



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 12

APPLICANT **BX**

RESPONDENT **F Ltd**

The Tribunal orders:

1. BX's claim against F Ltd is dismissed.
2. BX must pay F Ltd \$160.00 by 4pm on 13 March 2024.

Reasons:

1. The applicant parked in a carpark monitored by the respondent on 21 August 2023 and received a parking ticket for unauthorised parking for an amount of \$160.00. The applicant seeks a declaration of non-liability for an amount of \$305.00 which includes the amount of the parking ticket, penalty charges for non-payment and the Tribunal's filing fee.
2. At today's hearing the representative for the respondent, HX, told the Tribunal that the applicant had not been charged a penalty fee as she had disputed the ticket. Therefore, the only amount she was liable to pay the respondent was the amount of the ticket which was \$160.00.
3. The issues to be determined by the Tribunal were:
 - a. What were the terms on which parking services were offered?
 - b. Did the applicant accept those terms?
 - c. Did the applicant breach the terms and conditions of the carpark?
 - d. If so, what fee is the respondent able to charge the applicant as a result of that breach?
 - e. Is the applicant able to claim the Tribunal's filing fee?
4. Any applicant to the Tribunal has the task of establishing the legal and factual elements of its claim to the required standard. That standard is the balance of probabilities which means that it is more likely than not. When assessing whether the onus of proof has been discharged by a party I need to consider and evaluate the evidence presented to the Tribunal by the parties.

What were the terms on which the parking services were offered?

5. The relevant law is the law of contract.
6. On the evidence provided I find that the signage setting out the carpark's terms and conditions was clear and visible to users of the carpark. I am also satisfied that if someone using the carpark did not agree to the terms and conditions, they were able to leave without incurring any cost.

7. The evidence shows that the terms and conditions of the carpark allowed customers of the retailers could use the carpark for a period of 120 minutes without incurring a fine. If they breached the terms of the carpark, users of the carpark could be liable for a fine of up to \$200.00.

Did the applicant accept those terms?

8. I accept that the applicant accepted the respondent's terms on which it offered its parking services when she decided to park in the respondent's carpark.

Did the applicant breach the terms and conditions of the carpark?

9. The parties disputed the evidence provided to the Tribunal. However, as set out above, the applicant has the burden of proof. After weighing up the evidence, I do not find that the applicant has shown it is more likely than not that she did not breach the terms of the car park. I say this because:

- a. The evidence shows that although the applicant did make a purchase from one of the retailers, this was after the ticket was issued.
- b. The applicant told the Tribunal she entered the carpark at 4:25pm, which means the purchase was made an hour and 15 minutes later. The applicant had parked in the car park for approximately an hour before the ticket was issued. I find that it is reasonable to assume that if the applicant was going to make a purchase, it would have been made long before the ticket was issued.

If so, what fee is the respondent able to charge the applicant a breach fee?

10. On the evidence provided I find that the respondent is able to charge the applicant a fine of \$160.00 because she breached the terms and conditions of the carpark.

11. In summary, as the applicant requested a declaration of non-liability for the amounts the respondent claimed she owed pursuant to the breach notice, I am entitled under section 11(2)(b) of the Disputes Tribunal Act 1988 (DTA) to order that any amounts I do find to be owing by the applicant to the respondent should be paid. Therefore, I find that the applicant should pay the respondent \$160.00.

Is the applicant able to claim the Tribunal's filing fee?

12. The applicant also claimed the Tribunal's filing fee of \$45.00. Section 43 of the Disputes Tribunal Act 1988 only allows a party to claim costs, including the filing fee, in certain limited circumstances, none of which apply in this case. For this reason, I do not find that the applicant can claim this fee.

Referee: K. Armstrong
Date: 21 February 2024



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>.