



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

**[2023] NZDT 506**

**APPLICANT      J Ltd**

**RESPONDENT    UX**

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. J Ltd provide training services and courses in psychological first aid. It contacted UX, [redacted], and offered its service to develop a psychological first aid course to meet the needs of UX.
2. The parties agreed that HS, director of J Ltd, should travel to [City] for a meeting to discuss the needs of UX and develop the course. The meeting was held on 25 May 2022 and UX reimbursed J Ltd for his travel and accommodation costs as it had agreed to. In the meeting it was agreed that J Ltd would deliver a “pilot course” on 5 July 2022. HS emailed UX and agreed to not charge for his time to deliver that course, but he would be reimbursed for the reasonable costs he incurred. J Ltd involved \$795.25 for airfares and accommodation on 6 July 2022, and UX paid that invoice.
3. After the course feedback was obtained from participants and UX decided the course “didn’t quite hit the mark” and decided not to offer the course to other members of its staff. J Ltd claimed for compensation for 50 hours of time to develop the course, 8 hours to review the feedback, and payment for the use UX had of its intellectual property, for a combined total of \$16,468.28.
4. The issues to be resolved are:
  - (a) What were the agreed terms of the arrangement between the parties? Did UX breach a term of the agreement when it decided not to run further courses?
  - (b) If so, what loss can J Ltd show it has incurred that it is entitled to be compensated for?

**What were the agreed terms of the arrangement between the parties? Did UX breach a term of the agreement when it decided not to run further courses?**

5. The parties do not dispute that J Ltd was to invoice UX for HS’s travel and accommodation expenses to attend the planning meeting in [City]. The invoice for \$666.60 was sent on 27 May 2022 and was paid. Nor do the parties dispute that J Ltd agreed not to charge for HS’s time to run the first course and only be compensated for its costs. UX paid that invoice of \$795.25 on 14 July 2022.

6. The point of disagreement between the parties is whether an agreement was made that bound both parties to work collaboratively together to develop a course that suited the needs of UX and whether there was an agreement that the course would be rolled out to the surrounding districts.
7. HS said he was aware that two other providers had offered a similar type of course in the past and UX had not continued to offer courses in psychological first aid from either. HS said that his offer was to deliver a course for the purpose of receiving evaluation and feedback so improvements could be made. The course was not going to be the final course. UX therefore breached the contract as it failed to continue to offer the course. HS said he expected the course would be further developed and rolled out to the surrounding districts and in that way J Ltd would recover the investment it made in developing the bespoke course. He considered the description of "pilot course" was used in the context of a test course to develop the course content.
8. UX disagreed it had created an expectation that it was committing to continue to offer the course, or any variation of it, to its staff. EI said that HS was aware that two previous similar courses were not offered past the first trial stage. He said it was important to UX to assess the course content before it offered it across a wider group of staff. UX considered the phrase "pilot course" that was used in email correspondence was commonly used to mean a single course that may be continued or may not run again. She said HS was aware that neither of the two providers preceding J Ltd's course had been approved after the pilot course stage.
9. I have no doubt that HS very genuinely held the view that after the pilot course he would receive feedback about how the course would need to be changed and that he would then roll that course out to the staff at UX. However, to be entitled to claim for a breach of contract, HS must show, on balance of probabilities, that he was engaged by UX to provide an agreed amount of future courses.
10. It is for the contracting parties to make the terms of their agreement certain. In the correspondence however, there is no promise made that J Ltd would be engaged to conduct future courses, when the courses would run or how many courses would be offered. HS was hopeful that UX would continue offering the course, but that hope did not arise from any promises made to him from UX. HS anticipated further contracts with UX, but from all the evidence provided, UX's conduct falls short of creating a reasonable impression that further courses would be run and J Ltd would be engaged to conduct those courses.
11. As J Ltd has not proven that UX contracted with it to run further courses, it is not entitled to be compensated for the costs it has claimed. Part of the costs claimed was for use of course materials that HS said were protected by J Ltd's intellectual property. The Disputes Tribunal is unable to award costs to compensate for the use of intellectual property as it is outside of the jurisdiction of the Disputes Tribunal by virtue of section 11(5)(c) of the Disputes Tribunal Act 1988.

## **Conclusion**

12. As J Ltd has not proven that UX breached a term of an agreement, it is not entitled to the order that it seeks, and its claim is dismissed.

**Referee: K Cowie DTR**

**Date: 25 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>.