



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 470

APPLICANT FT

RESPONDENT MU

**SECOND
RESPONDENT** T Ltd

**THIRD
RESPONDENT** U Ltd

The Tribunal orders:

T Ltd is to pay \$17,871.00 to FTFT by 1/9/23.

Reasons:

1. This order should be read with the 2 that precede it.
2. No cross claim has been filed between the respondents.
3. The applicants only seek orders against T Ltd (T LTD).
4. There is no active claim today by any party against U Ltd (U Ltd). If there had been it would have been dismissed. U Ltd's participation in this dispute has been of assistance to the parties and the Tribunal.
5. I address the issues in dispute below as also explained to the parties during the hearing.

Was the particular ocean freight for Mr FT's particular container paid to U Ltd, and if so when and how and by whom? What evidence is there of this payment being or not being made?

6. I have been satisfied on the evidence presented today that U Ltd has not been paid by T LTD, or any other party, U Ltd's Shipping charges of \$6,117.19 under Bill of Lading number [redacted], being the FT container.
7. It is clear from U Ltd's business records:
 - a. no such payment has been made or received.
 - b. U Ltd did receive a payment through a AB (IN) of \$12,422.36 on 22/12/22 and that payment was for 2 other containers arranged to be shipped by T LTD for IN under Bill of Lading number [redacted] and not the FT container [redacted].

8. T LTD says that it entered into a contract with a "AB" of [car company] (AB) for AB to pay the shipping costs of a number of containers T LTD had shipped, including the FT container. It understood AB had then paid the shipping costs for the FT container.
9. In support of that T LTD produced only a screenshot of bank transfer showing T LTD transferred \$4,800 to AB on 22/12/22. It said on the same day it also gave AB \$2,000.00 in cash and borrowed a further \$18,000.00 from AB to cover those shipping costs, including the FT container.
10. T LTD has produced no written contract recording that agreement. It produced no loan agreement recording the \$18,000.00 loan. It obtained no receipt for the \$2,000.00 cash payment it said it made.
11. Even if T LTD had established such agreement with AB existed (which it has not to my satisfaction on the evidence provided) such is not a defence to this claim as:
 - a. The shipping costs for the FT container have not been paid.
 - b. If AB has breached that contract by not paying the FT container shipping costs, that is a legal matter between T LTD and AB arising out of that separate agreement which Mr FT was not part of.
 - c. It does remove T LTD's primary liability to Mr FT to pay for the shipping costs of the FT container after receiving full payment for those shipping cost form Mr FT.
12. I find in breach of the contract between T LTD and Mr FT, T LTD has not paid U Ltd's cost of shipping Mr FT's container to [Country 1]. T LTD is therefore liable to pay the reasonable proven losses that arise out of that failure to pay those costs, including any reasonable proven associated losses.

Was U Ltd legally entitled to refuse release of Mr FT's container until the ocean freight charges were paid?

13. U Ltd's right to refuse release of the container arises out of its contract with T LTD. That is contained in the bill of lading issued for that shipment. Clause 15 "Carriers Lien" of that bill authorises U Ltd to exercise a lien over the FT container if its shipping costs have not been paid.
14. Those costs were not paid. It was therefore entitled to exercise that lien over the FT container.

What amount of compensation is Mr FT entitled to claim for breach of the shipping obligations due to him and by/from whom and in what proven amounts?

15. Mr FT is claiming against T LTD only.
16. Mr FT entitled to payment of the shipping costs he paid to T LTD as T LTD has not paid those to U Ltd. The amount he paid was **\$6,100.00**.
17. To that I add the storage charges that have been accruing at and from the [Country 1] port. I do so because it is a reasonable and foreseeable loss arising from the breach of its contract with Mr FT. If the shipping charges had been paid, as they should have, by T LTD then the container would have been released with no storage charges being incurred. U Ltd was entitled to exercise its Lien over the container unit those charges were paid.
18. T LTD could have paid the demanded shipping charges again (in its mind) and then pursued U Ltd in this Tribunal for that (in its mind) double payment. The container would have been released and the dispute with U Ltd resolved here. T LTD choose not to do so.
19. Those charges as calculated by Mr FT are:
 - a. for the period of 12/12/22 to 25/08/23 being \$19,371.00 [currency]

b. Converted at today's rate to NZ\$ is **\$11, 771.00.**

20. T LTD did not object to this calculation of \$11,771.00 when it was presented by Mr FT.

21. I have not been asked to and cannot make any further orders as to future storage costs at this point, as they have not been incurred yet. There was also a suggestion that those charges may be reduced by the Port upon payment of the shipping costs and further negotiation. As discussed at the last hearing and again today, it would serve all parties well if they could work together to have the truck released as soon as possible so these charges come to an end. It was encouraging that they agreed to stay behind together after today's hearing to see what could be achieved.

22. Mr FT also seeks the costs of his travel to NZ to resolve this problem and car hire costs. I do not award these amounts as it was not imperative for him to travel to NZ to resolve the dispute. It could have been addressed from [country 1] with the assistance of his NZ residing son (who has been substantially assisting him and was also permitted to represent him in these Tribunal hearings).

23. As to any hire costs in [country 1] such would not be awarded as the customs issue would still have been left to be resolved and I am not satisfied he needed a car there as he did not need one before the Truck was shipped and his intended use of the truck in [country 1] is unclear.

24. I do not award legal costs for this dispute as such are not awardable except in exception circumstances of which this is not one.

25. The possible issue of any damage to the truck while in [country 1] was not pursued in today's hearing and I therefore make no findings or awards in relation to any damage to it. That remains a live issue that Mr FT can follow up if he wishes and if he considers it worthwhile, against any appropriate parties and in the appropriate legal jurisdiction.

Referee: A Hayes

Date: 25/8/23



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 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 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 20 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/finances/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>.