



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 374

APPLICANT F Ltd

RESPONDENT O Ltd

The Tribunal orders:

O Ltd is to pay F Ltd the amount of \$470.00 by 18 August 2023.

Reasons

1. This dispute arises from work done by BQ of F Ltd for O Ltd. F Ltd seeks \$990.00 from O Ltd for that work. In response, SO of O Ltd says that there was no agreement for BQ or his company to do any work for his company, and O Ltd does not owe F Ltd any money at all.
2. The issues to be determined in this matter are:
 - (a) What (if anything) was agreed between the parties in relation to electrical work?
 - (b) If there was an agreement, was the agreed work carried out?
 - (c) If the work was carried out, what payment is F Ltd entitled to?

What (if anything) was agreed between the parties in relation to electrical work?

3. BQ gave evidence that he received a telephone call from SO, whom he considered a friend, on Friday 22 April 2022 in relation to electrical work to be carried out at O Ltd premises. He was to prepare a specific type of extension cord that would have plugs for pillars (used in wedding decorations) at regular intervals. BQ further said there was no discussion of the costs of the work, but there was agreement that he would do this work urgently, that is, on the same evening/night from 10.00 pm onwards. The urgency, BQ said, was due to O Ltd needing the extension cord and pillars for a wedding on the following day.
4. SO initially gave evidence that there was no agreement to do any work at all. He rejected the suggestion the two of them had ever been friends. He later said that BQ had come to his premises to drink kava, and on that occasion did some work on some light fittings. That work took at most about an hour and was performed while drinking kava in between.
5. BQ, as the applicant, bears the burden of proving his claim on the balance of probabilities. It needs to be 'more likely than not' that his version of events is true.
6. BQ acknowledged that he did not have any written evidence of the agreement. He said because SO had been a friend, he trusted him and did not insist on any written order confirmation. I note that if there had been an email exchange (or even an exchange of text messages) BQ would not face the same predicament.

7. I have considered carefully whether to reject the claimed agreement for want of evidence of it. However, I find that there is circumstantial evidence in the form of the invoice for materials from an electrical wholesaler (K Ltd). This is dated 22 April 2022, addressed to BQ and states as his order number "OE".
8. I consider it implausible that BQ would have ordered electrical parts with that reference, on the day he says he later carried out the work, without him believing there to be an agreement that he would carry out work. Moreover, SO admitted that BQ had been at O Ltd premises and did electrical work that night, albeit claiming it was different in scope to what BQ had claimed.
9. I also note that SO, at a later stage of the hearing, acknowledged he had discussed electrical work (regarding the extension cord) with BQ, albeit he claimed he had only asked for advice, and then decided BQ was too expensive, and he would acquire the parts himself. This reference to costs is inconsistent with BQ's recollection that no price had been discussed.
10. In assessing the competing narratives I consider there was a degree of mobility in SO's evidence. I also note that while SO claimed he had never been friends with BQ, that sits uneasy with his acknowledgement that they had been drinking kava at O Ltd premises on a Friday night, while (as SO admitted) BQ did some electrical work.
11. As a result, I reject SO's version of events, and prefer the evidence given by BQ about the existence of an agreement that he would prepare an extension cord specific to O Ltd purposes. I therefore find that there was an agreement that BQ would carry out work (namely to provide a specific 'tailor-made' extension cord) to O Ltd, and that he would do so on the evening of 22 April 2022. While there was no agreement as to price, I consider it implicit in that agreement that BQ, doing this work as a friend, would not be 'out of pocket', that is, would be paid for the materials he obtained for the job.

If there was an agreement, was the agreed work carried out?

12. The parties' evidence is again in conflict. BQ said he prepared the extension cord (with the materials he had purchased) as agreed, and also fixed some light fittings for O Ltd. He said he arrived at 10.00 pm and left at about 4.00 am the following morning.
13. SO acknowledged that BQ was at O Ltd premises in [Suburb] on the night of 22 April and that he repaired some lights while mostly drinking kava.
14. BQ's witness, TD gave evidence that the three men were at the premises, and that BQ had done electrical work. I note that TD was unable to say when he had arrived at the premises and when he had left. He was initially unable to say what work BQ had done, as quite obviously he had been there only to socialise and drink kava. I am satisfied that, despite TD's inability to remember some aspects of the night in question, his narrative of what he could remember is reliable and supports BQ's version of events.
15. I note that SO also could not remember when he had left O Ltd' premises. He advised that he would have had to lock up and secure the premises by setting the alarm before leaving. I consider it improbable that he would have left BQ behind on his own. I conclude that if there was an agreement to prepare/make an extension cord (which I have found there was) it is more likely than not, that that work was also completed, before all three men left the premises.

If the work was carried out, what payment is F Ltd entitled to?

16. BQ says F Ltd is entitled to \$990.00 because the retail value of the parts alone would have been \$913.94. The invoice to him by K Ltd was for \$595.41 but that had his trade discount

deducted and also included a “crimp tool” worth \$108.75 plus GST that was not a part provided to O Ltd.

17. BQ claimed he was entitled to be paid for parts (plus mark up) and for his labour. Therefore, he said, the amount of \$990.00 was due and owing.
18. SO stated that if he had to pay for the work done by BQ on the night of 22 April 2022, the appropriate payment for it would be about \$200.00.
19. The difficulty I am faced with here is that there obviously was no agreement as to price. I am mindful that BQ said that he and SO had been friends. In the absence of any claim that a price was agreed, I am not persuaded that there is a basis for F Ltd charging any markup on parts or for any labour.
20. I consider F Ltd is entitled to be paid for the materials it obtained for the work, as it is implausible that SO would have expected his friend BQ (if that was what he was at the time) to pay for the materials out of his own pocket. Neither is it plausible that BQ would have agreed to do so.
21. It is clear from both the parties, and from TD, the witness, that there was a significant amount of drinking kava involved and I consider it plausible that in the context of socialising together, SO expected BQ to contribute his labour as a favour. I therefore find that this was a job done for a friend (at night, and while socialising and drinking kava) and that therefore F Ltd was not entitled to charge a normal trade mark up for the materials it obtained or for BQ’s labour.
22. I consider based on the evidence before me that F Ltd is entitled to be paid \$470.00 for materials (i.e. the K Ltd invoice minus the crimp tool).

Referee: P Moses
Date: 28 July 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>.