



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 755

APPLICANT Q Ltd

RESPONDENT T Ltd

The Tribunal orders:

1. The claim is dismissed.
2. Q Ltd is to pay T Ltd costs of \$360.00 by 22 December 2023.

Reasons

1. The dispute relates to work that Q Ltd (KC) carried out for a client of T Ltd in November 2021.
2. KC's written claim states that:

T Ltd contacted me to go about installing some carpets into a cabin onboard a super yacht and after a site visit was made I prepared a quotation.

There were some amendments to the plan so I advised I would revise their quote and an additional 50% or so was added to the original quote, this was accepted via the Xero software platform.

Upon completion [...] I emailed the invoice for balance of payment.

T Ltd short changed me \$805.00 claiming that they thought that the original quote was the correct quote.

3. Q Ltd's claim seeks \$850.00.
4. The hearing took place by phone on 12 December 2023. NC represented T Ltd at the hearing.
5. I made multiple attempts to phone KC between 11.30am (the scheduled start time) and 11.45am. The calls went unanswered.
6. Where a party who has been given notice of the hearing fails to participate in the hearing the Disputes Tribunal can proceed and determine the matter on the evidence available to it¹.
7. NC submitted that:
 - a. Q Ltd quoted \$1,725.00 for the job.

¹ Section 42, Disputes Tribunal Act 1988

- b. T Ltd considered that the quoted price was high given the size of the job, but they accepted the quote.
 - c. There were no changes to the plan, and KC did not provide an amended quote.
 - d. At the completion of the job KC issued an invoice for \$805.00 more than the quote.
 - e. They disputed the invoice.
 - f. KC issued a 'credit note' for the \$805.00.
 - g. They heard nothing more from KC after December 2021 until he contacted them in September 2023 demanding payment of the \$805.00.
8. My findings are:
- a. It is not proven that an amended quote was offered and accepted. KC has provided absolutely no evidence of the alleged amended quote.
 - b. The fact that KC issued a credit note for the disputed extra charge and then took no steps for nearly two years supports a finding that KC accepted that there was no arguable basis for his claim for extra payment.
9. T Ltd seeks costs on the basis that the claim is frivolous and vexatious².
10. The Tribunal must be cautious about awarding costs on this basis³. The fact that a claim is unsuccessful does not mean that the claim is frivolous and vexatious. This is a lay Tribunal, and unrepresented parties are not expected to have knowledge about their prospects of success.
11. The relevant considerations are⁴:
- a. The motivation of the party in bringing the claim.
 - b. The conduct of the party in the proceedings.
 - c. Whether there is any arguable basis for the claim
12. In this instance:
- a. KC contacted T Ltd after nearly a year and half of silence and demanded payment of \$805.00 with the threat of commencing proceedings if T Ltd did not pay.
 - b. KC is familiar with the Disputes Tribunal.
 - c. KC's claim is based on an alleged amended quote, which T Ltd has consistently denied the existence of, and about which KC has provided no evidence.
 - d. NC, the managing director of T Ltd, was required to prepare for and attend the hearing.
 - e. KC did not participate in the hearing.
13. Having regard to these factors I am satisfied that the claim is frivolous and vexatious and that it is appropriate to award costs.

² Section 43(2) Disputes Tribunal Act 1988

³ *Bolton v Auckland District Law Society* HC Auckland CIV-2004-404-6908, 14 July 2005 per Heath J

⁴ *L v W* [2003] NZFLR 961

14. I will award \$360.00, based on three hours of preparing for hearing and one hour participating in the hearing at \$90.00 per hour.

Referee: Nicholas Blake
Date: 13 December 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>.