



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2023] NZDT 168**

**APPLICANT      BS**

**RESPONDENT    O Ltd**

**The Tribunal orders:**

The claim by BS against O Ltd is partially proved. It is declared by the Disputes Tribunal that BS does not have to pay O Ltd the sum of \$468.00.

**Reasons**

1. In October 2018 O Ltd slipped BS's boat for maintenance. BS now brings a claim against O Ltd for a declaration that he does not owe O Ltd \$1,051.10.
2. The issues to be resolved are:
  - (a) Can the Disputes Tribunal impose a 'quasi contract'?
  - (b) If so, what is the remedy?

**Can the Disputes Tribunal impose a quasi contract?**

3. BS explained that when he had his boat hauled out, in 2018, it was discovered that he needed a specialised plank to replace part of the keel area of his boat. In March 2019 the timber was purchased, and O Ltd prepared it and placed it in storage in a specialised way with bolts and so forth in order to preserve the expensive wood's integrity so it could be used in 2-3 years' time, to be fitted onto BS's boat. BS paid O Ltd for the plank.
4. It was not disputed that when BS tried to have the boat hauled out in 2021 O Ltd couldn't accommodate him and in 2022 he had ND marina haul out the boat and do maintenance. Further, in 2023 BS was advised by O Ltd that he could haul out the boat in June and fit the wooden plank, however, after some consideration BS decided not to go through with the job because he had decided to sell the boat.
5. BS submitted that he should not have to pay for the four years of storage claimed by O Ltd.
6. NX representing O Ltd explained that in 2020 Covid 19 resulted in O Ltd being shut down for about six months.
7. NX said that at any time BS could have had his boat hauled out by another company. NX said O Ltd invoiced BS for the sum of \$4.00 per week for approximately 200 weeks because O Ltd had kept the wooden plank safe at a controlled temperature and in such a way so as to preserve its integrity.

8. NX said that O Ltd wouldn't have charged BS for the storage if BS had continued with O Ltd and undertaken to have plank fitted as earlier anticipated by both parties.
9. NX said that because O Ltd did not receive the benefit of the repair job, it was only fair and reasonable that BS pay for the storage.
10. I am satisfied that BS has partially proved his claim for the following reasons:
11. I accept there was no contractual agreement between the parties that BS would pay for storage. That was confirmed by NX when he explained that O Ltd wasn't expecting to charge BS for the storage because O Ltd expected to get the benefit of undertaking the repairs to the keel of the boat.
12. The Disputes Tribunal has jurisdiction to hear claims in contract and quasi contract. Quasi contract was described by the Court about another claim that was heard in the Disputes Tribunal as follows: "The common thread would appear to be that they are all situations where one party has provided a benefit to another, which that other party has taken advantage of so that the courts impose an obligation to pay for that benefit. The obligation which the courts recognise is thus not one imposed unilaterally on that party by another. It arises by reason of what they both do or say. In those circumstances, the liability arises even though there has not been a legal contract or necessarily any agreement".
13. I am satisfied that I can impose a quasi contract in relation to the storage of the plank.
14. I take into account BS's submissions that O Ltd did not question him about payment for storage between the time that the plank was first installed and paid for and then stored and four years later when he made the decision not to go ahead with the repairs.
15. I also take into account that BS was not solely responsible for waiting for four years before acquiring a haul out date from O Ltd. I accept that Covid 19 and the lock down period described by NX frustrated the process. I also accept there were times when O Ltd couldn't accommodate BS's request for a haul out.
16. However, I acknowledge that BS has received a benefit from the storage because O Ltd has kept his property safe and in good condition in a specialised way in its facility. Although, storage fees were not contemplated until four years later, I also take into account that O Ltd was not anticipating charging BS because it expected to get the benefit of a future haul out and repair job.
17. For these reasons I find that while there was no contract for storage fees, I can impose a quasi contractual obligation on the parties. I am satisfied that O Ltd agreed to store BS's plank in the expectation of further work, and BS received the benefit of the storage in the expectation that he would be engaging O Ltd to do the future work. If O Ltd had not expected to receive the benefit of the future work, they would have not had a reason to store the plank without charging fees.
18. For these reasons I am satisfied BS should pay some fees towards the storage of his property.

**If so, what is the remedy?**

19. BS also claims that he should not have to pay for the unbolting and moving the plank out of the shed manually (6 men-15 minutes each) at \$100.00.
20. Because BS paid for the timber to be picked up and set up in the shed in 2019 it is a reasonable inference that he expected to pay for its removal from the shed.
21. For these reasons I am satisfied that BS should pay the fee for the removal of his plank from the shed for which he was invoiced \$100 before gst.

22. Because I have found that there was a quasi-contractual relationship between the parties for the storage of the plank, I am satisfied that BS should be liable for storage costs. However, I reduce these by half to take into account the period of covid when BS was unable to slip his boat or remove the plank and the time when O Ltd were unable to accommodate BS which may well have reduced O Ltd's storage time.
23. For these reasons I find that the claim by BS against O Ltd is partially proved and BS does not have to pay O Ltd the sum of \$468.00 or in other words half the storage fees that O Ltd has invoiced BS for.

**Referee: K Johnson**  
**Date: 03 July 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>.