

Under the Employment Relations Act 2000

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY
CHRISTCHURCH OFFICE**

BETWEEN Malcolm Geoffrey Taylor (Applicant)

AND Department of Labour (Respondent)

REPRESENTATIVES Malcolm Taylor in person
Natasha Szeto, counsel for respondent

MEMBER OF AUTHORITY James Crichton

TELEPHONE CONFERENCE 8 May 2006

DATE OF DETERMINATION 11 May 2006

DETERMINATION OF THE AUTHORITY

The problem

[1] The applicant (Mr Taylor) applies to the Authority for relief under section 68 (5) of the Parental Leave and Employment Protection Act 1987 (the Act) to forgive non-compliance with the formal requirements of the Act. Mr Taylor had applied for paid parental leave but that application had not been received by the Inland Revenue Department until after he returned to work, resulting in a refusal to grant leave.

[2] The Department of Labour as respondent (the Department) acknowledges that there is *an irregularity* with Mr Taylor's application for parental leave in that the strict requirements of the Act have not been complied with. However, the Department advise that, were it not for that irregularity, Mr Taylor was entitled to paid parental leave.

The process

[3] On 8 May 2006, I convened a telephone conference between the parties and elicited from them the information that I required in order to consider the matter appropriately, reach a decision and prepare this determination.

[4] I indicated at that telephone conference, having heard the parties, that I did not require anything further from them and in particular did not require either further submissions or the attendance of the parties at an investigation meeting to progress the matter.

[5] I undertook to endeavour to reach my conclusion promptly and issue a determination as soon as I reasonably could.

The facts

[6] Mr Taylor works for the University of Canterbury. He applied for and was granted paid parental leave from 5 December 2005 to 27 January 2006, an eight week period required to enable him to travel to Thailand with his wife to adopt an abandoned four year old girl.

[7] The application for paid parental leave is completed on an Inland Revenue Department form and then filed with that department. The form has sections which are required to be completed by the employee and by the employer.

[8] Mr Taylor completed his part of the form in December but he was unsure whether he would receive full pay from his employer or not and he sought clarification of that issue from the human resources section of the University.

[9] Because of the time of year that enquiry was not responded to because human resources staff were away on holiday leave and it was not until mid-January that Mr Taylor was advised by the human resources section of the University that he would indeed receive full pay.

[10] He says that immediately he received that advice he posted the partially completed Inland Revenue Department form to the University and it seems that there was then a further delay before the University completed the form and sent it away.

[11] Certainly, had the University dealt with Mr Taylor's application immediately they received it and then posted it on to the Inland Revenue Department, the issues the parties are presently concerned with, would not have arisen.

[12] Mr Taylor says that the application now duly completed was posted to the Inland Revenue Department on the last week of his parental leave such that it was received by the Inland Revenue Department on Tuesday, 31 January 2006, one day after Mr Taylor had recommenced his duties at the University.

The law

[13] The effect of s71 (L) of the Act is to bring to an end the entitlement of an employee to parental leave on the date on which that employee returns to work. Given the application was received the day after Mr Taylor returned to his duties, the application was not able to be considered and so his application for parental leave failed.

[14] Section 68 of the Act makes provision for the Authority to grant relief in respect to non-compliance with the strict requirements of the Act. It confers a right on an employee in Mr Taylor's circumstances to apply to the Authority for relief in respect of an *irregularity*.

[15] The section allows the Authority the opportunity to grant relief if it thinks it is reasonable to do so having regard to the nature of the irregularity, good faith or otherwise of the parties and any other matters it thinks proper.

Discussion

[16] Here the nature of the irregularity is minor, constituting a default of just one day. The *bona fides* of Mr Taylor are undimmed by the breach. It is clear that he did everything he reasonably could of to ensure that the matter was dealt with in a timely fashion. He had a reasonable question to ask his employer about the nature of the remuneration he was to receive. He was unable to get an answer to that question because of the Christmas holiday period. He did everything he reasonably could have to extract that answer from his employer including attending at the University on the

first day it was open (5 January 2006) to establish if anybody was available to respond to his question.

[17] Nothing that Mr Taylor did was inappropriate or lacking in judgement and the default, if any, was a function of the University's inability to respond to Mr Taylor's question at a particular time of the year and then deal expeditiously with what had become a very late application.

[18] By reason of the time of year (the Christmas holiday period) there was a genuine difficulty in getting the matter dealt with by the University's human resources section because relevant people were on annual leave.

[19] The Department does not oppose the granting of the relief sought and indeed makes the point that, were it not for the irregularity just referred to, the application for taxpayer funded paid parental leave would have been granted.

Determination

[20] I have considered the application before me and reached the decision that it is appropriate to waive the irregularity and I now direct that Mr Taylor is to receive the benefit of the parental leave payment which, but for the irregularity referred to herein, would have applied to his parental leave from 5 December 2005 to 27 January 2006.

Costs

[21] Costs are to lie where they fall.

James Crichton
Member of Employment Relations Authority