



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 146

APPLICANT HN

RESPONDENT N Ltd

The Tribunal orders:

1. The claim is dismissed, and HN is ordered to pay \$48 to N Ltd by 5pm on 19 July 2023.

Reasons:

2. HN had an appointment to see a doctor at N Ltd on 14th June 2022 to obtain a driver's medical certificate. The appointment went as planned where a few checks were completed, and a form was filled which would assist HN with his driver's licence.
3. After the appointment, HN was given an invoice for \$98 by the reception at the clinic which is the subject of this dispute.
4. HN is of the view that this fee should be \$50 in line with the other appointments he has had with the clinic.
5. HN believes he has been charged for two appointments which he says is wrong as he was only there for fourteen minutes which is less than the fifteen minutes allocated for each standard appointment.
6. HN paid only \$50 at the time and left. He has since been issued several reminders that he has an account balance of \$48 that is overdue with the clinic.
7. HN now seeks a declaration that he is not liable to pay the \$48 sought by the clinic.
8. In response, HL appearing on behalf of the clinic said the appointment for obtaining a driver's medical certificate is unsubsidised under New Zealand capitation model. Even if the patient has a community services card like HN, they pay the full fee of \$98 at their clinic. He also added that the clinic's fee for this service is reasonable as most other clinics charge up to \$200 for this service.
9. He said his clinic's usual practice is to allocate a 30-minute appointment as opposed to the usual 15 minutes at no extra charge as often doctors need to spend more time explaining results that may negatively impact on one's ability to get a driver licence.

Were the charges clearly explained to HN?

10. As this appointment was a non-standard appointment, a key issue for me to determine is whether the reception or the doctor seen by HN explained to him the real nature of this appointment would lead to the higher charges and also clarify what those charges will be.

11. HN says he phoned the clinic to book an appointment for the 14 June and was advised over the phone that they had no double appointments. HN says he clarified that he only wanted one slot. The receptionist advised that she would call him back and when she did, he was simply booked for this appointment on the 14 June 2022. No further details were given regarding the appointment cost or the duration for which it was being set.
12. HN is adamant that at no point was he advised that this appointment would cost him \$98 or that this will be a double slot by default.
13. HL on behalf of the clinic submitted that it's the clinic's usual practice to advise patients what they need to pay for an appointment when they are booked. But he confirmed that he did not speak to HN on the phone on this occasion. The receptionist who booked this appointment was also not present at this hearing.
14. HL advised that all their charges are clearly outlined and displayed on their website and also at their clinic.
15. HN said he has not looked on their website or paid any notice to their displayed charges at the clinic.
16. When HN was booked for the appointment, he should have been advised that this appointment was subject to two slots as a minimum and the charges would be higher accordingly. I accept HN's position that the clinic has omitted advising HN of the actual charges for his appointment. I accept that HN arrived expecting to pay \$50 and was surprised to get a bill for \$98.
17. Accordingly, on this issue I find that the charges were not clearly explained to HN by the clinic.

What is a reasonable price for the services?

18. As I find that the charges have not been clearly explained, I now consider s31 of the Consumer Guarantees Act ("CGA") to determine a reasonable price for the services provided.
19. To determine this issue, I consider HL's submission that appointments of this nature generally take longer and accordingly are allocated two slots of fifteen minutes each. While the appointment with HN has taken only fourteen minutes, this does mean that the clinic is unable to take any further appointments during the entire duration for which the appointment is booked which is half an hour.
20. I also accept HL's position that this appointment is subject to a different funding model to standard appointments leading to the clinic having to charge a higher fee from their patients. I also accept HL's comment that other clinics do charge a much higher fee for this service than the respondent which further demonstrates their fee being reasonable. I, therefore, find that \$98 was a reasonable fee pursuant to section 31 of the Consumer Guarantees Act.
21. Accordingly, I dismiss the applicant's claim for a declaration that he is not liable to pay the remaining \$48 on his overdue account with the respondent.

Is HN required to pay the Invoice or not?

22. Rather than seeking monetary damages, an applicant in the Tribunal can apply for a declaration of non-liability, that is, a declaration that the applicant is not liable to another person (the respondent) in respect of a claim or demand founded on contract (s10(1)(b) of the Disputes Tribunal Act 1988). If granted, a declaration of non-liability declares that the applicant is not required to pay the amount (s19(1)(d) of the Disputes Tribunal Act). Such a declaration will be granted once the claim is proved under the CGA. However, if an application for a declaration of non-liability is declined, the Tribunal will order the applicant to pay the amount claimed or demanded.

23. HN asked for a declaration of non-liability in relation to the amount of the Invoice (\$48).

24. As I have found that the clinic's charge to HN was reasonable in the circumstances, HN's claim has not been proved and I decline his application for a declaration of non-liability in relation to the Invoice. Instead, HN is to pay to N Ltd \$48, being the amount owed on the Invoice, by the date set out in the Order.

Referee: S Malaviya

Date: 16 June 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>.