



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 564

APPLICANT **Q Ltd**

RESPONDENT **UB**

APPLICANT'S **C Ltd**
INSURER
(if applicable)

The Tribunal orders:

UB is to pay \$1040.56 to Q Ltd on or before 19 December 2023; and

C Ltd is struck out as a party to the claim as the losses claimed by Q Ltd are not insurable losses.

Reasons

1. Q Ltd was booked by UB as the venue for her and her partner's wedding on 3 December 2022. A venue hire agreement was signed by UB on 24 November 2022 which contains terms and conditions relevant to the hire. The time of hire stipulated in the signed contract was from 2pm on 2 December to 10am on 4 December.
2. UB paid the contract price but after the event, Q Ltd invoiced an additional amount of \$1987.47 as they are entitled to do under certain circumstances as provided for in the terms and conditions of the contract. UB disputed the additional charges. She did not attend the teleconference hearing as her phone went to voicemail on multiple attempts to reach her at the beginning of the hearing time. The hearing therefore proceeded in her absence.
3. Q Ltd claims \$1987.47, being \$612.50+GST for 17.5 additional cleaning hours, \$1000+GST for two hours 'overstay', and \$115.73+GST for rug doctor hire for carpet cleaning.
4. The issues to be determined are:
 - Were additional cleaning charges justified?
 - Is UB liable under the terms of the contract to pay for two hours that the band stayed on the premises while packing up from 12pm to 2am on the evening of the wedding?
 - Is the rug doctor charge justified?

Were additional cleaning charges justified?

5. I find that Q Ltd is contractually entitled to charge for additional cleaning required under clause 3(g)(iii) of their terms and conditions and find further that they have provided sufficient evidence in the form of photographs and detail of staff hours incurred to justify the charge of \$612.50+GST.

6. The hirers were required to leave the venue in 'good, clean and tidy condition' and they did not. As well as cleaning multiple areas within the venue, Q Ltd had to dispose of the (very large) remainders of the wedding cake, which would not fit in the bins on-site and had attracted ants overnight.

Is UB liable under the terms of the contract to pay for two hours that the band stayed on the premises while packing up from 12pm to 2am on the evening of the wedding?

7. Q Ltd submitted that clause 3(g)(viii) of the terms and conditions allow them to charge an hourly rate of \$500+GST for "any unauthorised overstay". UN for Q Ltd said that the band was still packing up from 12pm to 2am which required their onsite manager to stay up in order to lock up after them – Q Ltd had to pay him overtime due to these extra hours.
8. With respect to the timing of the booking, I note that the booking did not end until 10am the day after the wedding, so that the band did not stay past the end of the booking period.
9. However in addition to the written contract, UN provided an email which was sent to UB on 16 November 2022 which gives further detail about timing and states that on the Saturday (the day of the wedding), 'music/noise must finish at 11.30pm' and 'all guests except those staying at the farm must depart by 12am latest'. Timing for pack out on Sunday morning was stated to be between 8am-10am (meaning no attendance before 8am on the final day of booking). Because this email was sent prior to the contract being signed by UB, the time limits contained in it form part of the contract terms and conditions which she has agreed to by signing the contract.
10. In considering whether clause 3(g)(viii) applies to the period between 12am and 2am after the wedding reception, I have had regard also to clause 3(i), which states, "The Hirer acknowledges that the provisions in this clause 3 are to protect Q Ltd against loss of business from cancellations and the risk and inconvenience of finding a replacement event...". I regard that clarification as relevant and do not consider therefore that a breach of the wedding evening time limits can be treated the same contractually as an "unauthorised overstay" as envisaged by clause 39(g)(viii), which I take to mean (given 3(i) staying past the end time of the entire booking under the contract.
11. I find that there was a breach as a result of the band staying past the 12am deadline on the evening of the reception, but that it does not attract the "unauthorised overstay" charges that staying on venue past the Sunday 10am deadline would attract. UN did argue that Q Ltd 'might have had' another booking from 12am that evening, but I consider that unlikely and there was no evidence for it.
12. For the reasons above, I find that UB is liable to pay Q Ltd's staff overtime costs, which the evidence provided shows were \$70.00. As that is the actual wage cost to Q Ltd as they employ an on-site manager, GST is not added and UB is to pay the actual cost only.

Is the rug doctor charge justified?

13. I find that a rug doctor was necessary based on the photographs of carpets provided and the state they were left in. UB is to pay \$133.09 as claimed.
14. A total of \$1040.56 is to be paid by UB to Q Ltd.

Referee Perfect
Date: 21 November 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>.