



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 371

APPLICANT D Ltd

RESPONDENT G Ltd

The Tribunal orders:

G Ltd is to pay D Ltd \$19,662.67 on or before 25 May 2023.

Reasons

1. D Ltd supplied electricity to G Ltd as the company is now called, (previously GH Ltd), under D Ltd's terms and conditions. In about 2020 and 2021, D Ltd discovered that there had been problems for some time with the electricity meters which measured the amount of electricity used by G Ltd. It was ultimately discovered that one meter had been bypassed (that is, the electricity supply was set up not to be measured by the meter) and another meter had simply stopped working. The meters were repaired in about February 2022. D Ltd estimated the usage that had not been properly measured and billed by the processes in its terms and conditions and issued an invoice to G Ltd. G Ltd did not pay. D Ltd filed a claim in the Disputes Tribunal.
2. This is a claim for payment of unpaid invoices for an estimated amount of electricity supplied by D Ltd and used by G Ltd in the sum of \$19,662.67.
3. The issues to be decided were as follows:
 - a. Has G Ltd breached a legal obligation to pay the invoiced amount?
 - b. If so, what is payable in total by G Ltd?
4. The hearing was convened by telephone today. I was unable to contact CM, the director of G Ltd, on the phone number provided. Under the Disputes Tribunal Act 1988 I can resolve a dispute in the absence of one of the parties.

Has G Ltd breached a legal obligation to pay the invoiced amount?

5. When two parties reach agreement, for example about the provision of goods or services in exchange for payment, a legally binding contract arises. The terms and conditions that apply are those that are made known to the parties prior to the point at which agreement is reached. Failure to comply with the terms of the contract is a breach for which compensation may be payable.
6. D Ltd's terms and conditions are comprehensive and were provided in evidence today. When a problem with a meter develops such that the amount of electricity is not measured or is measured incorrectly, the terms and conditions provide D Ltd with the ability to estimate the amount of

supply that has been used but not billed, and to invoice the customer. That charge will be payable and enforceable under the contract, unless of course there is a mistake in the calculation.

7. In this instance D Ltd discovered that one of the meters had been tampered with, knowingly or unknowingly, so that the electricity supplied to the property was not measured properly. D Ltd estimates this started in about September 2018. Further, from about May 2019, another meter had failed altogether. The two meters were finally repaired on 3 February 2022. In the meantime, there had been at least two if not three years of incorrectly measured supply to G Ltd.
8. In terms of its contractual rights, it appears that D Ltd would be able to estimate the lost measurements back to the point at which it first went wrong. However, in practice, this is not how this is usually calculated. In the hearing today, TB from D Ltd said there was an informal "365 days maximum" policy which D Ltd applies for the benefit of the customer; that only the last year would be estimated and recovered, unless there was evidence of deliberate fraud. In this instance that meant that only the final 12 months' worth of estimated supply was claimed. This would result in effect in this case, bearing in mind the length of time that there appeared to have been incorrect measurements (two or three years), in a significant discount of what technically D Ltd could have recovered.
9. Further, TB demonstrated in the hearing that the usage estimate made for that time, of about 36 units per day, was actually significantly less than the more likely usage of about 268 units per day on average, bearing in mind seasonal variations. There had been some mistakes made by D Ltd in terms of the invoicing, in which a number of invoices were incorrectly credited, and then rebilled, which probably caused some confusion. TB was clear that while D Ltd is claiming about \$19,000.00, if it relied on its strict rights under the contract, the amount claimed could be at least double that, and probably more, in terms of both the 365 day policy and the estimated daily usage. D Ltd however was not willing to claim that full amount in this case and was prepared to accept that the amount claimed is appropriate, bearing in mind all its policies, and what had occurred.
10. The amount of \$19,662.67 was invoiced to G Ltd by D Ltd as the underpayment caused by the meter faults. I find that under D Ltd's terms and conditions, this amount is payable under the invoice, and the failure by G Ltd to pay this amount is a breach of the terms of the contract with D Ltd.

If so, what is payable in total by G Ltd?

11. When one party breaches a contract, the other party is entitled to claim compensation for the loss it has suffered as a result.
12. In this case because G Ltd has not paid the duly invoiced amount of \$19,662.67, this is the amount G Ltd is ordered to pay to D Ltd.

Referee: M Wilson
Date: 27 April 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>.