



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 438

APPLICANT Q Ltd

RESPONDENT B Ltd

The Tribunal orders:

1. The claim by Q Ltd is dismissed.
2. BH Ltd is added as the respondent.

Reasons:

1. B Ltd is the trading name of BH Ltd (referred to in this decision as B Ltd).
2. On 10 January 2023, Q Ltd provided two specialist driver training courses, one for UE and the other for MX, who both suggested that they were employed by B Ltd and that B Ltd would be responsible for the invoice.
3. B Ltd says that it never authorised the enrolment of these two individuals for these courses and that UE ceased working for them on 13 January 2023 and MX never worked for them.
4. The issues to resolve this claim are:
 - a. Who did Q Ltd contract with to provide the specialist driver training courses?
 - b. If it was with B Ltd, what amount should it be required to pay Q Ltd?

Who did Q Ltd contract with to provide the specialist driver training courses?

5. Q Ltd received a telephone call from UE on 9 January 2023 arranging for the two course enrolments. E-mail confirmation of the enrolments was sent to UE's personal e-mail address.
6. On the morning of the courses, being 10 January 2023, UE and MX completed Learner Enrolment Forms which on the second page have space for details about who is paying the bill.
7. Both UE and MX ticked "company account". UE provided the name "[B Ltd]" and EU provided the name "[B Ltd]" and gave an e-mail address for the operations manager of the company.
8. B Ltd does not have a company account with Q Ltd.

9. B Ltd said during the hearing that it uses another specialist company for the provision of these types of services. It denies that it agreed for UE and MX to carry out these courses and denies liability for the invoice.
10. It says it had no knowledge of the courses until it received Q Ltd's invoice for \$530.00.
11. An applicant is required to prove its claim on the balance of probabilities. This means that Q Ltd needs to show that it is more likely than not that B Ltd asked it to provide two driver training courses for it on 10 January 2023.
12. Q Ltd has not been able to establish this.
13. I am therefore unable to conclude Q Ltd entered into a contract with B Ltd for the provision of two driver training courses to be carried out on 10 January 2023 for the following reasons:
 - a. all arrangements were made directly with the students involved;
 - b. no contact was made with B Ltd before the driver training services were provided;
 - c. The information provided by these students as evidence that they had authority to bind B Ltd was exceptionally limited;
 - d. Q Ltd had no existing relationship with B Ltd;
 - e. B Ltd did not have an account with it; and
 - f. The first contact by Q Ltd with B Ltd was the provision of an invoice for the training courses, after they had been provided.
14. Although it is clear that Q Ltd acted entirely in good faith and placed trust in the students when they said that B Ltd would be responsible for the invoices, that is not sufficient for me to reach a conclusion that B Ltd is legally responsible for the driver training services which were provided for UE and MX.

If the contract was with B Ltd, what amount should it be required to pay Q Ltd?

15. In light of my conclusion on the first issue, I am not required to further consider this issue.
16. However, because the matter was discussed during the hearing, I note that there is a significant question as to whether interest at the rate of 2.5% per day would be an interest rate that could be enforced.
17. Disregarding the effect that compounding would have, even on a simple basis, this amounts to over 900% per annum.
18. There would need to be significant justification provided to avoid the conclusion that interest calculated in this manner was more akin to a penalty than a genuine commercial rate. As a penalty, it is unlikely that interest of this magnitude would be enforceable.

Conclusion

19. Q Ltd has been unable to establish that B Ltd engaged its services to provide driver training courses for UE and MX, or that UE and MX had authority to bind the company.

Referee: S Simmonds DTR
Date: 11 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>.