



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

[2023] NZDT 539

**APPLICANT** DC

**RESPONDENT** K Ltd

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. DC was visiting K Ltd at about 8pm on a Sunday evening with friends. He asked the barman if he, the barman, could plug his phone in to charge, behind the bar. The barman agreed and plugged DC's phone in.
2. At 8.20pm that night CCTV shows a man speaking to another barman and the barman taking a phone and charger out of the wallplug and handing the phone to this man.
3. At about 8.56pm that night DC returned to the bar and asked for his phone. He saw two other phones plugged in charging but his was not there. His was the phone handed to the man at 8.20pm.
4. DC claims \$1200 from K Ltd, the owner of the K Ltd represented by KD, comprising:
  - \$280, the sum he paid for his phone a few months earlier; and
  - \$920 for stress and the loss of information etc on the phone.
5. The issue to be decided in the first instance is whether K Ltd took possession of the phone into its care.

**Did K Ltd take the phone into its possession under a bailment relationship?**

6. A bailment is a legal relationship related to physical possession of property. It arises where one party (the bailee) knowingly and willingly accepts possession of goods belonging to the owner (the bailor) with the obligation to take reasonable care of the goods, to prevent loss or damage.
7. DC said he introduced himself to the barman, asked if his phone could be charged behind the bar and said he would return in 40 minutes or so. He said he told the barman he was with someone who was a regular at the bar and named her. He said the barman agreed.
8. I find that the acceptance by the barman to allow DC's phone to be charged behind the bar did not create a bailment relationship giving DC rights of compensation. I make this finding for the following reasons:

- a. DC obtained a favour that was outside the service provided by K Ltd and as such came with no legal obligation by bar staff.
- b. DC's expectation for its care by bar staff is in contrast with the lack of care he took of the phone. KD made a salient point that he had occasion to have his phone charged earlier that day in a café and positioned himself where he could effectively guard it.
- c. It is common knowledge that phones are attractive items to steal. DC went outside of the bar to sit with friends and did not make a point of having the phone or that end of the bar in his sight.
- d. A bailment relationship is usually connected to the bailor handing over goods to a bailee for the purpose of having work done ie a panelbeater, a mechanic; or for a fee.
- e. Because bailment creates independent rights and obligations, it must be clear to the parties, particularly the bailee that they are obliged to take reasonable care of the goods.
- f. I do not see that situation in this case where there are a number of staff and no system in place agreed to about the care of the phone and how this was to be managed.
- g. The barman's agreement to allow the phone to be charged did not provide DC with the release of its care by him.

**Conclusion:**

9. The only legal recourse for compensation for DC is if he proved a bailment relationship was created and as he has not proved this, the claim is dismissed and no further hearing is needed.

**Referee: J Savage**

**Date: 3 October 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>.