



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 301

APPLICANT **LJ and MJ**

RESPONDENT **GT**

The Tribunal orders:

GT is to pay the sum of \$3,000.00 to LJ and MJ on or before Thursday 24 August 2023.

Reasons:

1. On 1 July 2022, LJ and MJ met with GT at her business [a restaurant]. They chose menu 3, with a few minor changes, and made a booking for their child's 21st birthday on 4 February 2023 for 100 people at \$50.00 each, plus a band for \$1,500.00, making a total cost of \$6,500.00. They paid a deposit that day, and the balance on 25 August 2022.
2. LJ and MJ claim that the band did not show up for the party, and that seven of the menu items were not provided. They now claim a partial refund of \$3,000.00.
3. GT did not attend the hearing or present any defence to the claim. The absence of a party does not prevent the hearing going ahead.
4. The issues to be determined are whether the services were carried out with reasonable care and skill, and fit for the communicated purpose, and what refund if any, is payable.
5. Section 28 of the Consumer Guarantees Act 1993 (CGA) provides that where services are supplied to a consumer, there is a guarantee that the service will be carried out with reasonable care and skill. CGA s 29 provides that services must be reasonably fit for any purpose the consumer makes known to the supplier before the contract is formed.
6. LJ and MJ provided copies of menu 3 noting the agreed changes and items not provided, a deposit receipt noting the details of the agreed services and menu changes, and a receipt for the balance. In the absence of any evidence to the contrary, I accept that the agreed menu was not provided and that the band did not show up. GT therefore failed to carry out the services with reasonable care and skill or ensure that they were fit for the agreed purposes.
7. Where a failure cannot be remedied or is of a substantial character, the consumer may obtain from the supplier damages in compensation for any reduction in value (CGA s 32(b)(ii)).
8. The failure could not be remedied, and is also substantial. LJ and MJ have claimed \$3,000.00, which equates to a full refund of the cost of the band, and a 30% refund of the payment for catering. I find this to be a fair amount in compensation for the reduction in value, and grant an order accordingly.

Referee: E Paton-Simpson
Date: 10 August 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 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>.