



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

District Court

[2023] NZDT 139

**APPLICANT** DG

**RESPONDENT** NQ

**The Tribunal orders:**

**NQ is to pay DG \$2,799.31 within 28 days.**

Reasons

[1] DG claims from NQ the cost of electrical work that was done in order to rectify faulty work done by NQ. NQ denies liability.

[2] DG said that his hot water system had been performing poorly in his house. He had been unsure of the cause of the problem, as City Council workers had been working on pipes nearby at the time. He had been at work one day when NQ appeared as a customer. Noticing that NQ was wearing a shirt with "TF" on it, and knowing that TF Ltd was a company that did plumbing and electrical work, DG told NQ about his hot water problem. NQ gave DG his phone number, and asked DG to call him if he wished, which DG did.

[3] NQ went to DG's house and inspected the hot water cylinder. DG said that NQ had advised him that the hot water cylinder needed to be replaced, and offered to do the work for him. DG accepted this. It was arranged that a second-hand hot water cylinder would be purchased, and NQ would install it.

[4] DG said that NQ did the work, which entailed replacing the cylinder, and doing the associated plumbing and electrical work. DG paid NQ \$880.00 in total, for the cylinder and the work.

[5] The day after the installation, said DG, the hot water had ceased to run, and he had contacted NQ to ask him to attend to it. NQ had said that he was busy. After that, he had been incommunicative and, a week or so later, DG had telephoned a director of TF Ltd, EX. EX, together with a plumber from his company, inspected the work that NQ had done.

[6] EX then informed DG that NQ was not a qualified plumber or electrician, and had not carried out the work correctly. DG then also learned that NQ was not an employee of TF Ltd, but an independent contractor, and had not been acting on behalf of TF Ltd in doing the work. It was unclear whether the cylinder had required replacing or not, it having been disposed of by NQ. EX said that NQ should not have diagnosed the problem, or done the electrical work.

[7] DG supplied photos of the electrical work, which showed wires around the cylinder outside the building. EX had the defective work repaired by a qualified electrician from his company, at a cost of \$2,979.31 to DG. TF Ltd had not charged DG for any plumbing work that needed to be done by way of rectification, and had deducted the \$850.00 from its invoice for the electrical work. This was to allow for

the payment that DG had made to NQ. TF Ltd then supplied a certificate of electrical compliance for the electrical work to DG.

[8] DG said that he had believed that NQ was qualified to do the work that he had done, and had learned that this was not so only after he had contacted EX. DG claimed from NQ reimbursement of the money that he had paid to TF Ltd for TF Ltd's rectification of NQ's work. EX had reported NQ to the supervising electrical and plumbing boards.

[9] NQ considered that he had no liability for any reimbursement to DG. He said that he had some skill with plumbing and electrical work because, although he was not registered as a plumber or electrician, he was a heat pump technician. His intention had been merely to assist a compatriot. He said that he had passed on the money that DG had paid him to a friend who had assisted him, NQ, in handling the heavy cylinder.

[10] NQ said that he had told DG, before he had begun the work, that he was neither a plumber nor an electrician. He said that he had left the electrical work incomplete, and told DG that he, NQ would arrange for an electrician to come and finish the job. However, he had been busy with other work for the following week or so, and had been unable to make such an arrangement.

[11] NQ said that he had discussed with DG whether a new cylinder should be purchased, and DG had agreed that a second-hand one could be bought via [online platform].

[12] NQ felt that DG had behaved unreasonably in contacting TF Ltd, and should have waited until he, NQ had had time to bring an electrician to the site to complete the electrical work. He considered that the work that he had done was satisfactory.

### **The issues**

[13] The questions for me to decide are:

- whether NQ misrepresented his qualifications to DG; and
- if so, whether DG is entitled to compensation; and
- if so, what is a reasonable sum to compensate DG.

### **Did NQ misrepresent his qualifications?**

[14] In my view, NQ held himself out, or gave the impression to DG, that he was qualified to do the work that he did. He had, when he first met DG, been wearing a "TF" shirt, and had invited DG to contact him regarding work to be done on DG's hot water cylinder. He had carried out electrical work. I do not accept that DG would have agreed to the work being done by NQ, and paid him for the work, if he had known that NQ was not qualified as a plumber or an electrician. By contracting to do the work, NQ in effect represented that he was suitably qualified, and DG reasonably relied on that.

[15] I do not accept that NQ told DG that the electrical work was incomplete, and that he, NQ would arrange for an electrician to complete the job. The hot water system failed the day after NQ worked on it, he made no arrangement for an electrician to attend, and did not respond to DG's messages about the matter. DG, in my view, acted reasonably in contacting TF Ltd and, having discovered NQ's lack of qualifications and the existence of unsatisfactory electrical work, arranging for TF Ltd to carry out the necessary repairs and to certify the work.

### **Is DG entitled to compensation?**

[16] I consider that DG is entitled to be reimbursed for the cost of the electrical work that TF Ltd did in order to rectify NQ's defective work. TF Ltd did not charge DG for plumbing but only for electrical work,

which NQ had not been legally permitted to do, and which he had done badly. DG was obliged, for obvious reasons of safety and legality, to ensure that a qualified electrician attended to the repairs.

**What sum should NQ pay?**

[17] I accept that it is not possible now to know whether a replacement hot water cylinder would, in any event, have been required by DG. However, that is because NQ purported to diagnose the problem, advised DG that a replacement cylinder was needed, and proceeded to do the work. He then disposed of the old cylinder. If, in fact, TF Ltd's subsequent repair work went beyond what was required, or would have been needed in any event, DG has obtained some advantage, or betterment. However, it is NQ's fault that it is impossible to ascertain the facts relating to either of these possibilities. A diagnosis from a qualified person might, for example, have resulted in a finding that only an element required replacing. NQ's actions prevented a reliable diagnosis being made and, in my view, he must bear the responsibility for that.

[18] I do not think it makes any difference whether NQ passed on to his friend the money that DG paid him. The friend was not a party to any agreement with DG.

[19] For these reasons, I consider that NQ is obliged to reimburse DG for the cost of the rectification work that TF Ltd did. As DG eventually sold the cylinder that NQ supplied for \$180.00, I have deducted that sum from the \$2,979.31 that TF Ltd charged DG. The \$850.00 that, I accept, was at least the sum that DG paid to NQ has already been deducted from TF Ltd's repair costs. Thus, DG's loss is \$2,799.31, which is the amount that NQ must pay him.

**Referee: C Hawes**  
**Date: 4 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>.