



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 717

APPLICANT LN

RESPONDENT B Ltd

The Tribunal orders:

1. The applicant's name has been corrected from [redacted] to [redacted].
2. The respondent has been renamed to reflect the contracting company – B Ltd.
3. The claim is dismissed.

Reason

Is the respondent required to provide a refund?

1. LN has made a claim that she is entitled to a refund of fees paid to the respondent because she was denied attendance at courses due to the Covid mandate situation. However, there is insufficient evidence that LN was denied access to courses. I am satisfied that the emails show the respondent encouraged LN to attend courses when it was possible for her to do so after the mandate was lifted. LN had about four years to opt in to training opportunities but has not taken up those opportunities.
2. LN has also said that because of limitations caused by the mandate situation she should be able to receive a refund of course fees. The contract LN agreed to stated that she would not be entitled to a refund in any circumstances. That clause may not be enforceable however there is another clause headed 'Force Majeure' which states that the respondent will not be liable or responsible for any failure to perform or delay in performance of any obligations that is caused by events outside its reasonable control. The New Zealand Government's response to Covid and the resulting mandates was outside the control of the respondent. I could not order a refund of the course fees where LN agreed that the respondent would not be liable for delays or failure to perform where there was a brief delay caused by Force Majeure.
3. I am satisfied that the more likely reason for LN not participating in the training is a change of mind and circumstances, rather than a failure on the part of the respondent. The claim for a refund must be dismissed.

Referee: B M Smallbone

Date: Monday, 4 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>.