



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1373

APPLICANT NH

RESPONDENT RA Trustees Ltd

The Tribunal orders:

RA Trustees Ltd is to pay \$1449.00 to NH on or before 2 December 2020; and

NH is to organise construction of a wire and batten fence on the shared boundary between [Property 1] and [Property 2] (the property owned by RA Trustees Ltd) as per the details provided in a quotation from [Fencing Company] emailed on 1 February 2020; and

Work on the fence is to be started by 19 January 2020 and completed no later than 28 February 2021; and

If access to carry out the work to the fence over NH's property is more difficult, inconvenient or expensive than over RA Trustee Limited's land, NH and her contractors are authorised, with any equipment, to enter upon any portion of RA Trustee Limited's land at all reasonable times to do such things as are reasonably necessary to carry out the work on the fence. Any such entry to RA Trustee Limited's land shall be exercised so as to cause as little damage possible to the land entered upon and as little disturbance as possible to persons lawfully upon RA Trustee Limited's land. Any such entry does not authorise NH or any person to cut down, lop or injure any tree or shrub on RA Trustee Limited's land without the consent of RA Trustee Limited.

Reasons

1. NH originally approached the property manager looking after RA Trustee Limited's property at [Property 2], to discuss the replacement of an old stock fence on the boundary between the properties. The properties are semi-rural with RA Trustee Limited's current tenant grazing horses in the field bordered by the fence in question.
2. RA Trustees Ltd proposed replacement of the parts of the fence that were falling down, rather than full replacement and the parties met on site on 1 November 2019 to discuss the fence. As no agreement could be reached, NH forwarded a quotation from a fencing contractor for a replacement fence to RA Trustees Ltd on 1 February 2020 and referenced that quotation in the formal fencing notice she sent to them on 21 February 2020.

3. RA Trustees Ltd replied to the fencing notice informally on 27 February via their property manager, re-stating their desire and offer to undertake repairs to their fence at their own cost.
4. NH claims \$1449.00, being a half share of the fencing quotation for \$2898.00.
5. The issues to determine are:
 - Is the existing fence adequate?
 - If not, is the work proposed by NH needed to achieve an adequate fence and are the costs reasonable?

Is the existing fence adequate?

6. Section 9 of the Fencing Act 1978 provides that “the occupiers of adjoining lands not divided by an adequate fence are liable to contribute in equal proportions to work on a fence”. Section 2 contains the definition of an ‘adequate fence’ as follows: “adequate fence means a fence that, as to its nature, condition, and state of repair, is reasonably satisfactory for the purpose that it serves or is intended to serve.”
7. HR for RA Trustees Ltd agrees that the current fence is not in a good state of repair, but contends that it can be repaired for much less cost than a full fence replacement. She provided photographs at the hearing that show temporary repairs already undertaken by her tenant. The repairs consist of three metal waratahs placed alongside rotten wooden posts (that had been falling down along an 8-10 metre stretch of the 80-metre boundary), bound together with blue twine. RA Trustees Ltd wish to have the opportunity to use their handyman to concrete in three new supporting posts to replace those falling down before the temporary repair.
8. HR also points out that their tenant has placed an electric fence inside their boundary to help contain her horses, and notes that this was only turned off on the day they visited with NH because of the planned site visit. However, an electric fence is not considered to be part of a permanent fencing solution – as it can easily be turned off or moved – and it is the boundary fence that must be adequate.
9. NH says the boundary fence has been in place since she and her late husband moved to the property about 38 years ago. She has also provided photographs which show very decayed wooden posts along the length of the 80-metre shared boundary. A small section of the fence was on a lean of approximately 45 degrees before it was propped up in a temporary repair by the tenant as described above. The wires in the fence are stretched and loose and poorly affixed to the battens due to the decay evident in the wood.
10. It is clear that the existing fence is not an adequate fence and the necessity for a new fence is addressed below.

Is the work proposed by NH needed to achieve an adequate fence and are the costs reasonable?

11. Based on the photographs provided by both parties, I find that any repair to the fence is only going to be a short-term solution given the age and condition of the fence. Even though it is only a short stretch of fence that was actually falling over, the condition of materials in that length appears almost identical to the condition of the rest of the fence, so a full replacement of the fence is the only reasonable way to achieve an adequate fence on this boundary.
12. NH has also provided a statement from her fencing contractor stating “In many places posts and battens are rotten, some posts are supported with waratahs and steel pipes to keep the fence upright somehow. In my view the fence is beyond repair and needs to be replaced”. HR objects to the witness statement because Mr C is the contractor who also quoted to replace the fence. I accept HR’s point regarding the lack of independence of the witness statement. However I can also see the photographs upon which Mr C has based his assessment of the condition of the fence and I reach the same conclusion as him based on the photographic

evidence. RA Trustees Ltd provided no independent evidence to support their contention that it would be reasonable to repair the fence.

13. With respect to costs, the quotation provided by NH as part of the fencing notice appears to be reasonable for the type and length of fence proposed. No other quotations were provided in evidence. In accordance with section 9 of the Fencing Act 1978, RA Trustees Ltd are liable to contribute half of the cost of the quotation, their share being the claimed amount of \$1449.00.

Referee:

Date: 11 November 2020



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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.