FENZ agrees periods of parental leave can be granted for less than 12 months it says only those individuals who were granted a full 12 month period of parental leave will qualify for the incentive payment because of the phrase "before the expiration of twelve months" and logically 12 months of leave can only expire if 12 months of leave was granted in the first place.

[17] FENZ also submits the fact the incentive payment clause has existed largely unchanged in successive agreements between the parties since 1987 supports its interpretation because the plain meaning of the words have remained unchanged and the purpose of the clause since its origin was to encourage (initially) the mother, who had been granted 12 months' maternity leave, to return to their duties.

[18] FENZ's final submission is in relation to absurdity. It submits that based on NZPFU's contentions a worker could take one day of parental leave, and having done so, return to work, complete a further six months service, and claim the incentive payment. That position represents an absurdity, it is contrary to the plain meaning of the applicable clauses and contrary

⁴ *Television New Zealand Limited v E tu Inc* [2024] NZEmpC 93 at [11] and *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2021] NZSC 84 at [43]-[46], [232]-[233] and [250].

to “cross checking”, having regard to the background information available to a reasonable person, including as to the history of the clauses in question.

[19] NZPFU simply says that the situation described as an absurdity of a worker taking one day of parental leave and qualifying for the contractual incentive payment could happen regardless of what period of parental leave was granted because there are no limitations in the clauses on how much leave must be taken before a worker qualifies for the payment.

Analysis

[20] On a plain reading of the words in the relevant clauses, both interpretations are available to the parties because the words are capable of being read both ways but there are difficulties with a focus on the meaning of the individual words and phrases in isolation. Context and relevant background can inform meaning and are also important, although the text remains centrally important.⁵

[21] FENZ says the history of these clauses, in particular, that there has been no fundamental change to the entitlement, supports FENZ’s position. The more important issue is how the parties have treated that provision. There is a reference to it being applied inconsistently in the 2023 policy as well as reference to the need to clarify the position for the three-month period of parental leave because longer periods of parental leave have become less common. The memorandum dated 24 May 2023 implementing the three-month parental leave option records the following:

The intent of the clause was to encourage individuals to return to work following unpaid parental leave.

The clause requires that a person applies and has approved a full 12 months leave without pay to be eligible for the grant payment.

The application of this clause has not been applied consistently and the government funded paid parental leave now also provides financial support mechanisms, meaning the 12-month requirement in the CEA is less relevant as people tend to have a reduced period of unpaid parental leave.

An approach has been made to NZPFU to seek to agree alternative wording that better reflects the intent of the clause and provides clarity regarding eligibility. To date no response has been received.

Agreed Application of Clause

⁵ *Firm PI 1 Ltd v Zurich Australasian Insurance Ltd* [2014] NZSC 147 at [60]-[63].

FENZ has made the decision to clarify and enhance the application of this clause to provide absolute clarity on eligibility and to ensure the current variable interpretation and approval is addressed.

It has been agreed that FENZ will apply the following application:

- need to be an NZPFU member
- applied for, and took, a minimum of three months unpaid parental leave
- completes a further 6 months service following return from unpaid parental leave.

[22] While the key phrases in the clauses have remained the same, it is evident that both FENZ's parental leave contractual entitlements and the statutory entitlement to parental leave have adapted over time to keep step with societal changes. The parties at the end of the last bargaining round agreed to keep working to "clarify the application of the 30 days payment on return from parental leave" and less than a year later FENZ introduced the three-month parental leave option and expressly provided for the application of the incentive payment to shorter periods of leave.

[23] Cross checking FENZ's position on the plain and ordinary meaning of the words against this background and context leads to the conclusion that despite the long history of the clause, there has not been consistent application of the clause. In addition, there have been changes over time to keep pace with what best meets the needs of working parents in FENZ's workforce. The express application of the incentive payment to both a three month and 12 month periods of parental leave but not any periods in between undermines FENZ's position on the plain and ordinary meaning of the words, informs the position reached at the time the Collective was settled and creates an inconsistency.

[24] FENZ also refers to the purpose of the provision to support its submission the incentive payment is limited by the words "expiration of twelve months leave". If the Authority is to consider the broader purpose and context of the clause as part of cross checking and looks at the matter in the round, such a view supports the stance of FENZ, it was submitted. The purpose of the clause is to encourage those granted 12 months' leave to come back to work having taken their leave, and then to stay for a further six months at least. It is an incentive to return to work.

[25] The difficulty with that submission is that FENZ is on record in its own documentation recognising that longer periods of parental leave are now less common in practice. There seems

to be a futility in offering an incentive for an event that is less common than in the past and is now superseded by the policy document implementing the three months' parental leave period and creates two inconsistencies. The first inconsistency is that the policy introduces a minimum amount of leave that must have been taken and the Collective is silent on that and secondly, by FENZ's action's, the incentive payment now applies to the longest and shortest periods of parental leave that can be granted but not to a band of parental leave falling in between.

[26] NZPFU's submission on the absurdity point is that under its interpretation there is nothing to prevent a worker returning to work after one day and claiming the incentive payment. There is no specific wording in the parental leave clauses in the Collective that speak to the amount of leave that must be used before the incentive is payable to workers who otherwise qualify.

[27] Taking into account the nature of parental leave and that FENZ accept that periods of parental leave can be granted for less than 12 months, I prefer NZPFU's position on the absurdity point.

[28] This is not a case where the parties have consistently treated the clause in a particular way, and the 2023 policy, although not available at the time the Collective was settled, is evidence of FENZ's intention to be open to incentivising smaller periods of parental leave.

[29] If the purpose of the clause is to incentivise workers coming back from parental leave after long periods of leave and long periods of leave are now less common and the incentive is available for much shorter periods, being a minimum three months' parental leave, then after a cross checking exercise, the parties intentions were to adopt a less prescriptive interpretation of the words in the Collective.

Conclusion

[30] I agree with the NZPFU's position that the incentive payment in clause 1.4.2.3 of the Collective Agreement was intended by the parties be a contractual right for workers who are granted periods of less than 12 months parental leave. It is not limited only to workers who were granted 12 months of parental leave.

[31] For completeness it is noted there is an inconsistency between the 2023 policy and the Collective in that the policy purports to introduce a minimum period of parental leave that must be taken to qualify for the incentive payment. The Authority was not asked to determine that matter.

Costs

[32] In matters concerning disputes over the application, interpretation or operation of terms of a collective agreement, there is a presumption that parties will bear their own costs.

Sarah Kennedy-Martin
Member of the Employment Relations Authority