



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 536

APPLICANT DD

RESPONDENT H Ltd

The Tribunal orders:

DD Must pay H Ltd \$1,012.00 by 4pm on 7 November 2023.

Reasons:

1. The respondent provided the services of an electrician to the applicant. The applicant was charged \$1,257.38 for this work of which \$195.00 has been paid to date. The applicant is unhappy with the work and the amount she was charged and has not paid the invoice. The applicant seeks a declaration of non-liability for the amount of \$600.00 from the respondent.
2. The issues to be determined by the Tribunal were:
 - a. What work did the parties agree the respondent should do?
 - b. What price did the parties agree would be paid for the work? Did the respondent mislead the applicant as to its charges?
 - c. If no price was agreed, was the amount the respondent charged a reasonable price? If not, what is a reasonable price?
 - d. Did the respondent provide its services with reasonable care and skill?
 - e. If not, what remedy is available to the applicant?
 - f. What amounts, if any, should be paid between the parties?
3. 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.
4. The relevant law is the law of contract and the Consumer Guarantees Act 1993 (CGA). The CGA provides guarantees to consumers who obtain services from a person who is in the business of providing that service.

What work did the parties agree the respondent should do?

5. The work to be done by the respondent was for cables to be laid from the applicant's house to the self-contained studio in the applicant's garden to enable the applicant's son to have a high speed internet connection to enable him to continue his studies.
6. The respondent's representative, Mr Q told the Tribunal that this involved laying 42 metres of cables from under the house to the studio and that both an electrician and an apprentice attended the site.

What price did the parties agree would be paid for the work? Did the respondent mislead the applicant as to its charges?

7. The respondent provided a call recording between a member of the respondent's staff and the applicant's son during which the respondent's costs were discussed. These included the initial call out rate and the hourly rate that applied after that, plus any charges for materials supplied. The respondent also offered up a site visit to enable a quotation to be given but the applicant's son declined. After saying he was comfortable with the quoted charges, the applicant's son booked the job without a quotation.
8. The applicant told the Tribunal that her son had asked multiple times for the respondent to come and provide a quotation, but this had been cancelled which led to the need for the job to be done with some urgency as her son was about to start his university year. However, although this was not a great customer experience for the applicant, either she or her son were free to choose to engage another party.
9. The costs agreed to were therefore \$170.00 plus GST for the call out fee and first hour and \$95.00 per hour labour costs after that, plus materials. No further mention was made if the other charges discussed were inclusive or exclusive of GST. The respondent told the Tribunal that because the first charge was mentioned as being exclusive of GST, by implication, the other charges would be as well. However, where a price is quoted and it is exclusive of GST then a service provider must make this clear to its customer.
10. During the call the applicant's son also estimated what he thought the job would cost based on his assessment of the hours needed (2-3 hours) and that the only materials were cabling which would not cost much.
11. The applicant told the Tribunal that her son was made to understand that the cost would not be more than \$500.00. However, I do not find that this was the case. On the basis of the call recording while this may have been the applicant's son's understanding and an assumption he chose to make, the respondent confirm that the son's estimate was the full price or provide an estimate of what would be the full price, just the components that would go into the price. This is reasonable as the respondent's representative had no knowledge of the size of the job or the work required to be done, and no quotation had been provided.
12. Therefore, on the basis of the evidence provided, I find that although no full price was agreed between the parties as no quotation was given, the components of the pricing were agreed before the job was booked. The applicant's son's understanding of the full price was based on his assessment or understanding without any knowledge of how long the respondent's team would need to be there or the full cost of the materials provided.
13. I also find that there was no evidence that the respondent misled either the applicant or her son in any way about the respondent's pricing.

If no price was agreed, was the amount the respondent charged a reasonable price? If not, what is a reasonable price?

14. As I find that the respondent's charges were agreed to by the applicant's son when booking the job, there is no need for me to further consider this issue. Further, there is no evidence that would lead me to make a finding that the respondent's price for the work done was unreasonable.

Did the respondent provide its services with reasonable care and skill?

15. Section 28 of the CGA provides that where services are supplied to a consumer there is a guarantee that the service will be carried out with reasonable care and skill.

16. The applicant told the Tribunal that after the cables were laid, the internet was not working. This led to a call to her [Internet Provider] who sent out [Technology Company] to fix the issue. The applicant told the Tribunal that [Technology Company] told her the work done by the respondent was not done properly but was able to fix the issue. The applicant also told the Tribunal that there was no cost to her as a result other than time and stress which had been considerable. It also meant that her son had no internet so was not able to start university this year.

If not, what remedy is available to the applicant?

17. Section 32 of the CGA sets out the remedies available to a consumer where the supplier has failed to supply its services with reasonable care and skill, or they are not fit for purpose. Where there is a failure and the failure can be remedied, the consumer is required to give the supplier the opportunity to remedy the failure. If the supplier fails to remedy any issues within a reasonable period of time, the consumer can cancel the contract and have the failure remedied by someone else. The consumer can also claim reasonably foreseeable damages due to the failure of a supplier to provide its services in accordance with the guarantees set out in the CGA.
18. Even if I accept the applicant's evidence that the respondent had not provided its services with reasonable care and skill, which I have some difficulty with given [Technology Company] was sent to fix the issue and get the internet working rather than an electrician, as the applicant suffered no loss, I am not able to find that any remedy is available to the applicant.
19. I also explained to the applicant that while I acknowledged that while this matter may have been stressful to her and her son, I was unable to make an order for damages for stress or mental distress to be paid. Claims of this nature are a challenge to address for two reasons. First, the loss is of a subjective nature and the extent of intangible harm is difficult to prove and to price. If measured, any award is open to criticism on the basis that the outcome is unpredictable, or contains a punitive element not permitted in calculating loss. Leaving aside these practical issues, there is a more fundamental policy concern against such awards. Contracts often give rise to stress, particularly where personal, social or family interests are affected. This is generally a risk borne by those who transact, and, if recognised, would add a layer of uncertainty and subjectivity to every claim for breach.

What amounts, if any, should be paid between the parties?

20. As set out above, I find that the respondent's pricing was provided to, and agreed by, the applicant's son before booking the job with the respondent. This was not done in a way that was misleading to designed to mislead other than the disclosure of whether or not GST was included in the hourly rate quoted. For this reason, I have deducted the amount of \$48.88 which is the amount of GST charged for the electrician. As no other prices were disclosed other than the call out rate of \$170.00 which was disclosed as being exclusive of GST, I have not deducted GST off any other the other charges.
21. In summary, as the applicant requested a declaration of non-liability for the amounts the respondent claimed were owed pursuant to the respondent's invoice, I am entitled under section 11(2)(b) of the Disputes Tribunal Act 1988 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 the amount of the invoice less \$49.88, a total of \$1,012.00.

Referee: K. Armstrong
Date: 17 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>.