



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 571

APPLICANT M Ltd

RESPONDENT CQ

The Tribunal orders:

The claim is dismissed.

Reasons

1. M Ltd was engaged by CQ to provide digging services in preparation for siting of a tiny home. An initial price of \$7668.18 was too high for CQ's budget so the scope of work was adjusted and M Ltd provided a new price of \$2730.05 which was accepted by CQ.
2. A dispute arose about the price after the work was carried out and CQ paid all but \$555.66 of the invoiced amount, being 5 hours of digger and driver hire. The document provided to CQ by M Ltd was headed "Quote" and gave itemised prices and quantities of the various services involved in the job. 9 hours of digger and driver hire were priced at a rate of \$105+GST per hour.
3. CQ stated that he was on site when the digger driver was working and only two hours was needed to complete the work. Because that was disputed by M Ltd CQ paid for four hours, leaving the 5 hours balance outstanding. M Ltd's Mr I says his understanding is that the digger driver worked for 4 hours on site, but that that is irrelevant because a fixed price quotation was provided to CQ.
4. While I accept that a fixed price for the job was M Ltd's intention and that is why the document provided to CQ was headed "Quote", the statement at the bottom of that front page says "We have priced as accurately as possible but things can change. Our estimation is provided subject to our terms and conditions". The terms and conditions, for which a link is provided on the "Quote" state at clause 3 "You acknowledge that the Estimation is not a binding price for the services and that you will be charged for actual services carried out by us for you".
5. Any ambiguity in the formation of a contract is interpreted according to the contra proferentem rule which means the preferred meaning should be the one that works against the interests of the party that provided the wording.
6. Even though arguably, one could understand that any reference to an estimate in the terms and conditions was not applicable because the document was headed "Quote", suppliers often use the terms 'estimate' and 'quotation' interchangeably even though they have different meanings

legally, and M Ltd needed to make it clearer that its intention was to provide a fixed price if it sought to rely on that price in the event that the job was carried out in less time than priced.

7. For the above reasons and because CQ has already paid the actual time spent by M Ltd on his job, the claim is dismissed.

Referee Perfect

Date: 17 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>.