



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

**District Court**

**[2020] NZDT 1359**

**APPLICANT      CW Ltd**

**RESPONDENT    KI**

**The Tribunal orders:**

KI is to pay \$1,044.75 to CW Ltd on or before 11 November 2020; and  
CW Ltd is to deliver the remaining books in their possession to KI forthwith.

**Reasons**

1. KI engaged CW Ltd trading as QQ to provide printing services for a children's book she had written and illustrated. Just prior to the book order, QQ had printed 250 calendars for KI.
2. QQ quoted \$1,144.25 incl GST to print 100 x 28-page books and a proof was sent which KI approved.
3. When KI received the 100 printed books she immediately contacted QQ and advised that the covers were missing. It transpired that there was an internal cover which QQ had understood to be the main cover. The book as printed has 27 printed pages and 1 blank page and was printed as per the proof approved by KI.
4. KI subsequently kept 10 of the books, paying \$99.50 for them, and returned the remaining 90 books.
5. QQ claims \$1,148.47, being the invoiced amount of \$1,144.25 minus the \$99.50 paid already, plus \$103.72 in contractual interest charges.
6. KI did not lodge a counter-claim, but seeks a finding that the contract included covers separately such that CW Ltd is required to print and provide covers within the existing contract price.
7. The issues to determine are:
  - Did QQ provide the product as per the contract?
  - Is KI liable to pay the claimed amount?

*Did QQ provide the product as per the contract?*

8. I find that the books were printed and supplied in accordance with the contract because they were consistent with the quotation in terms of number of pages and, significantly, they were printed as per the final proof which KI had approved.
9. KI supplied two different files to QQ, one she called the 'draft cover' (on 4 December 2019) and one she called the 'final draft for the book interior' (on 5 December 2019) in emails to QQ. Those two files combined contain 29 printed pages and 3 blank pages which, if all printed together as intended by KI, result in a 32pp booklet.
10. The quotation sent by QQ is dated 5 December 2019, presumably generated after the 'final draft for the book interior' was sent through because that was emailed to QQ at 7.03am. What QQ quoted was a 28pp booklet which was only sufficient for the book interior although they say as various versions of files had been sent through to them, they understood the 'interior cover' in the larger file to be the intended main cover, because the previous 'cover' file had been described to them as a draft.
11. Given that KI used the wording 'final draft for the book interior' in her email of 5 December at 7.03am, I am of the view that QQ made a mistake in quoting a 28pp booklet. Further KI points out that what she intended to be the interior cover could not have been the main cover as it does not contain her name as author and illustrator as one would expect to see on a main cover. I accept that there was sufficient information available to QQ that they should have realised, or at least sought to clarify, that the complete booklet was made up of two files.
12. However, unfortunately KI confirmed the mistake, first by accepting the quotation for 28 printed pages, whereas she had supplied 29 printed pages (which with proper formatting, including necessary blank pages, would have resulted in a 32pp booklet), and later by approving the proof. The proof is the stage in the printing process where a copy of exactly what is going to be printed is sent to the client for approval. KI said she assumed QQ had just sent her the interior for approval. However the proof also contains the wording "Please check thoroughly. By accepting this proof, you accept all responsibility for errors so please be thorough." The proof also contains enough details in terms of how the 28pp booklet is made up, that a thorough check should have revealed that only the 'interior' was being printed. "6 pages of Custom Double-Sided 150gsm Silk Matt (the interior pages) is only 24 booklet pages, whereas the 'interior file' contained 27 printed pages.
13. KI should have been familiar enough with her own book that she picked up the error at the quotation stage, but certainly at the proof stage. If she had, there would have been a revised quotation and an increase in price. So the price she has paid is for the printed pages she received and QQ is not obliged to carry out extra printing at their cost. The problem now is that it is apparently difficult to add the cover to the finished product as supplied and also that the current booklet has heavier 'cover' pages on what were supposed to be interior pages. However given KI acceptance of the proof, the cost of remedying the problem is hers to bear.

*Is KI liable to pay the claimed amount?*

14. For all the above reasons, I find that KI is liable to pay the invoiced amount for the printing carried out by QQ. However I do not award the contractual interest because of QQ's contribution towards the issue due to their mistake at the quotation stage. Therefore KI is liable to pay \$1,044.75, being the contract price of \$1,144.25 minus \$99.50 already paid.

**Referee:**

**Date: 21 October 2020**



## 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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.