



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

[2024] NZDT 7

**APPLICANT** NB

**RESPONDENT** B Ltd

**The Tribunal orders:**

The claim is dismissed.

**Reasons**

1. NB had a contract of insurance with B Ltd which was issued in December 2018. He made a claim in October 2022 for an injury (over 2 years before) he says he incurred to his back when he was pushing a car in June 2020. B Ltd declined his claim saying he did not disclose issues he had with his back when he made his application. B Ltd also added a retrospective spine exclusion to his policy.
2. When NB filled in the application in November 2018 and answered "NO" to the question as to whether he "ever had any signs or symptoms of .. An injury .. disorder of [his] muscle, joint or bone".
3. I have fully considered all the material provided by NB and B Ltd and their respective comments during the hearing. Of particular note are the findings of the Insurance & Financial Services Ombudsman (IFSO) in its letter dated 26 June 2023. This letter was as a result of a complaint made by NB against B Ltd. IFSO is an independent organisation. All insurers and financial services providers must belong to a scheme. Consumers can make complaints to the relevant scheme. IFSO were not biased as NB maintains. As mentioned they are independent and make their own independent enquiries where necessary.
4. I agree with IFSO findings which were thoroughly analysed. They also refer to NB's spine surgeon's letter (dated April 2023) where he refers to his notes made in July 2020 which mentions the quite severe pain 5 years ago when he was a courier driver and lifted an heavy box. NB says the surgeon's comments was taken out of context and exaggerated. IFSO refers to the application and the requirement for disclosure. IFSO said the information was material taking into account the musculoskeletal questionnaire and the spine surgeons April 2023 letter. I note his later consultation with his spine surgeon was after he was having problems with B Ltd in relation to his insurance.
5. There was still an obligation to disclose in the application even if NB maintains it was "minor". In any event on the evidence the information was material. IFSO also refer to "material information", his spine surgeons letter is relevant particularly the July 2020 reference that NB has never been entirely pain free since then.
6. NB's claim is therefore dismissed.

**Referee:** Ms Jaduram  
**Date:** 27 February 2024



## 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>.