



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1352

APPLICANT KC
RESPONDENT Q Ltd

The Tribunal orders:

1. Q Ltd is to pay \$2,200.00 to KC by 3 April 2021.
2. A copy of this order is to be emailed to the respondent.

Reasons

Did Q Ltd comply with its legal obligations as a private training establishment?

1. The facts are that on 24 November 2020 KC signed up through Q Ltd's (Q Ltd) website for a 5 day [redacted] Course commencing on 30 November 2020. He paid the full cost of the course, \$2,200.00, as part of the website booking process. On the morning of the next day he phoned the New Zealand number for Q Ltd to cancel the booking. He was told that he needed to make contact with the company by other means which he did that day. At first the director of Q Ltd, Mr H, referred KC to the terms and conditions on the website which stated that there would be no refund if a cancellation was within 14 days before the course commencement. KC challenged this based on sections 354 & 357 of the Education and Training Act 2020 (ETA). Section 354 ETA requires a training establishment such as Q Ltd to notify a prospective student in writing of section 357 ETA. Ss 357(3)(a) & (b) ETA state that where a training scheme is for less than 3 months, every training establishment must allow a student to withdraw and receive a refund specified by NZQA. NZQA's website states that a minimum of 50% of what the student paid must be refunded.
2. KC has claimed that Q Ltd failed to inform him of his entitlements under s.357. There was discussion in the hearing about whether KC agreed to the terms and conditions on Q Ltd's website at the time of booking. However, whether the terms and conditions box was 'ticked' by KC or not is somewhat irrelevant because the terms and conditions did not accurately inform KC about s.357 ETA. Regarding cancellation terms and conditions, Q Ltd was on a journey of its own about what money could be withheld if there was a cancellation.
3. It is clear from the treatment of KC by Q Ltd and its website that the company was unaware of its obligations under the Education and Training Act 2020.

How much should KC be refunded?

4. Since the dispute arose Q Ltd offered a refund of 50% of the amount paid by KC. Mr H believes that this is reasonable because the course is an international qualification and does not sit within the NZQA framework but the 50% offered fits within the NZQA requirements.
5. Ms Budd rejected that offer and has applied to the Disputes Tribunal for relief.
6. S18(6) of the Disputes Tribunal Act 1988 states that the Tribunal shall determine the dispute according to the substantial merits and justice of the case, and in doing so shall have regard to the law but shall not be bound to give effect to strict legal rights or obligations or to legal forms or technicalities.
7. In considering the merits and justice of the case I have taken account of the submission from Mr H that the booking KC made resulted in extra staff being necessary to run the course. However, Mr H he did not provide evidence that extra staff had been contracted or what efforts had been made to stand them down again or what payments had been made to staff because of KC's booking. There is insufficient evidence provided by Q Ltd that within less than a day of the booking it had incurred costs that justified withholding 50% of KC's money. In fact there is insufficient evidence that the cancellation caused any loss to Q Ltd apart from a staff member's time to reverse the charge.
8. In considering the amount to refund I have also noted that NZQA's website does not state that 50% of the amount paid is a maximum refund. The website states that 50% is a minimum refund. Whether NZQA refund requirements applied to this course or not, the merits and justice of the case are that 50% should not be viewed as the maximum refund that is appropriate in this type of situation.
9. In considering the merits and justice of the case I have also taken account of the work required by KC because Q Ltd failed to follow the requirements of the Education and Training Act 2020. It was KC that had to do all the work to research the law that applied to his situation. As a result, he provided a service to Q Ltd, assisting it to know the legal framework it had failed to take on board. I note that the terms and conditions regarding cancellation on the company website have now been changed as a result of KC's work. Q Ltd's failure to recognize his assistance has cost him a \$90.00 fee in the Disputes Tribunal that should have been unnecessary if Q Ltd had acted more carefully and reasonably. Q Ltd was required to act with reasonable care and skill under section 28 of the Consumer Guarantees Act 1993 and the service regarding the refund failed to meet that guarantee.
10. I am satisfied that any staff time necessary to action a refund for KC pales in comparison to the work required by KC to bring Q Ltd's refund policy into line with the law.
11. The merits and justice of the case are that KC receives a full refund of the amount paid for the course and therefore \$2,200.00 is to be paid to him by Q Ltd.

Referee: B M Smallbone
Date: Friday, 12 March 2021



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/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>.