

# Employment Court clarifies the distinction between a dispute and a personal grievance

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In the recent decision of *Breen v Prime Resources Company Limited* [2023] NZEmpC 199, the Employment Court considered an argument which drew a distinction between a personal grievance and a dispute.

The Court determined that under the [Employment Relations Act 2000](#) (ERA), there is a difference between a personal grievance and a dispute. Disputes arise about the application, interpretation, or operation of an employment agreement, while personal grievances relate to an alleged unjustified disadvantage or dismissal.

Ultimately, it was held that the employee had a dispute (and not a personal grievance), which had to be resolved via the statutory dispute resolution process rather than by way of personal grievance. As a result, the employee could not claim compensation for humiliation, loss of dignity and injury to feelings.

## Background

Mr Breen began his employment at Prime Resources Company Ltd in April 2021. His job was selling off-the-plans apartments for the company.

By August 2021, New Zealand entered into a lockdown and Mr Breen advised Mr Chung (the company's managing director) that he would be working from home.

On 1 September 2021, Mr Breen received an email from Mr Chung which stated that he did not consider Mr Breen had worked full-time in August and so he would not be paying his full pay. He sought Mr Breen's agreement to this deduction, but Mr Breen objected. Mr Breen was not paid fully for August.

The parties exchanged correspondence and went to mediation. Following mediation, Mr Breen was paid his outstanding wages for the month of August and September 2021, however he still felt aggrieved and therefore raised a personal grievance for unjustified disadvantage for the late payments.

The Employment Relations Authority determined the company had unjustifiably disadvantaged Mr Breen in relation to the late payment for the month of August only. Mr Breen was awarded \$2,000 as compensation for hurt and humiliation.

Mr Breen challenged the quantum of this award, and the company also filed a challenge claiming that Mr Breen had not been underpaid for August.

During the course of the Court hearing, the company raised an argument that there was no jurisdictional basis for Mr Breen's personal grievance as the matter involved a dispute about the interpretation of an employment agreement and so could only be dealt with by the dispute resolution process contained in Part [10](#) of the ERA.

## The employment agreement

In the Employment Court, the company claimed that the disagreement arose out of an issue about the interpretation of a clause in Mr Breen's employment agreement. The company submitted that the parties were genuinely in dispute about the application and/or interpretation of that clause.

In Mr Chung's correspondence to Mr Breen on 1 September, he had relied on clauses 4.2 and 4.3 of the employment agreement which stated:

*4.2 You will not be paid for the hour you are not working because of your personal matter or ACC etc. Your holiday and sick leave shall not be applied to this clause.*

*4.3 Prime Resources shall be entitled to make a rateable deduction from your remuneration for the hours you have not worked as specified in clauses 4.2 set out above, which will be reflected with your wage calculation each month.*

Mr Chung informed Mr Breen he considered he had only been working limited hours during lockdown that this fell within the “etc” part of cl 4.2, and that the company was accordingly entitled to deduct the hours assessed as not having been worked. In response, Mr Breen disagreed with this interpretation of the clause.

Importantly, the Court (after considering the cross examination of Mr Chung) determined that Mr Chung genuinely believed his interpretation of the clause was valid.

## Distinction between dispute and personal grievance

The Court held there is an important distinction in the ERA between personal grievances and disputes, and it held that the remedies available for each type of claim depend on the correct characterisation of the claim.

While personal grievances grant compensatory awards including lost remuneration and compensation for humiliation, loss of dignity and injury to feelings, disputes can lead to declaratory relief which can be used to commence further proceedings for a breach of a contract claim, penalty action or a compliance order application.

The Court noted that section [161](#) of the ERA confers exclusive jurisdiction on the Authority to make determinations about employment relationship problems generally but also specifically grants jurisdiction to make decisions about disputes relating to the interpretation of employment agreements.

The Court also noted that Parliament had made a distinction in the dispute resolution processes available under the ERA. Section [129](#) specifically provides that disputes relating to the interpretation, operation or application of an employment agreement are to be dealt with in accordance with the mechanisms set out in Part [10](#) of the ERA, whereas personal grievances are to be dealt with under Part [9](#).

The Court stated that if an issue arises solely from the interpretation and/or the operation of the employment agreement, then it must be pursued by way of the dispute procedures set out in Part [10](#) and not by way of personal grievance. Further, the way in which a litigant describes their claim (as a personal grievance or as a dispute) is not the central issue. Instead, the central issue is what the claim derives from.

## Mr Breen’s case

The Court concluded that as the actions of the company were allegedly contrary to the provisions of the employment agreement, the issue was to be classified as a dispute and so a personal grievance could not be pursued. The company’s actions were based on a genuine interpretation of cl 4 of the employment agreement. The company’s interpretation may well have been wrong (a point the Court did not need to decide), but the claim was an action deriving solely from a disputed interpretation of an employment agreement.

Therefore, the Authority and the Employment Court did not have jurisdiction to decide Mr Breen’s personal grievance claim. Nor did the Authority or Court have the ability to award compensation for humiliation, loss of dignity and injury to feelings as there was no personal grievance. The Authority’s determination was set aside, and Mr Breen was not entitled to any compensation for humiliation, loss of dignity and injury to feelings.

While the Court noted that Mr Breen was entitled to feel frustrated at this result and the merits of his claim were compelling, the Court was not able to determine his claim.

## Conclusion

This case is a good reminder for employers that if there are issues solely arising from the interpretation, application, or operation of an employment agreement, they must be dealt with as a dispute as opposed to a personal grievance.

Classifying an issue as a dispute is dependent on the facts of each case. However, a good indicator is if the issue pertains solely to the interpretation of an employment agreement.

Whereas a personal grievance can lead to compensatory awards for the employee, the dispute route can lead to declaratory relief which allows a party to commence further proceedings for breach of contract and/or penalties.

It is important to note, however, that in this case the Court accepted the dispute was genuine and the employer had a genuine belief it was entitled to take the action it took. If the alleged dispute is seen as disingenuous and a smokescreen to take unjustified action, that will not qualify as a dispute.

Last reviewed on 10 January 2024