

**IN THE EMPLOYMENT RELATIONS AUTHORITY  
WELLINGTON**

[2015] NZERA Wellington 119  
5541090

BETWEEN            MANDY RICHARDSON  
                                 Applicant  
  
AND                    BRUCE ANTHONY STEWART  
                                 T/A LOUGHNANS  
                                 Respondent

Member of Authority:        M B Loftus  
  
Representatives:            Hamish Richardson on behalf of the Applicant  
                                 Charles McGuinness, Counsel for Respondent  
  
Investigation Meeting:      14 and 15 September 2015 at Palmerston North  
  
Submissions Received:      23 and 26 September 2015, from the Applicant  
                                 23 and 27 September 2015, from the Respondent  
  
Determination:              9 December 2015

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**DETERMINATION OF THE AUTHORITY**

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**Employment relationship problem**

[1]     The applicant, Mandy Richardson, claims she was unjustifiably dismissed by the respondent, Bruce Stewart trading as Loughnans, on or about 17 November 2014.

[2]     Mrs Richardson also claims to have been unjustifiably disadvantaged by:

- (a)     Mr Stewart's refusal to grant parental leave;
- (b)     Mr Stewart's requirement she be complicit in the dismissal of an ex colleague;
- (c)     Mr Stewart's refusal to sign Mrs Richardson's application for paid parental leave (IR880);

- (d) Mr Stewart's refusal to keep Mrs Richardson's position open in alleged contravention of s.41 of the Parental Leave and Employment Protection Act 1987.

[3] Finally there is a claim of discrimination on the grounds of pregnancy<sup>1</sup> with reference to the adverse health effects of Mr Stewart's actions and various comment she made *with regard to her body while pregnant*.

[4] Mr Stewart denies the claims have validity.

### **Background**

[5] Mrs Richardson was employed by Mr Stewart as a legal secretary for over eight years. In April 2014 Mrs Richardson advised Mr Stewart she was pregnant. She says about a week later Ms Stewart pressured her into telling other staff about her pregnancy. She says she was uncomfortable with this given it was still early and would have preferred to have waited.

[6] Mr Stewart denies applying any pressure and is of the view Mrs Richardson freely volunteered the information after her husband, Hamish, arrived in the workplace that day. While this was addressed at some length during the investigation it was not raised as a ground of dissatisfaction in the Statement of Problem. No conclusion is therefore required.

[7] Also in April Mr Stewart advertised for a new receptionist. The successful applicant commenced in June 2014 and the previous receptionist became Mr Stewart's secretary while his former secretary, Ms Smith, became a *floater* in the expectation she would, in time, cover Mrs Richardson's parental leave absence.

[8] Mrs Richardson was asked to train Ms Smith in aspects of her job with which the latter was unfamiliar. Mrs Richardson says, in the Statement of Problem, *she was under the impression that she would be training these people for the covering of her role while she was on parental leave. As it turns out the respondent was having the applicant train herself out of her job*.

[9] Ms Stewart denies that accusation and says Mrs Richardson clearly stated she would not be returning to work full time more than once. He says he would readily

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<sup>1</sup> Section 21(1)(a) of the Human Rights Act 1993

facilitate a part-time return given his high opinion of Mrs Richardson's capabilities but it was clear she had to train others to ensure the continued performance of all her functions.

[10] Mrs Richardson says when she raised the issue of parental leave in July Mr Stewart responded that he preferred to keep things informal. She says she therefore decided not to formalise her parental leave in the belief she could discuss it closer to the time. Mr Stewart does not recall a specific discussion in July 2014 but says there a number of conversations. He accepts he had a preference for informality and reiterates Mrs Richardson repeatedly advised she was not going to return full time but would like a part time role.

[11] Mrs Richardson claims that in September 2014 she again inquired about parental leave and asked if she needed to provide formal notice. She says Mr Stewart said she could if she wanted but it was not necessary. She says she then decided to formalise her request in writing. She did so on 9 September 2014.

[12] Mr Stewart says this was discussed that day (9 September) and Mrs Richardson again stated she did not want to return full time. He adds he went on to advise he did not believe he could grant parental leave as he would not be able to find anyone to temporarily take up her position given it was a key position.<sup>2</sup>

[13] An explanation of why Mr Stewart considers the role to be a key one is given in the Statement in Reply. It reads:

*... The Respondent's office is unique in a number of respects. The Respondent uses Word Perfect as a word processing package and it is not widely known – full training has to be given in respect of this software. In addition to this, Word Perfect has been developed by the Respondent to run a number of macros. Macros are automated systems which increase the efficiency of the word processing operator. Significant experience is required in order to use these macros.*

*The Applicant's job also involved completing settlements. The respondent was unwilling to employ someone and then trust them to complete settlement straight off. Such a position is too critical and responsible. The consequences to clients and the Respondent are too great to allow a temporary employee to undertake such work. The Applicant also undertook trust work and gifting work. Further experience which is unique to a person having been in the employment of Loughnans for a considerable number of years (over and above any general secretary experience) is necessary.*

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<sup>2</sup> Section 41(1)(a) of the Parental Leave and Employment Protection Act 1987

[14] On 11 September Mr Stewart responded to Mrs Richardson's written request for parental leave. Contained therein is:

*I draw to your attention that there are many strict and formal requirements set out in the Act and while it is always my preference to keep things informal I never the less have the statutory duty to comply with the Act which of course gives protection to you.*

*I draw to your attention the provisions of s.31 of the Act. Your notice does not strictly comply with sub section 2 and sub section 3(b).*

*In any event as I have discussed with you I am not able to grant you the parental leave because it is simply not possible for me to employ a person on a temporary basis to fill your position. Section 41 of the Act.*

*In addition that then as discussed with you it is your proposal that you should return to work part time. Your position is not part time but is full time.*

...

*I am also happy for you to return to work on a part time basis when you are able to. I note that we have talked about two or three days per week. I will work towards this and will keep in touch with you. You are and will continue to be an excellent employee and I look forward to your return. ...*

[15] Mrs Richardson says that earlier in September Mr Stewart told her he was making another legal secretary redundant. That person was away at the time. She says the employee concerned telephoned on 15 September, advised Mr Stewart had asked to meet at her home and asked if Mrs Richardson knew the reason. Mrs Richardson, despite being aware of the impending redundancy, chose to say she knew nothing. She says she felt the call placed her in a compromising position which she found stressful and upsetting. Mr Stewart knew nothing about the call at the time.

[16] Later that day (15 September) Mr Stewart asked Mrs Richardson accompany himself and another solicitor when they advised the redundancy. She says that forced her into a stressful situation with no notice and she was extremely nervous and anxious about the situation. She accompanied Mr Stewart and was present when the redundancy was advised though took no active part and said nothing.

[17] Mr Stewart denies any knowledge of the angst Mrs Richardson was feeling and says it was never raised with him. It appears Mrs Richardson voiced some dissatisfaction with the other lawyer involved but he says her comments were not

expressed in a way that raised alarm in his mind or made it clear Mrs Richardson felt stressed or anxious about the situation. Mrs Richardson agrees her comments to this lawyer were such that he was probably unaware of the level of angst she felt.

[18] Mrs Richardson goes on to say that when returning to the office she started thinking about her own position and her future with the firm. This added to her stress and soon after returning she visited her doctor who recommended she remove herself from the workplace. A medical certificate was provided that day. It reads:

*To whom it may concern:*

*I assessed Mandy Richardson on 15 Sept 2014.*

*I confirm that he/she is/has been medically unfit to attend work/study from 15 Sept 2014 and should be fit to resume on 22 Sept 2014.*

[19] Mrs Richardson's answers suggest she left the workplace and saw the Doctor on the instruction of her husband who had, after discussing her qualms with her, chosen to consult a solicitor (referred to herein as *counsel*.) Comments Mr Richardson made, albeit from the bar, would appear to confirm this and suggest the notion Mrs Richardson absent herself as stressed came from counsel.

[20] On 17 September counsel wrote to Mr Stewart. The letter refers to Mr Stewart's letter of 11 September before going on to say:

*Whilst it is accepted that the provisions of s.31 of the Parental Leave and Employment Protection Act 1987 have not strictly been adhered to, a simple correction would have sufficed to validate the notice. The opportunity to correct was not given; instead the employer has embarked on a course of conduct that has effectively dismissed our client on notice effective as of the 14th November 2014 or such other date as adjusted. The means of adjustment not being identified.*

[21] The letter later states:

*In addition the letter gives no reasonable justification as to why and how s.41 of the Act applies.*

*The employer is in breach of its obligations under the Employment Relations Act to act as a fair and reasonable employer. This letter serves as notice of personal grievance for unjustified action and unjustified dismissal.*

[22] As remedies Mrs Richardson sought immediate reinstatement; retention of the status quo, an opportunity to apply for parental leave by resubmitting the s.31 notice

and an agreed return to work on same terms and conditions following the expiry of the parental leave.

[23] On 19 September Mrs Richardson again saw her doctor. She says the doctor recommended she stay off work due to work related stress and in the interests of both herself and her baby. A further medical certificate was forwarded to Mr Stewart. Other than a revised return date (6 October 2015) its text was identical to that of 15 September.

[24] Mr Stewart responded on 24 September. He notes he does not accept counsel's assertions before advising he was happy to disregard the parental leave notice he had received and accept a new notice. He goes on to say:

*As an employer and perhaps more importantly personally, I am very sorry to have received two medical certificates for Mandy. The medical certificates gives no hint as to the reason that she is medically unfit to attend work.*

[25] He then notes various attempts he made to ascertain the nature of Mrs Richardson's illness and whether he could do anything to assist before asking for some intimation as to whether or not she would return as indicated on 6 October.

[26] In the interim Mr Stewart sent Mrs Richardson a text. Mrs Richardson says this occurred on 22 September. Mr Stewart says 23 September. It opens with *I do hope that you and your bump are well* before noting Mrs Richardson no longer had any sick leave left. It asked whether she wished to use holiday pay instead before saying Mr Stewart had tried to ring to see how she was but not received a reply.

[27] Mrs Richardson takes exception to the content and especially the reference to her *bump*. Mr Stewart considers the content quite reasonable but it resulted in another letter from counsel. Dated 24 September it advises:

*As you are aware we are acting for Mrs Richardson. It is inappropriate for the employer to make contact (let alone several times in the setting of harassment) with Mrs Richardson while she is currently away from work due to work related stress.*

*The employer is well aware of her circumstances and will know that it is critical she avoids stress. In future please direct all communications to this office to avoid any further stress to our client.*

[28] That led to Mr Stewart's second letter of the day. It contains advice that:

*In paragraph two of your letter you have set out “the employer is well aware of her circumstances”. I am not aware of Mandy’s circumstances other than that she is pregnant. You have stated you “will know that it is critical that she avoid stress” I am not aware of that. Please set out why it is that Mandy should avoid stress.*

*Am I to take from your letter (paragraph 1) that Mandy’s absence from work is due to work related stress? If I am to take that from your letter can you please advise in particular what that work related stress is as I am not aware of any work related stress. ...*

*My concern has now been raised that there is something in work place which could cause Mandy further stress and given that she is pregnant I do not wish this to occur. Please ensure that Mandy is able to provide a medical certificate to the effect that she is able to return to work before she does so...*

[29] On 1 October Mrs Richardson forwarded an amended parental leave notice via counsel. There then commenced an increasingly fraught series of correspondence with Mr Stewart challenging the validity of the parental leave notice and its adherence to the requirements of s.32 and particularly advice as to whether or not Mr Richardson was taking parental leave; the proffering of further medical certificates extending the period of absence; further request by Mr Stewart as to information concerning Mrs Richardson’s state of health and how he could remedy any problems and a noticeable lack of response thereto. The situation was not assisted by counsel’s failure to forward a later and more detailed medical certificate in a timely manner.

[30] Included in the correspondent is a letter of 3 November from Mr Stewart to counsel. It notes:

*Up until 9 September 2014 Mandy was happily employed in my firm and there was a happy and continuing work relationship. Mandy was pregnant. Her expected date of leaving was 14 November 2014. Mandy and I had discussed her return to work on a part time basis when she felt able.*

*The above expectation fulfilled Mandy’s requirements and I was happy with the arrangement.*

*We are now in the situation where I cannot even inquire after Mandy. She has not seen or met with her fellow employees who feel in a difficult position. I feel stress not because of the legal implications but simply because I have grown to know, like and appreciate Mandy.*

*While I appreciate that you have a legal role to fulfil I wonder whether an involvement of lawyers in this particular situation has in any way been productive from Mandy’s perspective?*

[31] The letter goes on to reiterate Mr Stewart's view he cannot keep Mrs Richardson's position open as it is key. In asserting why he says:

*My legal firm is very small and each person's position is strategic. No one can simply slot into Mandy's position. Outside temps are not in any way a reality due to:*

- (a) My methodology of operation*
- (b) The restricted employment market for legal secretaries in the Manawatu.*

[32] Finally the letter refers to what became another substantial problem. It says:

*I note that you have submitted the IR880. Mandy has completed this form. One of the question is "Has your employer granted you parental leave from work?" Mandy has ticked yes to this. The answer should be no. If Mandy completes the form correctly and submits it to me then the balance of the form can be completed by me.*

[33] This dispute was to fester for some time and meant Mrs Richardson was unable to get paid parental leave. Ultimately, and in April 2015, Mr Stewart took it upon himself to fill out another IR880 in which he answered *no* to the question *Has your employer granted you parental leave from work?* He forwarded this to the Inland Revenue Department which, after various inquiries, eventually granted paid parental leave to Mrs Richardson.

### **Determination**

[34] As already said Mrs Richardson claims:

- a. She was unjustifiably dismissed;
- b. She was unjustifiably disadvantaged by Mr Stewart's refusal to grant parental leave. This claim is intrinsically linked to another – namely that she was disadvantaged by Ms Stewart's refusal to keep her position open;
- c. She was unjustifiably disadvantaged by the requirement she be complicit in the dismissal of a colleague;
- d. She was unjustifiably disadvantaged by the way in which the IR880 was handled; and

e. She was discriminated against.

[35] Having considered the evidence it is difficult to see how Mrs Richardson can establish she was dismissed. The allegation, as initially aired, was Mr Stewart had *effectively dismissed* Mrs Richardson – not that he had actually dismissed Mrs Richardson.<sup>3</sup> The allegation was initially based on Mr Stewart’s advice he considered Mrs Richardson occupied a key position and he was unable to keep it open. The suggestion this constitutes a dismissal misses one key point – the content of the Parental Leave and Employment Protection Act 1987 (the PLEPA).

[36] The PLEPA provides there is a presumption an employee’s position can be kept open while they are on parental leave and the employment continues. In other words, and all things being equal, there is a guarantee of return and the employer is incapable of dismissing in all but a few circumstances. One of those circumstances is where the employee occupies a key position but such an assertion can be challenged. That is how this dispute commenced and where its pursuit should have remained. Had that occurred the result I shall deliver would have meant dismissal would not, and could not, have occurred.

[37] There is perhaps one other thing upon which Mrs Richardson may rely as indicative of actual dismissal and she later altered her position to do so.<sup>4</sup> That was Mr Stewart’s advice he was going to pay her holiday pay though the amended Statement of Problem recognises it is not clear whether this amounted to notice of dismissal.<sup>5</sup>

[38] I agree especially as it is almost universal for employers to pay outstanding leave upon an employees’ departure on parental leave and given further confusion which arose through Mrs Richardson’s (or more correctly counsel’s) failure to respond to various approaches from Mr Stewart about her leave and payment thereof. Finally there was Mr Stewart’s undisturbed evidence the payment was made on the basis it was Mrs Richardson’s money and he had been led to believe she wanted it.

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<sup>3</sup> Letter Counsel to Stewart dated 17 September 2014

<sup>4</sup> Amended Statement of Problem ([40] below) at paragraph 2.43

<sup>5</sup> n 4 above

[39] Though not expressly asserted, there is also a suggestion Mrs Richardson may have been constructively dismissed. This arose via the way evidence was presented and a claim Mr Stewart's actions irrevocably destroyed trust and confidence.<sup>6</sup>

[40] This would also fail for two main reasons. First a number of the issues now being canvassed have the appearance of afterthoughts given they were not raised before the amended Statement of Problem dated 12 August 2015. This is at least eleven months after the events now being complained about. They were not seen as significant at the time with most not being mentioned in contemporaneous correspondence. That their significance was, at least at the time, minimal was confirmed by Mrs Richardson's oral evidence that the significance of most had grown in her mind with the passage of time. There is then the fact Mrs Richardson admits these events, which included the early advice of her pregnancy to colleagues and Mr Stewart's alleged comments about her *bump*, were not seen as serious enough to warrant comment or advice Mrs Richardson did not appreciate them at the time. In such circumstances it is hard to see how these events can now be claimed as being destructive of the employment relationship.

[41] Finally and even if I am wrong and what occurred constitutes a dismissal I conclude it would make no difference to the remedies which would accrue.

[42] First there is a claim for reinstatement. That shall be attained through other means.<sup>7</sup> A finding she was dismissed would also mean Mrs Richardson would not accrue a greater award in respect to lost wages. Her period of parental leave, which is unpaid (at least as far as Mr Stewart is concerned) would mean there is no wage loss. Indeed, and given it would be inordinate she get wages more than a year after dismissal given a lack of evidence regarding mitigation, a finding of dismissal might have led to a smaller award in this respect. Finally there is compensation (s.123(1)(c)(i) of the Act). The evidence Mrs Richardson gave regarding hurt and humiliation was holistic in nature. The addition of a dismissal, which in any event she came to believe she had suffered, would not have changed that evidence and therefore the resulting award.

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<sup>6</sup> Statement of Problem at paragraph 1.9

<sup>7</sup> Refer my later conclusion Mrs Richardson did not occupy a key position

[43] There is then the issue of Mr Stewart's refusal to grant parental leave. There is no doubt this occurred but the defence is it was *not reasonably practicable*<sup>8</sup> to keep Mrs Richardson's position open as it was a key one.

[44] The threshold that must be passed to establish a position is key is a high one. Indeed the Court has suggested the words *not reasonably practicable* appeared, under the PLEPA, to equate to *virtually impossible*.<sup>9</sup> Mr Stewart is, in my view, incapable of crossing this threshold. The duties to which he refers could be performed by others. For example he spoke of the archaic nature of Word Perfect and the development of macros but at the end of the day it is a word processing package and having used it in the past I conclude any half competent operator could be taught to do so. As to the macros I note he himself professed some expertise in this regard and could therefore have performed the function while Mrs Richardson was absent.

[45] Mr Stewart also commented on the paucity of legal executives in the area but here I note difficulties encountered in finding a replacement is not, in itself, determinative of whether or not a position is key.<sup>10</sup> The main point is, however, subsequent events totally undermined the assertion this was a key position, at least in the way envisaged by the PLEPA. As it turned out Mrs Richardson was not replaced and her work was performed by other already extant staff. This confirms the position was not key in that the work could be performed in a way that allowed Mrs Richardson's position to be kept open.

[46] Mr Stewart's incorrect decision in this regard clearly disadvantaged Mrs Richardson and deprived her of a statutory right. It also caused considerable angst.

[47] The conclusion Mrs Richardson did not occupy what the PLEPA considers a key position means she should have had her old position to return to at the end of her parental leave which was scheduled for 14 November 2015. Notwithstanding the fact she has not complied with the PLEPA's requirements regarding return that is an option now available to her. I reach this last conclusion the failures regarding return procedures should not be held against Mrs Richardson for a number of reasons:

- a. Compliance was impeded by the approach taken by Mr Stewart;

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<sup>8</sup> n 2 above

<sup>9</sup> *Auckland Provincial District Local Authorities Officers IUOW v Onehunga Borough Council* [1989] 1 NZILR 476

<sup>10</sup> *Manakau City Council v Auckland Local Authorities Officers IUOW* [1988] NZILR 747

- b. Mr Stewart consistently stated he wanted Mrs Richardson back;
- c. Mr Stewart was also consistent in saying he embraced informality and was complacent about the PLEPA's procedures.

[48] This last comment may seem incompatible with the correspondence which followed Mrs Richardson's departure and the emphasis Mr Stewart placed on the failure to identify whether or not Mr Richardson intended taking extended leave. Having heard the evidence I conclude that was a reaction to what Mr Stewart saw as the belligerent, uninformative and tardy approach of counsel and not directed at Mrs Richardson herself. This, I must say, really was a case in which the involvement of lawyers adversely impacted on what had previously been a sound relationship.

[49] Mrs Richardson also claims to have been disadvantaged by virtue of being complicit in the dismissal of her colleague. This is a claim that, for two reasons, will fail.

[50] First there is the fact Mrs Richardson is also bound by the duty of good faith and its requirement she be active and constructive in maintaining the relationship. If the situation was truly disadvantageous she both could, and should, have raised her concerns and ask she be excused from accompanying Mr Stewart. She didn't.

[51] Second the evidence does not suggest this issue was, at least at the time, of great significance. As already noted and while Mrs Richardson did not voice an objection with Mr Stewart she did comment about her attendance to another solicitor.<sup>11</sup> The witnesses agree that while Mrs Richardson said she did not want to go, she did not raise stress or anxiety or in any other way indicate a real aversion to the request. To that I add the fact Mrs Richardson's evidence was the issue that triggered her visit to the doctor that day (and her subsequent departure) was a consideration of her future and the possibility she may be next for redundancy.

[52] Here, and as a quick aside, I note there is no claim in respect to payment for the period 15 September 2014 till the scheduled commencement of parental leave.

[53] Mrs Richardson also claims to have been unjustifiably disadvantaged by virtue of the way Mr Stewart handled her IR880. Given the evidence I must say I find this decision inordinate and inexplicable.

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<sup>11</sup> Paragraph [17] above

[54] I initially thought it may have arisen from an apparent contradiction on the form. According to the notes attached thereto an IR880 cannot be completed or forwarded until the employer has granted parental leave. Mr Stewart however informed me that was not in his mind. What he objected to was the fact Mrs Richardson had answered the question in the affirmative when, in his view, he had not granted leave. He refused to finalise the form till she remedied this.

[55] He was unable to adequately answer why he did not simply fill out the form and notify a view there as an error in Mrs Richardson's answers. This took on a greater impact when I note both parties proffered evidence which suggests the Inland Revenue have procedures to address such anomalies and make a determination about eligibility. Instead Mr Stewart deprived Mrs Richardson of her payments for some considerable time by inactivity. He has not, in my view been able to adequately explain why and I conclude his actions constitute a further disadvantage. Indeed this became a considerable source of anguish and hurt Mrs Richardson considerably.

[56] Finally there is a claim Mrs Richardson was discriminated against by reason of pregnancy. It is a claim that will fail. First there was little direct evidence with the evidential effort being directed at the other causes of action. More importantly that other evidence does not suggest Mr Stewart's actions were a discriminatory response to Mrs Richardson's pregnancy. Even though he may have been incorrect they were driven by his view of his statutory duties and rights under the PLEPA.

[57] The conclusion Mrs Richardson has successfully pursued three of her claims raises the question of remedies. She sought reinstatement and compensation under s.123(1)(c)(i) in an unspecified sum. She also sought an order Mr Stewart complete the IR880 and an order she was entitled to paid parental leave but after a considerable delay these claims have been resolved in her favour.

[58] As already said the conclusion this was not a key position means there is a presumption Mrs Richardson's position remained open. It was therefore available for her return as planned on 14 November 2015 and payment of wages would have recommenced as of that date. Therein lies a potential problem. While Mrs Richardson sought reinstatement and Mr Stewart has consistency praised her as an employee and stated he wanted her back her evidence suggested a return might no longer be sought. When I asked her about this during the investigation the answer *probably not*. That however is not a definitive rejection though subsequent

correspondence from Mrs Richardson would suggest she no longer has any wish to return. Given that I advise that her wages, payable from the scheduled date of return, shall continue for a further week past the issuing of this determination. This is to permit Mrs Richardson to consider the decision and decide whether or not she wishes to avail herself of the opportunity to return. If she decides not to return her wages shall cease to be payable as of 16 December 2015. Obviously payment shall continue if she does return.

[59] Turning to compensation. This claim was supported with considerable evidence about the hurt Mrs Richardson felt at her treatment and the effect this potentially had on her baby (which was yet another source of angst). There was also a medical component to this evidence though that is subject to a suppression order that shall remain in place and will not therefore be discussed further. Her level of hurt must however be tempered by the angst visibly displayed by Mr Richardson which left me wondering how much his reaction to the wrongs he felt his wife had suffered influenced her reactions and feelings. The possibility Mr Richardson's feeling fuelled Mrs Richardson's angst is not something that can be readily visited on Mr Stewart.

[60] Having considered the evidence I conclude it supports a significant award and consider the sum of \$10,000 appropriate.

[61] The conclusion remedies accrue means I must, in accordance with the provisions of s.124 of the Act, address whether or not Mrs Richardson contributed to the situation which gave rise to the grievance. While I have commented on the effect counsel had any shortcomings there were not those of, or attributable to, Mrs Richardson. She can only be considered an innocent party incapable of influencing the outcome in respect to the claims she has been successful with.

[62] Costs are reserved. Normally I would ask the parties try and resolve this between themselves but there are strong indications Mr Richardson and Mr McGuinness will be incapable of doing that. Therefore Mrs Richardson is advised that as the successful party, and in the event she wishes to pursue the issue of costs, she should do so by filing a written memoranda no later than 23 December 2015. Mr McGuinness may have till the end of January 2016 to reply.

### **Conclusion and Orders**

[63] For the above reasons I conclude Mrs Richardson has a personal grievance as she was unjustifiably disadvantaged by Mr Stewart's refusal to grant parental leave and keep her position open during a period of parental leave along with his handling of her IR880.

[64] As a result I conclude:

- a. Mrs Richardson was entitled to return to her previous position on 14 November 2015;
- b. Wages would then have become payable from that date;
- c. Mrs Richardson has now indicated a return is not going to happen. She has till 16 December 2015 to confirm her reaction to reinstatement and in the event she chooses not to return wages will cease to be payable as of that day;
- d. Mr Stewart is to pay Mrs Richardson a further \$10,000.00 (ten thousand dollars) as compensation for humiliation, loss of dignity and injury to feelings pursuant to section 123(1)(c)(i) of the Act.

[65] Costs are reserved.

M B Loftus  
Member of the Employment Relations Authority