



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

[2023] NZDT 538

**APPLICANT**      **FX**

**RESPONDENT**    **KQ**

**The Tribunal orders:**

Claim Dismissed.

**REASONS**

**Brief Details of Claim**

1. KQ was engaged on contract to FX for a period of around 1.5 years. KQ's contract was terminated in May 2023.
2. In July 2023, FX contacted KQ seeking a refund for discounted treatments KQ had given to family and others at a staff discount rate, without authority. Payment for a container of recovery cream was also raised, which has since been paid for.
3. FX claims \$2,690 for 14 treatments FX claims were given without authority.

**Issues**

4. The issues for the Tribunal to determine are:
  - (a) Whether KQ gave treatments at the staff discount rate without authority;
  - (b) If so, the amount KQ should pay to FX, taking into account the issue of commission due to KQ on each treatment.

**Did KQ give treatments at the staff discount rate without authority?**

5. The onus to prove a claim lies with an applicant. The standard of proof required in the Tribunal is "the balance of probabilities". That means that FX has the burden to prove that it is more likely than not that KQ gave the treatments without authority. There must be more certainty than doubt.
6. In general, there is no dispute that KQ did give the treatments at the staff discount rate, although KQ said she could not recall who one of the customers was (NX) and was uncertain about another (LD).
7. However, on the issue of whether KQ obtained permission for the staff discounts, the evidence is contradictory.
8. On the one hand, FX produced documentary evidence of Meeting Notes of a meeting on Saturday 4 December 2021, which contain a statement that a 10% discount off injectables for friends and family were no longer offered, because a prescription drug could not be discounted. FX said this was circulated to all staff. FX said that if she was not willing to offer a 10% discount to family and friends,

why would she authorise a the much larger staff discount. FX said it did not make business sense. FX said the staff rate was only for staff.

9. On the other hand, KQ said she was not sure she received a copy of the notes of the meeting held on 4 December 2021. In addition, KQ pointed out that FX had herself authorised treatment at the staff discount rate for the [cleaner] and her son. KQ was paid on a commission basis for injectable treatments given. KQ said she was not paid commission on treatment at staff discount rates. KQ submitted an email dated 23 August 2023 from FX to KQ, in which FX says "I have checked our records and I can see that you have been paid commission on all transactions except for those where a staff discount was applied". KQ says if she was not receiving commission on the staff discounts, why would she give a substantial discount on treatments.
10. DS, who had been employed by FX for around 6 months, gave evidence that she had overheard FX give KQ authority to treat KQ's mother at the staff rate. It is clear that DS's employment did not end on the best of terms, and I have considered whether this may have tainted DS's evidence to the Tribunal. However, I have taken into account DS's reply to a text from KQ to DS in which KQ tells DS that she is being accused of stealing from the company "because I gave mum and a few others staff prices with her verbal consent". DS's reply, in which she says "I literally remember her telling you it's fine", appears spontaneous, and has the ring of truth about it.
11. Taking all of the above into account, I find that FX has not proved it is more likely than not that the treatments were given without FX's authority, for the following reasons:
  - (a) Although FX explained that she gave treatment to the [cleaner] in order in return for permission to use before and after photographs, and to the [cleaner]'s son because of anxiety issues he had about his appearance which severely limited his activities, these authorisations do demonstrate that the rule about not giving injectables at a staff discounted rate to those who were not staff was not absolute, and nor was the rule that prescription drugs not be discounted.
  - (b) DS's evidence that she heard FX give authority for KQ to treat KQ's mother at the staff discount rate has reasonable weight in my mind.
  - (c) On the evidence available, it seems more likely than not that KQ did not receive (and knew she did would not receive) commission on treatment given at the staff discounted rate. At the hearing, FX went back on the statement she had given in her email to KQ dated 23 August 2023, and said she believed KQ did receive discount on the value of the treatment she did give. However, I cannot ignore the apparently unequivocal statement FX made in the email, apparently after rechecking the records, which states there was no commission paid on the discounted transactions.
  - (d) It is reasonably likely that KQ received no commission on the discounted treatments, in which case there appears to be no financial motivation for KQ to give the staff discount for clients other than her mother. In particular, it is difficult to see the motivation for giving a discount to two clients, who KQ either does not recall or barely recalls (NX and LD). FX has suggested KQ has received contra treatments in kind from the clients involved, but KQ denies this and there is no evidence to support FX's proposition in this respect.
  - (e) FX's claim that KQ gave injectable treatment at staff rates without her authority is possible. However, FX must prove it is probable, there must be more certainty in my mind than doubt. I do not have such certainty.
12. Because FX has not been able to prove her claim that KQ gave injectable treatments at the staff discount rate without her authority, FX's claim must be dismissed.

**Referee: JF Tunnicliffe**  
**Date: 29 September 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>.