

**IN THE EMPLOYMENT RELATIONS AUTHORITY
WELLINGTON**

**I TE RATONGA AHUMANA TAIMAHI
TE WHANGANUI A TARA**

[2025] NZERA 625
3360304

BETWEEN	MICHELLE XIAO Applicant
AND	BEST START EDUCARE LIMITED (T/A BESTSTART EDUCARE) Respondent

Member of Authority:	Davinnia Tan
Representatives:	David Luttig, advocate for the Applicant Stephen Langton, counsel for the Respondent
Investigation Meeting:	On the papers
Submissions received:	15 July 2025 from the Applicant 22 August 2025 from the Respondent
Determination:	6 October 2025

PRELIMINARY DETERMINATION OF THE AUTHORITY

Employment Relationship Problem

[1] Michelle Xiao commenced employment as a teacher with Best Start Educare Limited (BestStart) on 22 March 2021. Ms Xiao has a Masters in Communications.

[2] On 1 January 2022, BestStart introduced a pay parity scheme.

[3] On 5 December 2023, Ms Xiao advised BestStart of her Masters in Communications. Her email of 5 December 2023 to the People and Culture (P&C) team stated:

I received a pay parity increase based on a full pay parity recently. But I got confused when I was reading the description of Qualification Group in the reference guide... According to the guide, "level 9 subject or specialist qualification is in group 5, and it's not required to be directly related to teaching or education."

Actually, I've got a level 9 qualification assessed by NZQA...However, we were only requested to provide other higher relevant teaching qualification to BestStart in 2021... as a result I didn't supply this to pay parity team at that time... My current pay parity step is 5 based on the information supplied in 2021. I'm wondering if there should be any changes if the qualification is adjusted...

[4] On 19 December 2023, Ms Xiao received a letter from BestStart which stated:

BestStart have opted into full pay parity for our certified teachers.
Having considered your new information as part of our auditing and review process, we have identified that your pay parity step was not correctly mapped.
Based on the audited assessment for pay parity you are aligned to:

Pay Parity Step 7
Minimum Pay Parity Rate \$36.67

As you were initially mapped to a lower step, we now need to correct this in our system and align you to the correct step. We can confirm this has now taken place.
Your hourly rate from the 04/12/23 will be corrected to be \$36.67 which is the correct pay parity step...
We would ask that you review the recalculated assessment on the following page of your qualification and experience to confirm it is a true and accurate reflection of your service history by not later than 29/12/23...

[5] Following this letter, Ms Xiao raised concerns on 22 December 2023:

The response is well received...However I have some concerns in this regard...
The communication email about pay parity I received from BestStart requested us to provide relevant teaching qualification, so I didn't supply the Masters degree since it's not related to teaching...
The reference guide on how to determine the qualification group was not attached along with the email sent to me before, and there was no further explanation in the other pay parity confirmation letters which I received in the following years...This is the first time I see the reference guide... which is different from my previous understanding/impression. If the information has been provided in the previous letters, I would not wait and raise my questions after two years.
I'm afraid that I can't agree with no backpay prior to 05/12/23. The higher qualification was achieved before 2021 even if it was not submitted due to some kind of miscommunication. I truly believe that every employee in BestStart would be fairly treated and paid for what they are entitled to... according to pay parity funding rates...

[6] BestStart declined Ms Xiao's request to backpay her at the level of 'Pay Parity Step 7' prior to 5 December 2023. On 11 January 2024, BestStart's National Administration Manager Marie Morris wrote to Ms Xiao stating:

BestStart adopted a fully open communication program to certified teachers from October 2021 when the decision was made...to commit to Pay Parity. BestStart wanted our certified teachers to be informed about pay parity and what would be required.

On the afternoon of the 5th of October 2021, all BestStart certified staff received a letter advising that BestStart were committing to the new pay parity scheme which initially was capped at step 5....

Subsequent to this...teacher[s] were invited to Question and Answer sessions via Teams.

Further communications followed regarding the change from Pay Parity to Extended Pay Parity on the 01/01/2023 then full pay parity on the 01/12/2023.

[...]

[7] Ms Xiao says that based on what BestStart had requested in October 2021, she did not inform BestStart of her Masters in Communications because it was not a teaching qualification. However, she believes that based on what BestStart had committed to as part of the Pay Parity scheme, she should be back paid from the date Pay Parity came into effect. BestStart does not agree.

[8] On 26 February 2025, Ms Xiao lodged a personal grievance claim for an unjustified disadvantage in the Authority and sought compensation under s123(1)(c) of the Act.

The Authority's investigation

[9] For the Authority's investigation the preliminary matter was heard on the papers.

[10] As permitted by s 174E of the Employment Relations Act 2000 (the Act) this determination has stated findings of fact and law, expressed conclusions on issues necessary to dispose of the matter and specified orders made. It has not recorded all evidence and submissions received.

Preliminary issue

[11] This determination considers whether the employment relationship problem is a personal grievance (within the meaning of s103(3)(1)(b)) or is based on an action

derived “solely from the interpretation, application, or operation, or disputed interpretation, application, or operation, of any provision” of the employment agreement¹ (dispute) and therefore excluded by virtue of being a dispute under s103(3).

[12] Section 103(3) of the Act sets out that:

... unjustifiable action by the employer does not include an action deriving solely from the interpretation, application, or operation, or disputed interpretation, application, or operation, of any provision of any employment agreement.

[13] Section 103(3) of the Act has been considered recently by the Employment Court in *Breen v Prime Resources Company Ltd*² which confirmed that a person is prohibited from pursuing a personal grievance over what is in substance a dispute about the employment agreement.

Submissions

[14] Submissions advanced for Ms Xiao were that because BestStart agreed to a “variation” of Ms Xiao’s remuneration in December 2023 by refusing to back pay Ms Xiao from January 2021 to December 2023, this “is a clear disadvantage” and “must be dealt with as a personal grievance”.

[15] BestStart disagrees and submitted that the dispute is a wage claim dispute which “as is the case in all disputed wage claims³...is a dispute over the interpretation, application and operation of the ...applicable employment agreement.” Citing the Employment Court’s decision of *Breen v Prime Resources Company Ltd*⁴(*Breen*), BestStart submitted that Ms Xiao is therefore barred from pursuing a personal grievance pursuant to s103(3) of the Act.

Analysis

[16] Having reviewed parties’ submissions, I consider that at the heart of the employment relationship problem is a dispute about the application of Ms Xiao’s employment agreement with BestStart. The matter is not a personal grievance. This is because whether or not Ms Xiao is entitled to back payment of her remuneration depends solely on the interpretation of the terms and conditions of her employment

¹ Employment Relations Act 2000, s 103(3).

² *Breen v Prime Resources Company Ltd* [2023] ERNZ 816 (*Breen*).

³ For example, see *Mahony v Industry Trade & Training Options Ltd* [2013] NZERA, Christchurch 10.

⁴ See above n2.

agreement with BestStart. The employment agreement includes, not only her written employment agreement, but also subsequent agreements, whether made verbally or in writing, to Ms Xiao.

[17] Rightly or wrongly, BestStart considers that it was not under an obligation to backpay Ms Xiao because it considers it was only obliged to do so once Ms Xiao advised of her Masters degree. Ms Xiao however noted that this degree was attained prior to commencing her employment with BestStart and as such she should have been remunerated accordingly from the date BestStart's Pay Parity scheme was effective. The issue of whether Ms Xiao is entitled to backpay is therefore a question of determining when the obligation to pay Ms Xiao at 'Step 7' of the Pay Parity scheme arose. This is a question of interpretation.

[18] As former Member Loftus stated in *Mahony v Industry Trade & Training Options Ltd*⁵,

The payment of wages is, I conclude, an issue about the application and operation of an employment agreement. Section 103(3) precludes this [personal grievance] claim.

[19] I therefore find that the matter at hand is based on an action derived "solely from the interpretation, application, or operation, or disputed interpretation, application, or operation, of any provision" of the employment agreement⁶ (dispute) and therefore excluded by virtue of being a dispute under s103(3)).

[20] As the Employment Court also made clear in *Breen*⁷, a claim solely deriving from the interpretation and/or operation (or dispute) of the employment agreement must be pursued by way of the disputes procedure and not by way of personal grievance.

[21] I therefore find that Ms Xiao is not permitted to pursue her claim as a personal grievance.

⁵ See n3 above, at para [23].

⁶ Employment Relations Act 2000, s 103(3).

⁷ See above, n2.

Disputes and mediation

[22] Section 129 of the Act provides that where there is a dispute about the interpretation, application, or operation of an employment agreement, any person bound by the agreement or any party to the agreement may pursue that dispute in accordance with Part 10 of the Act.

[23] Having regard to the objects of the Act set out in Part 10 of the Act in supporting successful employment relationships and the good faith obligations that underpin them, including the recognition given to mediation services in the manner described in Part 10 of the Act to support all employment relationships, I consider this matter one that may be best resolved and appropriate for mediation.

[24] In reaching this view, I am also cognisant of the fact parties do not dispute that Ms Xiao and BestStart have maintained an excellent employment relationship, and the dispute is isolated to the current issue before the Authority. Further, section 159 of the Act requires the Authority to consider mediation where any matter comes before the Authority for determination. Now that the preliminary issue has been determined, I consider there is merit in parties attempting to resolve the substantive matter by mediation.

Orders

[25] Parties are directed to mediation by 30 January 2026.

[26] If, following mediation, Ms Xiao wishes to commence investigation into the dispute, she should advise the Authority, and a case management conference will be convened to timetable an investigation meeting of the substantive matter as to whether there are wages in arrears, owing to Ms Xiao in the circumstances set out above.

Costs

[27] Costs are reserved. The parties are encouraged to resolve any issue of costs between themselves.