



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 83

APPLICANT **C Ltd**

FIRST **OB as trustee of B Trust**
RESPONDENT

SECOND **B Ltd as trustee of B Trust**
RESPONDENT

The Tribunal orders:

OB and B Ltd, both as trustees of B Trust, are jointly and severally liable to pay \$11,270.00 to C Ltd on or before 30 March 2023.

Reasons

1. C Ltd contracted to provide earthworks for the B Trust's new swimming pool which was being built under a separate contract with BU Ltd.
2. An initial estimate of \$5000-\$5500 + GST was given (it appears verbally) to OB acting on behalf of the Trust and the Trustee company.
3. Some months later, the day before the digging was to begin, OB was advised that some extra materials and work were going to be needed. On the day of the dig, costs escalated significantly, with an apparent change to the ground levels as well as other extra costs. OB signed a variation form which detailed the extra work but which did not record any extra price information.
4. OB says he was advised verbally that the extras listed on the variation form would cost \$1800+GST. He says he also agreed to the use of a crane on the day, although was feeling that he had no choice to agree to the extra costs at that stage, and was told that would cost \$2500+GST.
5. C Ltd invoiced \$12,794.00+GST for the job (\$14,713.11) and claim that amount plus the Tribunal filing fee (although, as stated at the hearing, the fee cannot be awarded under the Disputes Tribunal Act 1988).
6. The issue to be determined is:
 - What extra charges were incurred on the job and were they reasonable?
7. I find that the claim is only proven to the extent that OB for the Trust agrees to the extra charges, because although a variation form was signed, no supporting evidence in the form of supplier invoices was provided at the hearing to support the additional costs.

8. OB acknowledges that he was told about \$1800.00 worth of costs (which C Ltd contends was for the extra scoria alone) and that he was advised it was \$2500.00 for the crane. In the wider context of the dispute, I also acknowledge OB's point that finding out on the day work was occurring that there were costs that more than doubled the price he had been given originally by C Ltd put him in a difficult position and I accept that his agreement to the costs he says he did agree to was reluctant. When an estimate is given, it is best accompanied by some detail of what basis the price is given on, for example assumptions about ground level or amount of excavation to be undertaken for that price, and what it includes or excludes.
9. There was also little supporting evidence for the explanations given as to why additional costs were incurred, so it was difficult for the Tribunal to determine whether or not those costs were genuine 'variations' or items that should reasonably have been provided for in the original estimate provided by C Ltd.
10. For all these reasons, I consider that the price OB has already offered to pay, being \$5500.00 (the upper end of the original estimate), \$1800.00 for the variations listed on the form and \$2500.00 for the crane, all plus GST, a total of \$11,270 incl. GST, is fair and reasonable.

Referee Perfect

Date: 2 March 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>.