

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND**

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

[2025] NZERA 649  
3385363

BETWEEN LAUREN TENNENT  
Applicant

AND MINISTRY OF BUSINESS,  
INNOVATION AND  
EMPLOYMENT  
Respondent

Member of Authority: Jeremy Lynch

Representatives: Applicant in person  
Jessica Ellison, counsel for the Respondent

Investigation Meeting: On the papers

Submissions received: 8 August 2025 and 4 September 2025 from the  
Applicant  
22 August 2025 and 2 September 2025 for the  
Respondent

Determination: 16 October 2025

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**DETERMINATION OF THE AUTHORITY**

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**Employment Relationship Problem**

[1] Under s 71ZB of the Parental Leave and Employment Protection Act 1987 (the Act), Lauren Tennent seeks a review of the decision to decline her application for parental leave payments.

[2] The chief executive of the Ministry of Business, Innovation and Employment (MBIE) delegates such decisions to officers of the Inland Revenue Department (IRD).

[3] Ms Tennent's application was in respect of a child for whom she became

primary carer in August 2024.<sup>1</sup>

[4] By letter dated 10 October 2024, IRD declined Ms Tennent's application because she did not stop working after the birth of her child, meaning she was not entitled to receive parental leave payments under the Act.

[5] In undertaking the review sought by Ms Tennent, the Act empowers the Authority to confirm, modify or reverse this decision.<sup>2</sup>

### **The Authority's investigation**

[6] The parties agreed that the Authority's review could be investigated and determined 'on the papers'.

[7] Both parties lodged submissions and supporting documents in accordance with an agreed timetable.

[8] In addition, Ms Tennent lodged reply submissions and further information.

[9] As permitted by s 174E of the Employment Relations Act 2000, this determination has not recorded everything received from the parties, but has stated findings of fact and law, expressed conclusions and specified orders made as a result.

[10] The Authority has carefully considered all the material provided.

### **Issues**

[11] The issues requiring investigation and determination are:

- (a) Whether Ms Tennent is entitled to a parental leave payment?
- (b) If it is determined that Ms Tennent is not entitled to a parental leave payment, should the Authority exercise its discretion to confirm, modify or reverse this decision?

### **Background**

[12] There is no dispute between the parties as to the background facts.

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<sup>1</sup> Parental Leave and Employment Protection Act 1987, s 7(1)(a).

<sup>2</sup> Section 71ZB(2).

[13] Ms Tennent gave birth to her child on 25 August 2024.<sup>3</sup>

[14] She had been working on a part-time basis during her pregnancy. Before the birth of her child, Ms Tennent says she looked at the information on the IRD website in respect of the requirements to receive paid parental leave. Ms Tennent says that she advised her employer that she would keep working on a part-time basis after the birth of her child, but that she would resign from her employment if it became too difficult to manage after the birth of her child. Ms Tennent says she could see nothing on the IRD website to indicate that there was a problem with this approach.

[15] Ms Tennent continued to work after the birth of her child, but soon found this too exhausting. Four weeks after the birth of her child, Ms Tennent resigned from her employment.

[16] Six weeks after the birth of her child, Ms Tennent applied for parental leave payments. Ms Tennent's application was declined by IRD on the basis that she had not stopped work when her child was born.

### **Paid parental leave - eligibility and entitlement requirements**

[17] In *Ministry of Business, Innovation and Employment v Duan*,<sup>4</sup> the Employment Court set out a five step "roadmap" for determining a person's eligibility and entitlement to parental leave payments under the Act.

[18] For reasons that will become apparent below, only the first two steps are considered.

#### *Eligibility*

[19] A person is entitled to paid parental leave payments if they are an 'eligible employee' or 'self-employed'.

[20] Section 71CA provides a two-limb test for a person to come within the definition of an "eligible employee".<sup>5</sup> An eligible employee must be the primary carer

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<sup>3</sup> Under s 7(1), being the child's biological mother, Ms Tennent became 'primary carer' on the birth of her child.

<sup>4</sup> *Ministry of Business, Innovation and Employment v Duan* [2023] NZEmpC 232.

<sup>5</sup> Above n 4, at [25].

of the child, and meet the ‘parental leave payment threshold test’.<sup>6</sup> There is no dispute that Ms Tennent was an eligible employee at the relevant time.

### *Entitlement*

[21] Under s 71D of the Act, an eligible employee is entitled to receive parental leave payments, if during the ‘relevant period’, they are not employed, or self-employed, or they take parental leave from their employment or self-employment.<sup>7</sup>

[22] Section 71K(1)(a) provides that a parental leave payment in respect of a child is payable for a period that begins on the earlier of either the date the person commences parental leave, or the date of confinement.<sup>8</sup>

[23] The Court in *Duan* held that in respect of s 71K, it:<sup>9</sup>

... prescribes the criteria for an entitlement, requiring certain persons to do certain things at certain times to receive that entitlement. Section 71K does not impose when a person is to take parental leave. However, to be entitled to receive the Government parental leave payments, their leave must align with the timing set out in s 71K.

[24] Section 71L provides for when the period of parental leave payments is to end.

### **Was Ms Tennent entitled to parental leave payments under the Act?**

[25] Having met the threshold of an eligible employee as required by s 71CA of the Act, the Authority must then consider whether Ms Tennent is ‘entitled’ to receive parental leave payments, under s 71D of the Act.

[26] As in *Duan*, Ms Tennent’s circumstances do not meet the second limb of the test in s 71D(1), which requires her to not be employed or to have taken parental leave from her employment during the period she was eligible to receive parental leave payments as defined by ss 71K and 71L of the Act.

[27] In Ms Tennent’s case, there is no dispute that she continued to work for four weeks after the birth of her child. The effect of Ms Tennent continuing to work, is that

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<sup>6</sup> Section 71CA(1).

<sup>7</sup> Section 71D(b), as set out in *Duan*, above n 4, at [27].

<sup>8</sup> At [31] of *Duan*, the Court held that ‘the date of confinement’ is the date on which the process of giving birth begins (for example, the mother begins labour, or commences the medical procedure leaving to the birth such as by way of caesarean birth).

<sup>9</sup> *Duan* at [37].

her parental leave did not align with the statutory timing requirements set out under s 71K.

[28] Ms Tennent submits that because she did not stop work immediately on the birth of her child, she had not "...returned to work, within the reasonable interpretation of this requirement".

[29] In *Duan*, the Court considered the meaning of "returns to work", and held that:<sup>10</sup>

Taking into account the text in light of its purpose and context, we find that the phrase "returns to work" means:

(a) ... the date on which the person returns to perform paid work after the birth of the child.

...

...Once a person starts to perform work for which they are paid, they have returned to work.

[30] Ms Tennent therefore "returned to work" immediately following the birth of her child.

[31] In order to be entitled to receive parental leave payments, Ms Tennent was required to have taken parental leave from her employment.<sup>11</sup> However, by returning to work immediately following the birth of her child, Ms Tennent did not comply with this requirement.

[32] This is the reason why IRD, on behalf of MBIE, declined Ms Tennent's application for parental leave payments.

## **Discussion**

[33] The Court in *Duan* held that:<sup>12</sup>

The requirements concerning a person's eligibility entitlement to receive parental leave payments from public money contained in pt 7A 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 their entitlements at risk.

[34] MBIE submits that the Act does not allow Ms Tennent to "move the parental leave payment period; to do so would be contrary to section 71K". I accept this

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<sup>10</sup> Above n 4, at [40] and [41].

<sup>11</sup> Section 71D(1)(ii).

<sup>12</sup> Above n 4, at [24].

submission. As set out in *Duan* above, eligibility entitlements are rigid. There is no statutory provision for Ms Tennent to move the payment period.

[35] MBIE further submits that the hours Ms Tennent worked following the birth of her child cannot be treated as “keeping in touch days” under s 71CE of the Act. I accept this submission, but note that this is not an argument advanced by Ms Tennent.

*The discretion under s 71IA of the Act*

[36] Under s 71IA of the Act, MBIE has a discretion to approve the making of a parental leave payment to a person, despite an ‘irregularity’ in that person’s application for the payment.<sup>13</sup>

[37] However, s 71IA(5) makes it clear that ‘irregularity’ relates to matters of form only. The Court in *Duan* held that under 71IA(5), MBIE’s discretion cannot be exercised in relation to matters of substance:<sup>14</sup>

Section 71IA does not allow MBIE to exercise its discretion to move the relevant dates, being the start and end dates of Ms Duan’s parental leave payment period, to another time period not provided for by the legislation.

[38] In the circumstances of this matter, MBIE could not have exercised its discretion under s 71IA to grant Ms Tennent a payment.

[39] Ms Tennent was not entitled to parental leave payments because she returned to work straight after the birth of her child. In doing so, she failed to meet the second limb of the test in s 71D(1) of the Act.

**Should the Authority exercise its discretion to modify or reverse MBIE’s decision?**

[40] Under s 71ZB of the Act, the Authority has a discretion to confirm, modify, or reverse the decision to decline Ms Tennent’s parental leave payments.

[41] Ms Tennent says that the Authority should exercise this discretion in her favour, due to deficient information on the IRD website, the effect of which was that she was unaware of the requirement to stop work.

[42] Ms Tennent submits that:

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<sup>13</sup> Section 71IA(1).

<sup>14</sup> Above n 4 at [62].

I relied on the Inland Revenue website when making work arrangements and only continued working as I believed, on reasonable grounds, that I could due to the guidance and criteria on the website. There is absolutely no mention, let alone indication, on the website that working post-birth would disqualify me for paid parental leave.

[43] In response, MBIE submits that the IRD webpage (in August 2024) explains that “parental leave payments start the earlier of when you go on parental leave and your date of confinement (the date childbirth starts)”.

[44] In her reply submissions, Ms Tennent accepts that this wording was set out on the IRD website in August 2024. However, she says that after her application was declined, she telephoned IRD to obtain further information. She says that “none of the [IRD] staff I engaged with... were able to locate this requirement or point me to any clear guidance...”.

[45] Ms Tennent submits that:

This underscores that the wording was not sufficiently clear or prominent, even to staff tasked with administering the scheme.

...

...the statement regarding the “earlier of” parental leave or date of confinement is weaker, more technical, and less definitive. With such a critical eligibility requirement, the guidance should have been unambiguous and prominently highlighted.

[46] Ms Tennent also submits that:

By contrast, the same webpage, uses much stronger and definitive wording for other key criteria, such as:

*“you cannot apply for paid parental leave after you return to work.”*  
*“you must stop work to qualify for paid parental leave.”*

[47] The Authority notes that the above ‘key criteria’ are directly relevant in the circumstances of this matter. Ms Tennent’s application was declined because she applied for parental leave after returning to work, or did not stop working. The parts of the IRD website quoted by Ms Tennent suggest that there was sufficient information on the IRD website at the time of her application.

[48] That Ms Tennent could identify these relevant ‘key criteria’ undermines her submission that she was “disadvantaged by unclear, weakly worded, and insufficiently prominent guidance on the Inland Revenue website”.

[49] In any event, the Authority's role in determining this application is to apply the legislation, as enacted by Parliament, and in light of guidance from the Court. The Authority is not tasked with providing guidance as to web design. The IRD website is not a statute.

[50] Similarly, in her reply submissions Ms Tennent refers to the result of a Google search as authority for her position that there is a lack of publicly available information on this subject.

[51] In determining this matter, the Authority must apply the legislation. The results of a Google search are of no assistance.

[52] Ms Tennent submits that modifying or reversing the decision to decline her payments would "align with the purpose of [the Act], to support parents as primary carers...".

[53] This misstates the purpose of the Act, which is to set minimum entitlements in respect of parental leave,<sup>15</sup> and entitle certain persons to up to 26 weeks of parental leave payments.<sup>16</sup>

[54] In addition, s 71A sets out the purpose of pt 7A of the Act. It is clear from this section that the purpose of pt 7A is to entitle certain persons to do certain things at certain times, in order to receive a payment entitlement. This is consistent with the guidance from the Court in *Duan*, set out above. Under the Act, such persons are required to become the primary carer in respect of a child, and stop working in order to be entitled to receive payments.<sup>17</sup>

[55] Finally, Ms Tennent submits that the fact that none of the IRD staff she spoke with (after her application had been declined) were able to identify the criteria required to obtain parental leave payments, means that the Authority's discretion under s 71ZB(3) should be exercised in her favour.

[56] I do not accept this submission. There is nothing before the Authority to suggest that any such discussions with IRD staff occurred prior to Ms Tennent's application

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<sup>15</sup> Section 1A(1)(a).

<sup>16</sup> Section 1A(1)(c).

<sup>17</sup> Section 71A.

being declined (and by extension, prior to her decision to continue working following the birth of her child).

[57] Any guidance (or lack of guidance) arising from Ms Tennent's discussions with IRD staff occurred after her application for parental leave payments had been declined. There is no evidence to suggest this is a situation in which Ms Tennent was provided with incorrect or inaccurate information by IRD prior to her decision to continue working.

[58] I acknowledge the position Ms Tennent finds herself in. I accept Ms Tennent's submission that this appeal process has been stressful and frustrating.

[59] I also accept Ms Tennent's submission that at all times she has acted in good faith. Unfortunately, Ms Tennent appears to have misread or misinterpreted the statutory requirements. Although it may seem unfair, any discretion the Authority has to modify or reverse the decision to decline her parental leave payments, must be exercised in a principled way. Even if it is a genuine misunderstanding (which in the circumstances of this matter, I accept is the case), the Authority cannot disregard the legislation and ignore the requirements of ss 71D and 71K.

[60] To be entitled to payments under the Act, Ms Tennent was required to stop work on her date of confinement, but she did not. Regrettably, Ms Tennent does not meet the requirements of the Act.

[61] Ms Tennent's request for the Authority to exercise its discretion to modify or reverse MBIE's decision to decline her parental leave payments is unsuccessful

### **Costs**

[62] There is no order for costs. Parties are presumed to bear their own costs for review under the Act.

Jeremy Lynch  
Member of the Employment Relations Authority