



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

[2023] NZDT 756

**APPLICANT QD**

**APPLICANT SC**

**RESPONDENT NU**

**The Tribunal orders:**

NU is to pay QD and SC \$14,404.00 by 8 January 2024.

**Background**

1. BD supply kitset farm buildings.
2. In December 2021 QD and SC approached NU about supplying a kitset farm shed that could be converted to a dwelling.
3. NU drew up plans and provided a quote, which QD and SC accepted.
4. QD and SC paid the quoted price by April 2022. NU gave a delivery timeframe of 4 – 6 weeks.
5. The kitset did not arrive.
6. The builder that QD and SC had arranged to assemble the shed became sick and was not able to do the job. NU offered to do the job.
7. In October 2022, some poles and timber were delivered to site. NU's contractors arrived and concreted the poles in.
8. QD and SC were disappointed with the quality of that work. They also discovered that the timber delivered to site was different (lower quality) than what was specified on the plan.
9. They sent NU an email on 28 October.
10. Further materials were delivered in December 2022, but not the cladding. QD and SC asked about the cladding and NU advised them that it would be delivered in the new year.
11. The cladding never arrived. QD and SC attempted contact NU, without success.
12. To avoid further delays, they purchased replacement cladding and flashings in February 2023.

13. Their claim seeks compensation for the cost of the additional cladding. The claim does not seek any compensation for delay, or for the cost of re-doing the foundations, or for replacing the timber that was not per the specifications of the plan.
14. The first hearing was scheduled to take place by phone on 31 October 2023. I was able to contact NU on the day of the hearing, but NU was not aware of the hearing and he had not received any of the claim documents. The documents had been sent to an address where he no longer lived.
15. NU provided a new postal address, and he confirmed his email address.
16. The Registrar sent NU a complete copy of the claim documents, and notice of the new hearing, by post and by email on 4 November 2023.
17. The new hearing took take place by phone on 4 December 2023.
18. I attempted to call NU multiple times on the morning of the hearing, without success.
19. The hearing proceeded in NU's absence.

### Findings

20. QD and SC had a contract with NU. NU was to provide a kitset 5-bay shed to a specification that the building could be used for residential purposes. The materials that NU was contracted to provide included cladding and flashings.
21. NU failed to supply the cladding and flashings.
22. The remedy for breach of contract is damages to put the innocent party in the same position that they would have been in had the breach not occurred.
23. To put themselves in this position, QD and SC had to purchase cladding and flashings.
24. The cost the cladding and flashings is proven.
25. NU is liable to QD and SC for that amount.

**Referee: Nicholas Blake**

**Date: 12 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>.