

Dispute Resolution Process

The 3 "Ps" and the Dispute Resolution Process

Three concepts that encourage individuals to share all information are:

1. **Without Prejudice:** This means that, in the event that a mutually agreed resolution is not achieved, the meeting, discussion and participants cannot be held to anything that they said or anything that they may have offered, in attempts to resolve the dispute.

A meeting does not have to be declared "without prejudice." Arbitrators have ruled that grievance meetings are automatically without prejudice. This allows the parties to openly discuss potential resolutions without the fear of being held to what they might propose at a later date when circumstances may have changed.

An example of the meaning of "without prejudice" is where an Employer offers a monetary resolution to a dispute and the offer is initially turned down by the Union. The parties continue discussions and the Employer becomes aware of new information they believe strengthens their position. During future discussions to resolve the issue, the Employer may make an offer that is less than the first settlement offer. They can do this because the settlement discussions and the earlier offer were without prejudice – it's as if the first offer never existed.

2. **Without Precedent:** This means the terms of the resolution cannot be used in future proceedings as evidence of an interpretation, practice or commitment. For example, to resolve a Personal Leave grievance, an Employer may agree to grant a day of Personal Leave for a reason that the Employer would not normally consider as appropriate. By agreeing to the resolution on a "without precedent" basis, the Employer is not obliged to recognize those same reasons in the future, and the resolution cannot be held up as an example of the Employer's agreement to a specific interpretation.
3. **Privileged:** This means the discussions are confidential and anything discussed cannot be disclosed at the arbitration that may result from the grievance being discussed, or any other arbitration. ¹ Like the conversations between a lawyer and their client, conversations that are for the purpose of grievance resolution² are generally considered privileged and the content of the discussions cannot be introduced as evidence in any arbitration. This includes discussions between the Union and the grievor, and the Employer and its Managers. ³

There may be exceptions to this general rule.

The concepts in the above three phrases serve the overall purpose of protecting the integrity of the dispute resolution process in order to stimulate open discussion and exchange of information. This supports the principle that the purpose of the process is to try to reach resolution of the issue.

¹ Not necessarily privileged to matters before the Court.

² It is important to remember that meetings for the purposes of investigation may not be privileged.

³ The question of privilege is complex at times. If you are unsure, seek advice from your Union or Employer Labour Relations.

4. **Memorandum of Settlement (MOS)**

Not every resolution requires a formal MOS, however, where one is needed, there are a number of key elements that should be contained in an MOS:

1. Identification of the Parties to the Settlement (Union and Employer);
2. Reference to the issue or grievances;
3. How the matter is going to be resolved;
4. Waivers of liability;
5. Consequences of breaches of the settlement;
6. Signing spaces for the parties and the witnesses;
7. A release by the grievor(s) that acknowledges any specific individual responsibility, including an acknowledgment they are bound by the Memorandum and signing space for the grievor and a witness.

Note: In certain limited situations a confidentiality clause may be appropriate if agreed to between the parties.