



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

**[2023] NZDT 619**

**APPLICANT**      **LX**

**RESPONDENT**    **O Ltd**

**The Tribunal orders:**

The claim by LX against O Ltd is dismissed.

**Reasons**

1. LX owns land on which high voltage power lines run across part of it. LX now brings a claim against O Ltd for \$30,000.00.
2. The issues to be resolved are:
  - (a) Did O Ltd breach the agreement?
  - (b) If not, was O Ltd negligent?
  - (c) If so, what is the remedy?

**Did O Ltd breach the agreement?**

3. In 2020 LX and O Ltd signed a Tree Maintenance Agreement (the agreement).
4. The agreement relates to the maintenance of trees near O Ltd's high voltage power lines.
5. It is stated in the agreement under owner comments: Fell trees beside and under 33kv. Cut into manageable lengths for owner.
6. It is also stated in the agreement under the heading Disposal of Debris as follows: *the tree owner is responsible for disposing of the debris, large branches and tree trunks resulting from the specified tree work. If specified below, O Ltd will, in addition to the specified tree work, carry out removal of debris and certain clean up actions for the tree owner.*
7. In the agreement there were no further specifications below requiring O Ltd to carry out additional work.
8. LX said that in September 2023, he discovered a steer that was trapped by branches left on his property after they had been felled by O Ltd under the agreement.
9. LX described the branches and debris as being a "trap". He said that the branches and debris were like a set possum trap. He said the trap was set by O Ltd in 2020 and did not trap the unfortunate steer until 2023.

10. LX explained that despite his best efforts to save the steer it did not return to health and died as a result of its suffering.
11. LX said that the debris were not removed and were not cut into manageable lengths.
12. I am not satisfied that LX has proved that when O Ltd felled the trees in 2020, O Ltd was in breach of the agreement.
13. I make my finding when I consider the photographs provided by LX which appear to demonstrate a variety of short and longer lengths of branches.
14. I have also considered the agreement which does not require O Ltd to remove the cut material from the site.
15. I accept the submission by Ms Y that what is “manageable” and what is not “manageable” is subjective.
16. Although I acknowledge, that LX suffers from poor health, and he may well find the bits and pieces were too long or big to remove himself, that in itself does not prove that the branches and pieces of tree trunk were not manageable and in breach of the agreement.

**If not, was O Ltd negligent?**

17. If O Ltd has a duty of care to the landowners that they deal with when entering the property and felling trees near their power lines, I am not satisfied that LX has proved that it is more likely than not that O Ltd breached a duty of care causing loss of property.
18. I make my finding when I consider that the trees were cut down in 2020.
19. I accept O Ltd’s submission that it was not reasonably foreseeable that the felled branches and trunks would cause a hazard for animals.
20. I have taken into account that it was understood that it was the Land Owner’s responsibility to remove the debris.
21. I have also taken into account, that it has not been proved that the branches and trunks were unmanageable.
22. I have also taken into account that LX Submitted that he knows his business.
23. I acknowledge that LX is a skilled and knowledgeable farmer, however, unfortunately over the intervening years he did not express concern about the branches and did not take any remedial action himself.
24. For these reasons, I find that LX has not proved that O Ltd were negligent.
25. For these reasons I find the claim by LX against O Ltd is not proved. Because of my findings I do not need to consider the issue of remedy.
26. For these reasons, the claim by LX against O Ltd is dismissed.

**Date: 09 November 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>.