

*Under the Employment Relations Act 2000*

**BEFORE THE EMPLOYMENT RELATIONS AUTHORITY  
AUCKLAND OFFICE**

**BETWEEN** Katrina Jonkers (Applicant)  
**AND** The Chief Executive Department of Labour (Respondent)  
**REPRESENTATIVES** Katrina Jonkers in person  
Natasha Szeto for respondent  
**MEMBER OF AUTHORITY** Vicki Campbell  
**DATE OF DETERMINATION** 21 March 2007

DETERMINATION OF THE AUTHORITY

**Employment relationship problem**

[1] Ms Katrina Jonkers applied to the Authority under the Parental Leave and Employment Protection Act 1987 requesting relief be granted in respect of a claimed irregularity in the application she has made for paid parental leave.

[2] Ms Jonkers returned from overseas and resumed work as a teacher in New Zealand on 7 February 2006. Ms Jonkers works as a relief teacher and her first relieving post was at St Peters Catholic School where she worked full time for the first term of the 2006 school year. Her next assignment was at St Andrews Middle School where she worked for the second term of 2006. Ms Jonkers employment at both St Peters and St Andrews respectively were described as "fixed term" positions.

[3] During the third term Ms Jonkers picked up a variety of relieving duties at various schools including St Andrews Middle School and worked for a total of 6 weeks ending on 24 August 2006. The expected date of delivery of Ms Jonkers' baby was 10 September 2006.

[4] Ms Jonkers application for parental payments under the Act was denied on the basis that she was ineligible because she had not been in employment with the same employer for the six months immediately preceding the expected date of delivery of her child. Neither had Ms Jonkers made an application for parental leave to her employer.

[5] Ms Jonkers admits that there is no position being kept open for her, although the Authority is in receipt of a letter from St Andrews indicating that when she is ready to return to work in September 2007, St Andrews intends to engage her on a day to day relieving basis.

## The Act

[6] Section 71D of the Act sets out the entitlement to parental leave payments:

An employee is entitled to a paid parental leave payment under this Part if the employee-

- (a) has given written notice to his or her employer of his or her wish to take parental leave (either in accordance with this Act or with the alternative provision under which the leave is taken); and
- (b) takes parental leave from his or her employment in respect of a child; and
- (c) is an eligible employee.

[7] Subsection 2 of section 71D provides for an eligible employee to be a female employee who meets the criteria for maternity leave for the child under section 7. Section 7 of the Act defines an eligible employee as an employee who, at the expected date of delivery, will have been in the employment of the same employer for at least an average of 10 hours a week over the immediately preceding 12 months or the immediately preceding 6 months.

[8] Section 2AC of the Act provides for multiple employment situations for teachers who have been employed by more than 1 Board of Trustees whether concurrently or consecutively, to have those employments be treated as 1 employment.

[9] The Department of Labour says Ms Jonkers was employed on an as and when required basis and was not employed concurrently or consecutively. Further, the Department says Ms Jonkers was not working in a position which was capable of being kept open for her as she worked on a casual basis with no guarantee of ongoing employment.

## Determination

[10] Parental leave is available to be taken from employment which is current and which would otherwise continue but for the pending birth of a child. In this case, although only by a few days, Ms Jonkers employment had ceased prior to the expected date of delivery. Further, Ms Jonkers had not intended the employment to continue beyond the last day on which she provided relief teaching services.

[11] The Act recognises teachers as a special category of worker and provides for teachers to qualify for paid parental leave even where they have left one school and moved to another, provided the employment is concurrent or continuous. This means in order to qualify for paid parental leave Ms Jonkers employment at different schools must have been occurring at the same time or uninterrupted.

[12] Ms Jonkers was employed on two separate fixed term contracts for two separate schools. At the end of the first term Ms Jonkers employment ceased and she was paid holiday pay at that time. Ms Jonkers then commenced her second fixed term agreement and was

again paid holiday pay at the end of that agreement. However, at the beginning of the third term Ms Jonkers changed her employment category from Fixed Term to day to day reliever.

[13] The change in category meant that Ms Jonkers was now paid holiday pay on a pay as you go basis. The effect of this change was that Ms Jonkers employment ceased at the end of each separate engagement. Ms Jonkers was not in continuing employment during term 3, but rather was employed on an as and when required basis. She was free to take up or decline any offers of engagement at any school, likewise the Ministry of Education was not required to offer Ms Jonkers work at any time. There was no intention for the employment to continue beyond the end of each day to day engagement.

[14] This is not an “irregularity” as defined in s.68, which the Authority can grant relief in respect of. An irregularity arises under the Act where there has been some failure in relation to the form in which an application for paid parental leave is required to be made, or where there has been a failure to meet the time limits set for making application or a failure to take some step required by the Act. Ms Jonkers’ problem is more fundamental – she does not meet the section 7 definition of eligible employee.

[15] I am unable to by of any further assistance to Ms Jonkers.

Vicki Campbell  
Member of Employment Relations Authority