



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 590

APPLICANT ZA as trustee for HG Trust
person or organisation making
the original claim

RESPONDENT LM Limited
person or organisation originally
claimed against

Result of application for rehearing: Rehearing Refused

The Order 14 August 2023 of stands.

Reasons for decision:

1. TC appeared as a representative of LM Ltd.
2. TC is seeking a rehearing on the grounds that HD intended to attend the 14 August hearing but due to his medical condition, of which there is no dispute of the severity of HD's condition, he was rushed to hospital that day.
3. The initial hearing date of 5 April was adjourned on 28 March at HD's request due to his medical condition. The next hearing proceeded on 22 May. HD did not attend this hearing and in point 5 of my order I said:

HD of LM Ltd was unable to attend due to medical reasons. It may be likely that arranging a suitable date for HD to attend might be difficult. If so, HD should ensure that he provide sufficient knowledge of the dispute to someone who can represent the company at the next hearing. That person cannot be a person who has been enrolled as a barrister and solicitor, or who, in the opinion of the Tribunal, is, or has been, regularly engaged in advocacy work before other Tribunals.

4. TC says HD intended to appear at the 14 August hearing but was rushed to hospital. I accept that was the case however the purpose of my above order was to ensure the matter was not delayed further. HD elected not to appoint a representative after receiving the 22 May order. In doing so he took the risk the matter would not be adjourned a third time, which it was not.
5. I fully understand why HD could not appear at the 3 hearings however the opportunity to prevent further delays by appointing a representative was brought to his attention and was not taken up.
6. The Tribunal has an obligation to provide timely and expeditious outcomes. There may be a miscarriage of justice if the rehearing application is not granted but there may also be a miscarriage of justice to the applicant if it was. The determining factor is that HD elected not to appoint a

representative until the Tribunal issued an order determining the dispute. Unfortunately, his decision was a few months too late.

7. For this reason, the rehearing application is denied.

Referee: P McKinstry
Date: 1 December 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>.