

**IN THE EMPLOYMENT COURT OF NEW ZEALAND
WELLINGTON**

**I TE KŌTI TAKE MAHI O AOTEAROA
TE WHANGANUI-A-TARA**

**[2026] NZEmpC 171
EMPC 459/2025**

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
BETWEEN	FIRE AND EMERGENCY NEW ZEALAND Plaintiff
AND	NEW ZEALAND PROFESSIONAL FIREFIGHTERS UNION Defendant

Hearing: 15 May 2026
(Heard at Wellington)

Appearances: G Davenport, counsel for plaintiff
P Cranney and K Neo, counsel for defendant

Judgment: 5 August 2026

JUDGMENT OF CHIEF JUDGE CHRISTINA INGLIS

Introduction

[1] These proceedings relate to a dispute about the correct interpretation of a clause in a collective agreement between Fire and Emergency New Zealand and the New Zealand Professional Firefighters Union. It has come to the Court via a challenge to a determination of the Employment Relations Authority.¹

¹ *New Zealand Professional Firefighters Union v Fire and Emergency New Zealand* [2025] NZERA 555.

[2] The clause at issue (“Parental Leave”) provides a contractual payment to workers who return from parental leave and continue their duties for a further six months. The clause states that:

Parental Leave

1.4.2 Parental Leave as special leave without pay shall be granted to a pregnant female worker, or the partner of a pregnant female worker where they have transferred their entitlement to parental leave under the Parental Leave and Employment Protection Act 1987. It is not to be granted as sick leave on pay. An application for leave under this heading must be supported by a medical certificate.

1.4.2.1 Leave of up to twelve months is to be granted to workers with at least one year's service at the time of commencing leave.

1.4.2.2 For those with less than one year's service, parental leave up to six months is to be granted.

1.4.2.3 Where a worker returns to duty before the expiration of twelve months' leave without pay and completes a further six months' service, they qualify for a payment equivalent to thirty working days on pay (calculated at the rate payable for the thirty working days immediately following the cessation of duty). For coloured watch workers it is equivalent to 8.5 weeks' pay, for yellow watch workers it is equivalent to 7.5 weeks' pay, and for black watch workers it is equivalent to 6 weeks' pay.

[3] In summary, Fire and Emergency say that a returning worker is only eligible for what it calls an incentive payment where they have first been granted 12 months' parental leave. The Union says the grant of 12 months' parental leave is not the trigger for eligibility; a worker with at least one year's service who has been granted any length of parental leave is eligible for the payment once they return and complete six months of service.

Approach to interpretation of collective agreements

[4] It is convenient to set out the principles of interpretation relating to collective agreements at this juncture. While there was general agreement between the Union and Fire and Emergency about the applicable principles, there was one area where they diverged, a point I return to.

[5] As the Supreme Court has confirmed,² the principles of interpretation relating to contracts also apply to employment agreements. The proper approach is an objective one with the aim being to ascertain what the written agreement would convey to a reasonable person having all the background knowledge reasonably available to the parties at the time the agreement was entered into.³ While the meaning of a clause in an agreement may appear clear, meaning is informed by context. The approach is that a provisional conclusion as to meaning is to be cross-checked against the context provided by the agreement as a whole and any relevant background.

[6] Relevant too is the fact that collective agreements are not commercial in the way that business contracts usually are. They are not drafted, negotiated, and settled by practising lawyers, and the people covered by the collective agreements are not party to the negotiations. Collective agreements represent the development of a particular employment relationship over a period of time, sometimes a great many years. They involve people and human interactions that occur within the framework of multi-faceted obligations, both statutory and common law;⁴ and they are a product of compromise and opportunism.⁵

[7] The interpretative point at which the parties differed related to a submission advanced by Mr Cranney, counsel for the defendant, that contracts that conferred rights on workers should be interpreted so as to give effect to those rights, and are not to be narrowly read. I agree that this sits comfortably with the UK Supreme Court decisions of *Autoclenz Ltd v Belcher* and *R (UNISON) v Lord Chancellor*.⁶ I see the approach as reflective of a well-established principle of interpretation, namely that contractual provisions are to be interpreted in light of their evident purpose and where, as here, the purpose is to confer a contractual benefit (over and above any statutory entitlement) they should be read consistently with achieving that purpose.⁷

² *New Zealand Air Line Pilots' Assoc Inc v Air New Zealand Ltd* [2017] NZSC 111, [2017] 1 NZLR 948, [2017] ERNZ 428 at [74]-[78].

³ *Firm PI 1 Ltd v Zurich Australian Insurance Ltd t/a Zurich New Zealand* [2014] NZSC 147, [2015] 1 NZLR 432 at [60]-[63], affirmed in *Bathurst Resources Ltd v L & M Coal Holdings Ltd* [2021] NZSC 85, [2021] 1 NZLR 696 at [43]-[46].

⁴ *Television New Zealand Ltd v E Tū Incorporated* [2024] NZEmpC 93 at [12].

⁵ *New Zealand Air Line Pilots' Assoc Inc*, above n 2, at [14]-[18]; see too *Le Gros v Fonterra Co-Operative Group Ltd* [2023] NZEmpC 193, [2023] ERNZ 193 at [19].

⁶ See generally *Autoclenz Ltd v Belcher* [2011] UKSC 41, [2011] 4 All ER 745; *R (UNISON) v Lord Chancellor* [2017] UKSC 51, [2020] AC 869.

⁷ See the discussion in *Television New Zealand Ltd*, above n 4, at [12], [33], and [36].

Analysis

[8] Fire and Emergency submits that the wording of the parental leave provision is clear; an employee does not become eligible for payment of 30 days' pay unless they have been granted 12 months' parental leave in the first place. The Union says that the provision is ambiguous, and the ambiguity or lack of clarity is to be resolved by considering the underlying purposes of the clause and its wording in context.

[9] I do not agree with Fire and Emergency's submission that the clause is as clear as it suggests. Rather, two interpretations are reasonably open.

[10] The first interpretation is supported by reference to "expiration of 12 months' leave without pay" in cl 1.4.2.3, which may be taken to suggest that the payment (also referred to in this part of the clause) attaches only to a qualifying person who has sought and been granted parental leave of 12 months. This interpretation favours Fire and Emergency's position.

[11] The second available interpretation is that a qualifying worker may be granted parental leave of any period of time up to 12 months; when they return to duty before the expiration of 12 months, and complete a further six-month period of service, they qualify for a payment equivalent to 30 working days on pay. That interpretation is supported by use of the words "*up to* 12 months" in cl 1.4.2.1 and use of the words "*before the expiration of* 12 months' leave without pay" in cl 1.4.2.3. This interpretation favours the Union's position.

[12] I see the Union's interpretation as sitting more naturally with the wording of the provision when read as a whole. It means that the reference to the grant of "*up to* twelve months" parental leave in cl 1.4.2.1 is read consistently with the reference to returning to duty "*before the expiration of* twelve months' leave" in cl 1.4.2.3. So, by way of example, where a coloured watch worker has applied for and been granted seven months' parental leave, returns after seven months of leave, and remains in service for six months, they receive a payment equivalent of 8.5 weeks' pay. In other words, the use of the words "*before the expiration of* twelve months' leave without pay" can be seen as a convenient shorthand drafting device for capturing the situation

set out in cl 1.4.2.1. Conversely, it would have been a straightforward exercise to provide otherwise, and in accordance with Fire and Emergency's preferred interpretation.

[13] That is not to say that Fire and Emergency's interpretation is untenable. As I have said, cl 1.4.2.3 includes the words "before the expiration of twelve months' leave", but Fire and Emergency clarified its position: a worker is entitled to payment as long as they have been *granted* twelve months of leave. They do not necessarily have to be on leave for the entire duration of the leave they have been granted; they can return early in limited circumstances.⁸

[14] In other words, both interpretations provide a plausible explanation for why cl 1.4.2.3 includes the words "*before* the expiration of twelve months' leave".

[15] Mr Davenport, counsel for the plaintiff, submitted that the distinction between someone who can be granted up to six months' leave and someone who can be granted 12 months' leave, contained within cl 1.4.2.1 and cl 1.4.2.2, supports Fire and Emergency's interpretation.

[16] There is a degree of awkwardness about the provision, but that is probably resolved by reading it as an entitlement to the grant of parental leave rather than receipt of a payment after a return to service. Clause 1.4.2.1 (which is directed at workers with at least one year's service) refers to leave of up to 12 months, and cl 1.4.2.3 similarly refers to the expiration of "twelve months' leave". In this way the two subclauses (cl 1.4.2.1 and cl 1.4.2.3) can be seen as working together, conferring an entitlement to a payment after the return to service on an employee who has had at least one year of service prior to taking that leave (so beneficial to longer serving workers).

[17] Having concluded that there are two interpretations available but that the Union's interpretation sits more comfortably with the wording of the clause when read as a whole, I turn to the cross-checking part of the process.

⁸ Referring to the circumstances specified in the Parental Leave and Employment Protection Act 1987, s 45.

[18] I start with what the clause was designed to achieve. Mr Davenport submitted that the clause was intended to encourage people back to work at the end of a lengthy period away (namely 12 months), which he described as the “will I, won’t I” conundrum. I was not drawn to this submission; there is nothing in the clause, the broader agreement or the extrinsic materials that provides support for the “12 month will I or won’t I” conundrum. And while Mr Davenport leaned heavily on the 1987 Fire Service Commission Circular as evidence of the historical intent, it appears to me to simply restate the rule of the entitlement without any additional indication of its purpose.

[19] In any event, it remained unclear why 12 months should be assumed to be the natural trigger point for the “will I or won’t I” question to be asked rather than any other point in time during such leave. It might reasonably be assumed that an employee who has been granted 11 months of leave would face the same sort of conundrum at the 11 month mark.

[20] While Fire and Emergency characterised the provision as an incentive (incentivising a return to work after 12 months of parental leave) and the Union characterised it as conferring a benefit (a payment to support a worker and their family after a period of parental leave), I do not think much turns on the point. Plainly there is an element of incentivisation attaching to a payment that is made six months after a return to work: the worker receives the payment if they return to work; they do not receive it if they do not return to work. However, there is also clearly a benefit component to it; it is a payment Fire and Emergency has committed to making to returning workers over and above any statutory obligation it would otherwise have to meet.

[21] If the provision is, as Fire and Emergency say, an incentive payment for the return to work after taking parental leave, it seems more likely than not that any period of parental leave would suffice to meet that objective. The goal – a return to work – is achieved, and the safeguard lies in the requirement that the worker returns to service for a specified period, namely six months. In other words, I can see no reason why incentivisation would be linked to a 12 month, as opposed to some lesser, period of leave.

[22] The clause was originally inserted into the collective agreement in 1987, prior to the enactment of the Paid Parental Leave Act later that year. The clause has remained the same through various iterations over the years, although was recently amended, in the latest collective agreement, to refer to the partner of a pregnant female worker.⁹ While this aspect of the clause changed the wording of the original clause, the other wording remained the same.

[23] Mr Cranney, counsel for the Union, advanced a technical argument that because the statutory maximum leave a mother can transfer to a partner is 52 weeks, that only amounts to 364 days, which is strictly less than 12 calendar months. Thus, he argued, a partner could never mathematically be granted 12 months of leave. He submitted that Fire and Emergency's strict 12-month interpretation would therefore render the addition of "partners" to the clause meaningless. I do not accept that submission.

[24] As Mr Davenport pointed out, the Act allows a mother to transfer her full maximum statutory entitlement to her partner. Fire and Emergency accepts that, where this full transfer occurs, the partner is treated as having been granted "twelve months leave" under the clause and is capable of qualifying for the payment. Therefore, the addition of partners to the clause does not create the inconsistency the Union claims.

[25] In some cases, the way in which parties have acted over time may be relevant to the interpretative exercise, particularly where there has been consistent practice which is in line with one or other interpretation contended for. In this case, there has been an inconsistent approach to the way in which the clause has been applied, as a witness for Fire and Emergency confirmed. Fire and Emergency acknowledges this inconsistency. While it seeks to characterise certain inconsistent past payments as mere administrative errors, the fact that its own payroll staff repeatedly interpreted and applied the clause in a manner that did not require an initial 12-month grant undermines its assertion that the clause has a single, plain, and restrictive meaning.

[26] In addition, the evidence included a guideline document published by Fire and Emergency titled "Managing pregnancy and parental leave", a comprehensive internal

⁹ See the 2018-2021 collective agreement.

document from around the time of the 2022 collective bargaining. The guideline was intended to assist operational staff and their managers to navigate workplace issues arising from pregnancy, including health and safety risks and alternative duties. Notably, it also outlined how to apply for paid parental leave and explained the parental leave grant. In explaining the grant, no mention was made of the requirement to be granted a full 12 months of leave. It simply stated that eligibility arises after returning to work for six months, and instructs the worker to email their manager to confirm their last day of work and their first day back. The wording of the guideline does not align with the argument about mere administrative error.

[27] All of this lends support to the Union's argument that the payment under the clause, and the circumstances in which it is intended to be made, does not hinge on the earlier grant of 12 months' parental leave and the assumed asking and answering of the "will I, won't I" question at the 12-month mark.

[28] Fire and Emergency submitted that the Union's interpretation would lead to absurdity, and could not have been intended. In this regard it was said that a mother could transfer a minimal period of parental leave to her partner (perhaps one day), who could then return for six months and then receive the payment. It was said that this could not have been what was intended by the clause.

[29] There is nothing before the Court to suggest that the spectre of absurdity identified by Fire and Emergency (where leave is taken for one single day) is realistic. While Fire and Emergency pointed to the real-world example (which was the genesis of the current dispute) of one partner who took four weeks of transferred leave and sought the 30-day payment, I do not consider that outcome absurd. As I have explained, the incentive objectives (a return to service following parental leave) that Fire and Emergency say the clause is directed at are met whatever the length of parental leave, provided the worker returns to service. And nor is the result absurd when viewed through the lens of providing support to workers where they have taken leave for child related purposes. In other words, absurdity is best assessed having regard to what a clause is objectively designed to achieve.

[30] Indeed, there would be more absurdity if Fire and Emergency's interpretation is favoured. The statute deliberately contemplates mothers transferring some amount of leave to their partners. Under Fire and Emergency's interpretation, transferring even a single day would disqualify a mother from the 30-day payment because she did not apply for her full 12-month entitlement. It is unlikely that such a result would have been intended.

[31] For completeness, both parties argued that the 2022 collective bargaining negotiations supported their interpretations. The Union pointed out that, during this bargaining round, Fire and Emergency did not raise any claims seeking to alter the eligibility criteria or the application of the parental leave payment clause. Rather, it formalised how the 30-day payment would be calculated for different work rosters, without any mention of eligibility being restricted to those who were granted a full 12 months of leave. In response, Fire and Emergency maintained that the wording has historically remained consistent, reflecting (it is said) that the meaning was always clear and did not need to be adjusted. I am not satisfied that the 2022 bargaining round assists the interpretation exercise.

[32] The picture is more complex when looking at the 2018 bargaining round. Following this round of bargaining, the collective agreement wording was changed to include the "partner of a pregnant female worker" and the pronoun was changed from "she" to "they". Fire and Emergency argued that this did not alter the fundamental requirement that 12 months of leave must be granted; rather, it merely meant that a partner could qualify but only if the mother's full 12 month entitlement was transferred to them.

[33] I am not drawn to this submission. As touched on above, if it was the case that a partner could only qualify for the entitlement in the unlikely circumstance that the mother chose to take zero days of parental leave, this would have needed to be spelt out explicitly, as it is unlikely that both parties would understand it implicitly. The absence of such an explanation adds support to the Union's interpretation.

Conclusion

[34] While the issue is not entirely clear cut, I prefer the interpretation of the parental leave provision advocated for on behalf of the Union (and which found favour with the Employment Relations Authority). The grant of 12 months' parental leave is not the trigger for eligibility; a worker with at least one year's service who has been granted any length of parental leave is eligible for the payment once they return and complete six months of service.

[35] The challenge is accordingly dismissed.

[36] I do not anticipate any issue of costs arising but if it does I will receive memoranda, with the Union to file and serve within 21 days of the date of this judgment, Fire and Emergency to file and serve within a further 14 days and anything strictly in reply within a further seven days.

Christina Inglis
Chief Judge

Judgment signed at 12.15 pm on 5 August 2026