

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2013] NZERA Wellington 117  
5421371

BETWEEN                      MORGAN HOLLY  
   Applicant

AND                                MINISTRY OF BUSINESS  
   INNOVATION AND  
   EMPLOYMENT  
   Respondent

Member of Authority:        G J Wood

Representatives:              Applicant on her own behalf  
   Alex Leulu for the Respondent

Investigation Meeting:        On the papers

Submissions Received:        By 12 September 2013

Determination:                27 September 2013

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

1. The applicant, Ms Morgan Holly, worked on Tawhero school grounds between 2007 and 2013 as a teacher's aide, initially for Arahunga school, but then for Tawhero school itself. She left due to her pregnancy. She applied for paid parental leave, but was denied publicly funded payments because she had not been in the employment of the same employer for at least an average of ten hours a week over the immediately preceding six or twelve months, as required under s.7 of the Parental Leave Employment Protection Act 1987.
2. This situation had come about despite Ms Holly doing the same job since 2007, because, as noted above, the school she had been working at took over her employment at the end of January 2013 from another school. In effect

what had happened was that the school on whose premises the classroom that Ms Holly was working in on behalf of another school was located had decided to take over the running of that class, given that it was on its own premises.

3. As a result Ms Holly's employment with her new employer was less than the period required to be eligible for paid parental leave. Accordingly the Ministry declined Ms Holly's application for paid parental leave. Ms Holly challenges this decision on the basis that as she was paid by the Ministry of Education throughout and continued doing the same job, she therefore should not be disadvantaged by the change of employer. She also submitted that s.2AC of the Act provides an exemption for teachers in a similar situation to herself, i.e. having multiple employments.
4. While Ms Holly continued doing the same job, legally she was employed by a new employer at the beginning of 2013 and therefore technically she does not meet the requirements for eligibility for paid parental leave.
5. I accept that the Crown is the ultimate funder of schools and funded Ms Holly's work, which did not change throughout her employments. However the scheme of employment in the education sector is well known. From time to time employees change employer within the education system, sometimes without changing the real nature of their job. Ms Holly's case is one of those situations. The implications for Ms Holly in a parental leave setting were unlikely to have been considered by either school when a decision was made that a new school would take over as her employer.
6. Parliament must have intended to have understood that there were potentially issues of this nature in the education sector and in multiple employments generally, and the Act does provide for what is to occur in such situations.
7. Section 2A deals with multiple employments generally and states:

*An employee's entitlement to rights and benefits in respect of parental leave and parental leave payment must be determined by treating each of the employee's employment separately, if the employee has more than 1 employment.*

8. However, s.2AC - *Multiple employments of teachers* provides an exception to the above provision. It provides that where a teacher is employed by more

than one Board of Trustees to work in more than one state school or integrated school (whether concurrently or consecutively), those employments must be treated as one employment.

9. Unfortunately this exemption only applies to teachers as defined in s.91A of the Education Act 1989. This definition does not extend to teacher aides, but rather to teachers, relieving teachers and teachers in management positions. Therefore Ms Holly is excluded from the protections of s.2AC. The unfortunate result for Ms Holly is that she has not reached the threshold for eligibility for tax payer funded payment of parental leave.
10. Her situation can not be rectified by the discretion to approve irregular applications, because that discretion relates more to form and does not extend to eligibility.
11. Ms Holly's application to be paid parental leave must therefore be dismissed.

**G J Wood**  
**Member of the Employment Relations Authority**