



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 165

APPLICANT **BD Ltd**

RESPONDENT **N Ltd**

The Tribunal orders: Please email the parties.

This claim is dismissed.

Reasons

1. BD Ltd introduced a potential employment candidate (UI) to a company called N Ltd in July 2020. She was interviewed by N Ltd but subsequently they were unable to offer a position at that time to UI. Another employment role was taken up by UI in 2020.
2. In June 2022 UI contacted BD Ltd seeking an employment opportunity. In turn BD Ltd contacted N Ltd notifying them that UI was available for any employment opportunities. At that time, N Ltd responded to say they did not have any vacancies.
3. In December 2022, UI was employed by N Ltd. BD Ltd claim they are entitled to an introductory fee of \$26,967.50. N Ltd decline to accept there was a contractual relationship or obligation by them to BD Ltd.
4. The issue for the Tribunal to determine is whether there was a contract between the parties?
5. The relevant law is the Contract and Commercial Law Act 2017.

Whether there was a contract between the parties?

6. A contract is a legally binding promise or agreement; an act in law where two or more persons declare their consent as to any act or thing to be done or forborne by one side for the benefit of the other side. A promise or agreement is not legally binding and enforceable as a contract unless the requirements for contract formation, including certainty of agreement, and consideration, are satisfied. In this claim, I find certainty of agreement and consideration were not satisfied.
7. I have considered the submissions and evidence presented by both parties. Timing is a factor that also has been considered. In the first instance an introduction was made in 2020. At that time the terms of engagement by BD Ltd to N Ltd, on introduction of their candidate, was that a referred candidate is considered a candidate for 12 months from the date of introduction. That if an employment offer is made to the candidate, then a fee is due.
8. In this claim BD Ltd believe they reintroduced UI to N Ltd by email in June 2022. However, N Ltd state they responded to that email stating there were no vacancies. N Ltd did not meet with UI in June 2022, there was no reintroduction, and they did not have an opening at that time. N Ltd say

there was no engagement or interview or otherwise. BD Ltd says that later in the year in October 2022, UI met with N Ltd and at that time she was offered employment. BD Ltd says they are entitled to a fee. However, N Ltd have provided information that shows UI contacted N Ltd herself, that she did not approach N Ltd through BD Ltd as her agent, and she did not mention being with an agency at the time. Over a series of discussions, she accepted an offer.

9. According to N Ltd, no contract exists as there was no intention in June or July 2022 to create an employment opportunity. While BD Ltd believe their original introduction in 2020 and again their email contact in June 2022, is acceptance of N Ltd accepting the terms of engagement. I find it does not extend to acceptance in 2022 where there has been no re-engagement of terms or any acceptance from N Ltd that they agreed to recruitment services in 2022. There was no acknowledged acceptance that BD Ltd provided a service to N Ltd. The June/July emails do not constitute an offer, acceptance and consideration or intention to create legal relations. Therefore, the elements of contract are not met.

10. For these reasons the claim is not substantiated.

Referee: S Connell
Date: 27 June 2023



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact. Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.