



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 456

APPLICANT **MX and YR**

RESPONDENT **D Ltd**

The Tribunal orders:

The claim is dismissed.

Reasons

1. MX and YR contracted D Ltd to move their household goods from [City 1] to [City 2] in March/April 2023.
2. The terms of the written contract were that D Ltd would provide a 20ft container (of 38m³ volume) and a final price of \$3795 incl.GST was agreed. When the container was loaded in late March 2023, there was an overflow and MX and YR say they were told by the truck driver that it might be possible to share a second container with another customer and that that would cost between \$1200-\$1500 for a half-load.
3. MX and YR say it was confirmed verbally by a staff member from D Ltd's office that the price for a second 'half-load' would not cost too much so they decided to go ahead. TD for D Ltd says it was not possible to price their share of the second container until it was known what respective volumes each customer was loading and what proportion of the container volume would be filled (because that would affect the rate per cubic metre). He says that in the end MX and YR's goods used 17m³ volume and the other customer's goods 5m³ (that is, only 22m³ of a 38m³ container was filled).
4. On 4 April 2023 D Ltd emailed MX and YR to advise them that the actual volumes in the second container meant that a cubic metre rate of \$150.00 +GST would be charged. They protested the rate but confirmed the loading and it was only at that point that D Ltd booked the freight (the timing is evidenced by their ferry freight booking form provided). MX and YR paid the invoice of \$2550.00 (which had been reduced to \$150 incl.GST) for the second container and it was delivered to them on 14 April 2023, having shipped on 12 April 2023 (there was a delay from 4 April 2023 to 12 April 2023 because of well-publicised ferry issues around that time).
5. YR contends that by 4 April 2023, he and MX were already in [City 2], and infers that they therefore had little choice but to go ahead with D Ltd's cost to freight the rest of their goods. However no freight booking had been made at that point so while it may have been their most obvious and practical solution by that time, they were not obliged to accept D Ltd's price of \$150/m³ – that amount would obviously have been reduced had the other customer had a greater volume of goods to freight than 5m³, but that was not in D Ltd's control. I find that YR and MX accepted the rate proposed by D Ltd in its email of 4 April 2023 and on that payment of that

amount and delivery of the goods the contract has been fully performed and no refund will be awarded.

6. I note that MX and YR have referred generally to misleading statements made by D Ltd and gave, as an example, D Ltd's statement in an email to them that "A 20ft 38m³ container is the smallest option we have". I gathered from YR's verbal submissions that he was implying that they were led to believe that D Ltd would have larger containers available should they need them and that this would have avoided the 'overflow', partially-filled container situation. However the context of D Ltd's emailed statement is a question from the applicants – "and can we require a small container that is only for plants?". So D Ltd was replying that they had no containers smaller than 20ft (so plants could not be accommodated separately). I do not consider the statement to be misleading in this context.
7. MX and YR's other main issue with D Ltd's service is delays in delivery to them – with the first container, delivery was delayed by a few days because they had been sent the invoice and payment instructions, but had not noticed them because they were so busy with moving logistics, and also had not noticed the term of the contract that states that payment must be made in full before delivery. I do not accept that the delivery driver's comment that delivery was delayed for other reasons was misleading, because there may have been other delays and as a contractor I do not imagine he was necessarily privy to the payment arrangements. The mistakes that led to delayed payment, and therefore delayed delivery, were the applicants' mistakes and D Ltd is therefore not liable for any damage to plants in the first container.
8. MX and YR say expensive plants were also left to go into the second container rather than all placed in the first and that this led to their loss due to the long delay between loading of the first container on 31 March and delivery of the second container on 14 April. Some of these issues have already been covered, and YR acknowledged at the hearing today that most of the plants were in the first container with a couple in the second container (as seen in the photo provided by D Ltd). The delay of the second container was unpredictable and outside of D Ltd's control, being mainly due to the ferry problems. The delay between 31 March and the booking of the second container on 4 April was reasonable because D Ltd had to liaise with a second customer and there was a weekend during those 4 days.
9. Further, I note that the applicants' goods were carried at 'owners' risk' under the 'carriage of goods' provisions of the Contract and Commercial Law Act 2017. That means that the carrier has no liability for damage to or loss of goods unless the carrier intentionally damages or loses them and there is no suggestion of that in this case. The claim for compensation for damage to/loss of the plants can therefore not be upheld and as no refund is awarded, as above, the claim is dismissed.

Referee Perfect

Date: 16 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 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>.