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## Personal Grievances – Unjustified Disadvantages

Most of us have heard of personal grievances being submitted by disaffected employees who have been dismissed. In this scenario an employee will claim that their dismissal was unjustified and therefore that they are entitled to a number of remedies including reinstatement, compensation for lost wages and compensation for humiliation and distress.

However, personal grievances may be submitted for a number of reasons other than dismissal. The most common is the submission of a personal grievance for an unjustified disadvantage. In short, the employee will claim that the conditions of their employment have been disadvantaged unjustifiably and accordingly that they are entitled to compensation for this unjustified disadvantage.

What qualifies as a disadvantage covers almost every aspect of employment, but the usual complaints include a reduction in an hourly wage rate, a decrease in the number of hours worked, redeployment, reduction in any benefits that the employee has enjoyed through their employment, harassment and discrimination.

Personal grievances submitted for an unjustified disadvantage are ones which are often overlooked, and misunderstood by the employer. They are however, far more common than many people appreciate.

The starting point for an employer, is the employment agreement. The employment agreement sets out the obligations of either party and also sets out the minimum rights that an employee will enjoy.

Any proposed change to these conditions of employment made unilaterally by an employer may result in a submission of a personal grievance for an unjustified disadvantage.

If an employer, for whatever reason, is looking to change the terms and conditions of employment, then it is important to understand how these changes will, or may effect an employee. Employers are often forced into making changes in an employment relationship due to a changing commercial environment, particularly in more difficult times when the work flow decreases. An employer may consider that they have no option but to reduce the hours of an employee, or to redeploy them in order to maintain an efficient and profitable workplace.

In these circumstances, if an employer reduces the number of hours an employee works, or redeploy an employee, or reduces their benefits they may quite legitimately say that they have no choice. While that may on the one hand justify the change in the employment relationship, it won't protect an employer from a personal grievance for an unjustified disadvantage if a fair procedure is not followed.

If an employer is considering changing conditions of employment, it is important to firstly consider what changes they think are necessary and how that may affect the employee. If the proposed changes are potentially to the disadvantage of an employee then an employer cannot unilaterally make those changes.

Before any alterations to the employment relationship are made in these circumstances an employer must consult with the employee. That is, a fair and reasonable consultation process must be entered into between the parties. That would require at the very least for the employer to meet with the employee, explain the proposals and the rationale behind them. If after this process of consultation the employee accepts the necessity and agrees to the changes, then of course no problem will arise.

However, if after this process of consultation the employee is opposed to or resists any alterations to the employment relationship then the employer has a number of options.

If the proposed changes to the employment relationship are significant, then it may well be that the employee's position has in fact been made redundant. The employer may then be required to undertake a process of redundancy, which will again require consultation. That process can be undertaken at the initial discussions relating to the proposed changes or it could be undertaken as a separate event.

If the proposed changes are not such that the employee's position can be regarded as having become redundant, then provided the employer has entered into the process of consultation, the employer would be entitled to implement these changes to the employment relationship. The employer will be able to both substantively justify implementing the changes to the employment relationship and they will also have been undertaken in a procedurally fair way. If the process has been undertaken properly then although the employee's employment relationship and the conditions may have been disadvantaged, they will not be unjustifiably disadvantaged. Accordingly the employee is unlikely to be successful in any submission of a personal grievance for these reasons.

It is therefore fundamentally important for employers to have a comprehensive employment agreement so that if changes to workplace are proposed, then the employer is in a better position to determine the potential effects on the employee. Likewise, the employee is able to better assess what the effect may be on them.

Finally, having arrived at the position of amending the employment relationship between the parties it is important that these changes be recorded within the employment agreement either as an attached schedule, or if the changes are sufficiently significant, then a new employment agreement should be prepared and endorsed by the parties.

Andrew Laurenson is a partner at Govett Quilliam and has a particular interest in personal grievance matters. If you have any questions please feel free to contact Andrew.



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