

Court of Appeal set to clarify the approach to disputes over the interpretation, application or operation of employment agreements

The Court of Appeal grants leave to determine the scope of section 103(3) Employment Relations Act 2000

The Employment Relations Act 2000 (**Act**) differentiates between personal grievances – defined in section 103(1) and including unjustified dismissal and unjustifiable actions relating to one or more conditions of an employee's employment – and disputes that derive solely from the interpretation, application or operation of any provision of an employment agreement. The distinction between a grievance and a dispute is not always clear however, as illustrated in *Breen v Prime Resources Company Limited* [2024] NZCA 223.

Summary of the case

Mr Breen raised a personal grievance claim against his former employer, Prime Resources Company Limited (**Prime**), for failing to pay his salary for August and September 2021 during the COVID-19 lockdown.

Clause 4.2 of Mr Breen's employment agreement provided that Mr Breen would not be paid for "*the hour you are not working because of your personal matter or ACC etc*". Clause 4.3 provided that Prime was entitled to make a ratable deduction from Mr Breen's remuneration for hours not worked in accordance with clause 4.2.

During the 2021 lockdown, Mr Breen advised Prime he would work from home. Prime did not pay Mr Breen's full salary for August or September 2021, claiming that Mr Breen had not been working full time during that lockdown period. Mr Breen maintained that he had worked full time throughout the relevant period, and following mediation, Prime paid Mr Breen his outstanding pay for August and September (albeit late).

Mr Breen later bought a personal grievance claim in the Employment Relations Authority (**Authority**) claiming

he had been unjustifiably disadvantaged as a result of the late salary payment. Prime argued that, under the terms of Mr Breen's employment agreement, it was not required to pay him for hours not worked. The Authority found there was no evidence that Mr Breen did not work fulltime during August and September, and it did not consider the "etc" reference in clause 4.2 covered the national lockdown, which was out of Mr Breen's control. The Authority upheld Mr Breen's claim and awarded him \$2,000 compensation. Both Mr Breen and Prime appealed the decision.

Mr Breen appealed the quantum of the award to the Employment Court, and Prime appealed the entire decision. Prime raised, for the first time, that the Authority lacked jurisdiction to determine the matter, as Mr Breen's complaint was not a grievance as defined in s 103(1) of the Act. Rather, Prime's position was that the issue specifically concerned interpretation of the employment agreement, and as such should be dealt with under the dispute process at s 129 of the Act.

Section 103(3) of the Act provides that *an unjustifiable action by the employer does not include an action deriving solely from the interpretation, application, or operation... of any provision of the employment agreement*. Where a dispute arises about the interpretation, application or operation of an employment agreement, a party to that agreement cannot raise a personal grievance, but rather it is required to enter into dispute resolution pursuant to s 129 and Part 10 of the Act.

The Employment Court found that Mr Breen's claim was properly viewed as deriving solely from a disputed interpretation of the employment agreement. While Prime's actions may have been unjustified, they were based on a genuine interpretation of the employment agreement. As such, the issue derived from an issue of interpretation, and the dispute procedure of s 129 applied - no grievance based on a disadvantage had arisen.

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(Continued)**

The Employment Court accepted Prime's argument and set aside the Authority's award, requiring Mr Breen to pursue the dispute process under s 129 of the Act.

The Court of Appeal grants leave

Mr Breen applied for leave to appeal the Employment Court's decision, which was addressed by the Court of Appeal in the most recent case. Leave to appeal an Employment Court decision will only be granted where the question of law raised in the proposed appeal is a significant one that, by reason of its general or public importance, ought to be submitted to the Court of Appeal for decision.

Ultimately, the Court of Appeal found that there were seriously arguable questions of law which were significant, and that there is a need to clarify the approach to the proper construction and application of s 103(3). Accordingly, leave was granted for the Court of Appeal to consider whether the Employment Court erred in its construction and application of s 103(3) of the Act.

Is my employment issue a personal grievance or a dispute?

We look forward to the Court of Appeal's clarification of how to apply s 103(3). Until then however, we consider the following guidance may assist employers and employees when determining whether the issue at hand is a personal grievance claim, or whether it is a dispute that can be resolved in accordance with Part 10 of the Act.

The disputes procedure is intended to resolve genuine disputes about the employment agreement, such as an employee's rights or obligations under the contract, usually where the employment relationship is ongoing. The issue may address past conduct where a party to the agreement seeks redress, or it may be in respect of current or future intended conduct, where a declaration may be sought to determine the matter at hand. While the Authority does not have jurisdiction in respect of

disputes, alternative statutory mechanisms are available, including mediation and arbitration.

Nearly all disadvantage claims involve a degree of dispute about the interpretation, application or operation of an employment agreement. Whether an employee is, for example, raising a claim in respect of unpaid wages or claiming an employer's failure to provide a safe workplace, these matters engage issues relating to the employee's employment agreement.

What will distinguish issues to be resolved by the dispute procedure under s 129 from personal grievances, will be when the claim derives **solely** from the interpretation, application or operation of the employment agreement. Where other matters are engaged that sit within the ambit of a personal grievance – being those listed in s 103(1) of the Act – the Authority will have jurisdiction to investigate that claim and make a determination.

Still unsure?

If you have any uncertainty as to whether your issue is a dispute or a personal grievance, our recommendation is to reach out to our employment team, and we can guide you in the right direction, or assist you to bring (or defend) a claim.

Want to know more?

If you have any questions about employment disputes, interpretation or application of employment agreements, or any related employment queries, please contact our specialist [employment team](#).