



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 142

APPLICANT **BI**

APPLICANT **SI**

RESPONDENT **BA**

The Tribunal orders:

The Applicant's claim is not proven and therefore dismissed.

Reasons:

1. The Applicants are claiming \$21,030.00 which they say is the amount that they paid to the Respondent in three cash payments (21 July 2015- \$12,000.00, 27 July 2015 -\$3,000.00 and 17 August 2015 -\$6,000.00). The Applicants claim that the Respondent was to use this money to pay his brother in [Country] for cars that the Respondent's brother was to purchase and send to SI.
2. The Applicants claim that BA did not pay his brother as agreed, but rather kept the money himself. This has left the Applicants without their money and without the cars that the Applicants understood they were purchasing.
3. At the first hearing I adjourned to allow the Applicants further time to obtain documents from the Police file. At the second hearing the Applicants told me that they had further information which they wanted the Tribunal to consider, I allowed the Applicants further time to send in these documents, which they did. I confirm that I have considered all the evidence filed by the Applicants in determining this matter.
4. BA did not attend either hearing. The Tribunal can hear a claim in the absence of one party. (See s 42 Disputes Tribunal Act 1988) However, in order to be successful, the Applicants must prove their claim on the balance of probabilities.
5. I am satisfied from the evidence that there was an agreement between the Applicants and Respondents that the Applicants would pay the Respondent money and that he would on pay that money to his brother in [Country].
6. The questions to be determined are:

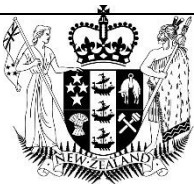
- a) Did BA breach the contract by not paying the sums paid by the Applicants to his brother in [Country]?
- b) If so, what is the remedy?

Did BA breach this agreement?

7. I am satisfied that BA received some payments from BI and SI because he accepts that he did so when interviewed by the Police on the 9 November 2015.
8. Having considered the evidence I am not satisfied on the balance of probabilities that BA breached this agreement because:
 - There is insufficient evidence to prove the exact amounts that they paid BA and how they were paid. There were no receipts for the money and no written documents, such as text messages, invoices, email correspondence between them and BA, which support the amounts that they say that they paid BA. Following the hearing on the 5 April 2023 the Applicants provided receipts from a [Car] which they say they sold for cash, and then used that cash to pay BA. The documents provided show that they sold a vehicle for cash to a [scrapping company], it does not show payment to BA, or the amount that they paid to BA.
 - The Applicants have not proven that BA did not send the money to [Country]. In his Police Statement BA told the Police that he sent the Money to a [company] in [Country]. It appears from the Police file, that the file was to be closed when BA provided receipts or evidence to the Police of those amounts being paid (BA told the Police that this payment was made via [a bank]). On the 20 December BA sent an email to the Police with the heading *confirmation of cash payments* and a word document attached. (The word document was not provided in evidence, so I do not know what it says). The Police file was closed shortly after that, so it is reasonable to infer that BA provided the Police with some evidence that he had made those payments, as he said, to [Country].
 - There are no documents to show what vehicle each payment was for. At the first hearing the Applicants confirmed that they had received some vehicles from [Country], but it was unclear whether those vehicles were the ones that they had made cash payments for or not.
9. As the Applicants have not proven their claims, then the Application is dismissed.
10. I further note that the Police report refers to BA as BX.

Referee: T Prowse

Date: 2 May 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>.