

Hong Kong: Court Confirms Exclusive Jurisdiction Of Labour Tribunal In All Employment-Related Disputes Except Tort Actions (18 Jun 2007)

Summary

The recent case of ***Glock (Hong Kong) Limited v Brauner Wilhelm*** (HCA2865/2004) confirms that the Labour Tribunal has exclusive jurisdiction in hearing a broad range of employment-related claims, but does not have jurisdiction over claims in tort.

Full Update

Background

Wilhelm was dismissed by Glock (Hong Kong) Ltd in August 2004. Wilhelm commenced proceedings against Glock in the Labour Tribunal alleging a breach of employment contract. Wilhelm's proceedings were transferred to the High Court as a result of an application by Wilhelm.

Meanwhile Glock commenced new proceedings in the High Court alleging breach of express and implied terms of contract and breach of fiduciary duty by Wilhelm (the "**New Proceedings**"). Wilhelm applied for the New Proceedings to be struck out on the ground that the matter was within the exclusive jurisdiction of the Labour Tribunal. An order to that effect was granted and Glock appealed against such order.

Issues Before The Court

The Labour Tribunal has exclusive jurisdiction over all matters which fall within the Schedule to Labour Tribunal Ordinance. Such Schedule provides that the Labour Tribunal does not have jurisdiction:

"to hear and determine a claim for a sum of money, or otherwise in respect of a cause of action, founded in tort whether arising from a breach of contract or a breach of a duty imposed by a rule of law or by any enactment."

Judgment Of The Court

The proper approach to decide matters regarding jurisdiction is to look at the reality of the dispute beyond the technicalities employed in the pleadings. If in reality the dispute is a liquidated or unliquidated claim for damages arising out of an express or implied term in a contract of employment, then the Labour Tribunal has exclusive jurisdiction and the proceedings must commence there.

The court stressed that unless and until the Labour Tribunal declines jurisdiction the High Court is prohibited from hearing such a case.

The court therefore rejected Glock's submission that, upon the proper construction of the Labour Tribunal Ordinance, claims for a breach of fiduciary duty should also be excluded from the Tribunal's jurisdiction. Instead the court confirmed that the Tribunal's jurisdiction is only excluded in respect of claims founded in tort. Since in reality the claims made by Glock were founded not in tort but in contract and equity, the Tribunal did have exclusive jurisdiction over the claims. The appeal was dismissed.

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Relevant area(s) of interest :

- Employment & Employee Benefits

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