



New Zealand Employment Relations Authority Decisions

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Jo v Department of Labour (Auckland) [2011] NZERA 877; [2011] NZERA Auckland 156 (15 April 2011)

Last Updated: 18 April 2017

IN THE EMPLOYMENT RELATIONS AUTHORITY AUCKLAND

[2011] NZERA Auckland 156
5336076

BETWEEN HELEN JO Applicant

AND DEPARTMENT OF LABOUR Respondent

Member of Authority: Alastair Dumbleton

Representatives: Applicant in person

Greg la Hood, counsel for Respondent

Determination

(on papers):

15 April 2011

DETERMINATION OF THE AUTHORITY

Employment relationship problem

[1] Ms Helen Jo, the applicant in the Authority, in 2010 applied under the [Parental Leave and Employment Protection Act 1987](#) (PLEPA) to take paid parental leave. Her application was referred by the Inland Revenue Department to the Department of Labour because there was a question as to whether Ms Jo was eligible for that leave.

[2] Ms Jo was advised in writing by the Department of Labour on 25 January

2011 that she was ineligible for the taxpayer funded paid parental leave. Reasons for its advice were given by the Department which also informed Ms Jo of her right to apply to the Authority for a review of the decision, under [s 71ZB](#) of PLEPA.

[3] Ms Jo applied for that review in February 2011 and in March the Department of Labour provided a comprehensive statement in reply to her application. In a telephone conference Ms Jo and counsel for the Department, Mr la Hood, advised that neither wished to be heard in person and agreed that the Authority could determine the matter “on the papers.”

[4] The timing of various steps taken by Ms Jo in relation to employment and applying for paid parental leave, is significant to her eligibility for that leave, as is PLEPA and its requirements.

[5] As to timing, there is no dispute about the dates on which critical steps were taken by Ms Jo. Those dates have been confirmed by her in the statement of problem and supporting material provided with it.

[6] Ms Jo is now a senior medical officer with the Waitemata District Health Board, having completed five years training in Radiology as a junior doctor or registrar. That training commenced on 12 December 2005 and required her to rotate between the three District Health Boards of Auckland, Waitemata and Counties Manukau.

[7] The training was successfully completed on 12 December 2010. That day, as verified by Ms Jo and in a letter from healthAlliance, Ms Jo resigned from Counties Manukau District Health Board and the following day she commenced her current employment as a senior medical officer with the Waitemata District Health Board.

[8] In June 2001, Ms Jo had filled out the application form for paid parental leave. She gave 13 December 2010 as the commencement date for that and 8 January 2011 as the expected birth date of her child. Accordingly, as at the expected date of delivery, Ms Jo would have been employed by her employer Waitemata DHB for about 26 days.

[9] The decision of the Department of Labour now under review referred to the following eligibility criteria for paid parental leave contained in [s 7](#) of PLEPA. An employee must:

- (a) Have been employed by the same employer for the 12 months or six months immediately preceding the expected date of delivery of the child; and
- (b) Have worked an average of 10 hours a week or more during this period; and
- (c) If they have been on a previous period of parental leave for another child, at least six months must have elapsed since the date they returned to work from their previous period of parental leave.

[10] Relevant to Ms Jo's application was her particular occupation as a junior doctor in which, for a five year period of training, she was required to be employed by more than one District Health Board. Rotation around several DHB's is quite usual during the training of junior doctors. The Department in its advice referred to an amendment to PLEPA which, in the case of junior doctors who are in training, permits their length of service with each employing DHB to be added together for the purpose of determining whether they meet the six or 12 month criteria for the leave.

[11] The Department's advice also pointed out that this amendment, [s 2AB](#) of PLEPA, applied only to any medical practitioner who was currently undertaking training at the time the leave was to commence. The Department concluded that as Ms Jo had ceased training from 13 December 2010, she was unable to meet the requirement of having been in employment with the same employer in the six months immediately preceding the date of delivery of her child, which was expected to be in January 2011.

[12] Ms Jo regards the circumstances of her case as unusual and which for that reason may not have been provided for in PLEPA. She considers her application should not be declined just because it may not have been contemplated when PLEPA was amended and she asks that her application be reconsidered on an individual basis in the light of the uncommon situation. She notes, correctly, that if her training had not finished in December 2010 but had continued up to and past the date of delivery of her child, she would have met the requirements of [s 2AB](#) of PLEPA and would have been entitled to paid parental leave.

[13] That, of course, was not the situation and the Department could only give its decision based on the actual circumstances applying to Ms Jo.

Determination

[14] The Authority agrees with the Department and the submissions made for it by Mr la Hood. Ms Jo, as she confirmed, had ceased employment and training with Counties Manukau DHB on 12 December 2010. She commenced employment as a senior medical officer with the Waitemata DHB on 13 December 2010. With that

timing she had not, as required by [s 7](#) of PLEPA, been employed by the same employer for the six or 12 months immediately preceding the expected date of delivery of her child. While [s 2AB](#) of PLEPA allows for training that is being carried out with more than one DHB to be treated as one employment, this only applies to a medical practitioner who "is" undertaking training. As at 13 December 2010, Ms Jo was no longer in training.

[15] I therefore consider that the advice given on 25 January 2011 to Ms Jo by the Department of Labour was correct and accordingly its decision remains undisturbed.

A Dumbleton

Member of the Employment Relations Authority