



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 328

APPLICANT **NQ**

RESPONDENT **QC Ltd**

The Tribunal orders:

QC Ltd is to pay NQ the sum of \$1,900.00 within 21 days of the date of this order.

QC Ltd's counterclaim is dismissed.

Reasons

1. In 2022, QC Ltd acted for NQ on an employment matter with his previous employer, ED. QC Ltd sent to NQ a Letter of Engagement dated 7 April 2022 which was signed by NQ on 9 April. The Letter of Engagement sets out the services to be provided to NQ and it includes the following statement:

 "We estimate the fee, up to and including mediation, to be in the region of \$2,500 to \$3,500 plus GST, depending on the amount of time involved, and the results achieved."
2. On 18 May 2022, QC Ltd issued an interim fee invoice to NQ totalling \$1,891.75 (inclusive of GST) and NQ paid to QC Ltd a total of \$1,900.00 for the services. Then, on 11 August, QC Ltd issued a further invoice totalling \$1,357.00 for "attendances in your matter from 23 May...".
3. NQ's employment dispute went to mediation and the parties came to an agreement which was apparently recorded in a Record of Settlement dated 7 October 2022 (the Tribunal was not provided with a copy of the settlement agreement). The settlement included an agreement by ED to pay or contribute the sum of \$4,500 plus GST (\$5,175.00) to NQ's legal fees and NL, who represented QC Ltd, confirmed that the firm had received this amount from ED.
4. NQ claims that the payment made by ED covers the total fees he was required to pay to QC Ltd under the terms of engagement and he therefore claims a refund of the \$1,900.00 paid to QC Ltd. He also claims the Tribunal application fee.
5. QC Ltd claims that the amount paid by ED does not cover fees for all of the time spent on the matter and it is entitled to retain the \$1,900.00 paid by NQ. They also filed a counterclaim for \$1,456.67

being the amount due on the 11 August invoice plus interest on that amount at a rate of 1% per month.

Is QC Ltd entitled to retain the sum paid by NQ and is the firm entitled to payment of the amount in the 11 August invoice?

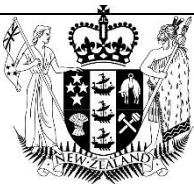
6. Whether QC Ltd are entitled to retain the amount paid by NQ and are entitled to payment of the amount due on the 11 August invoice turns on the meaning of the statement in the letter of engagement regarding the estimate of the fee.
7. NQ said that he understood it to mean that the total fee for the services, up to and including the mediation, would be somewhere between \$2,550 and \$3,500 plus GST and where it sat within that range would depend on the time spent and the outcome obtained.
8. On the other hand, NL claims that the clause means that the fee is estimated to be somewhere between \$2,500 and \$3,500 plus GST but it could be higher depending on the time spent and the outcome achieved. She said that they achieved a good outcome for NQ and spent considerable time on the matter.
9. I consider that, using a common sense and purposive approach, the clause would convey to a reasonable person the meaning put on it by NQ. That is, the estimated fee is between \$2,500 and \$3,500 plus GST and where it sat between those two figures would depend on the time spent and the outcome achieved. If QC Ltd had intended it to have the meaning asserted by N it could have simply included the additional words to the effect suggested by her that is, that the fee could be higher than the outer range of the estimate depending on the time spent and the outcome.
10. I note too that Rule 9.4 of the Lawyers & Conveyancers Act (Lawyers Conduct & Client Care) Rules 2008 requires a lawyer to "inform the client promptly if it becomes apparent that the fee estimate is likely to be exceeded". There is no evidence to support that QC Ltd told NQ that the fee is likely to exceed (by some considerable margin) the fee estimate in the terms of engagement.
11. I therefore find that the amount paid by ED on NQ's behalf in fact exceeds the fees payable by NQ under the terms of engagement. NQ is therefore entitled to a refund of the additional amount he paid, being \$1,900.00 and QC Ltd's application for payment of additional fees is dismissed.

Is NQ entitled to payment of the Tribunal application fee?

12. Section 43 of the Disputes Tribunal Act 1986 does not allow the Tribunal to award any party the filing fee unless it is provided for by contract and in certain specific circumstances described in s 43. None of those situations apply here. The claim by NQ for payment of the filing fee is therefore dismissed.

Referee: R Merrett

Date: 19 July 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>.