



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

[2023] NZDT 664

**APPLICANT**      QF Ltd

**RESPONDENT**    I Ltd

**The Tribunal orders:**

I Ltd is to pay QF Ltd the sum of \$776.89 on or before 19 October 2023.

**Reasons:**

1. I Ltd engaged QF Ltd to do some work on the hydraulic hoses for a truck. The work was carried out, but the truck not tested as there were also other tradespeople working on the electrics of the truck. The next day when the truck was being used one of the hoses developed a leak. I Ltd cleaned up the mess and had another company repair the leak. I Ltd informed QF Ltd of this two days later. I Ltd has not paid QF Ltd's invoice.
2. QF Ltd claims the sum of \$1,535.89 for the invoiced amount.

**The issue to be determined is what amount, if any, QF Ltd is entitled to.**

3. QF Ltd carried out the work but was not given the opportunity to test it when they completed the job. The next time the truck was used, one hose leaked. There was some dispute as to what caused the hose to leak, but the parts have been disposed of, so further analysis is not possible. It was agreed though, that it was a hose that QF Ltd had worked on. I Ltd did not give QF Ltd the opportunity to remedy the problem, but got it fixed elsewhere.
4. Although QF Ltd has referred to its terms and conditions in email correspondence, it is not clear that I Ltd received those prior to contracting with QF Ltd. Therefore, they cannot be relied upon in this dispute. It seems that the parties did not have clear terms in the contract around testing, and responsibility or opportunity for repairs should anything need further work. However, there is an obligation on all parties to mitigate any losses that they claim from another party.
5. As QF Ltd was not given an opportunity to test its work before truck was put back into use, it would have been appropriate to call QF Ltd immediately upon discovering the leak and ask them to remedy it. This would have mitigated the losses I Ltd suffered. However, I Ltd chose not to do so, and paid another company to fix it.
6. I accept that some costs to I Ltd associated with the leak were inevitable, which include the cost of spill kits, replacement hydraulic fluid, and I Ltd's mechanic's time. These costs were discussed at the hearing and total \$660.00 plus GST. I accept that it is reasonable for I Ltd to

claim these, as even if QF Ltd was called back to site, these expenses were likely to have been incurred. While QF Ltd says it would have had someone there in 20 minutes, I Ltd could not have known that in advance, so would have been prudent in cleaning up the spill and acting immediately with its own mechanic, as well as contacting hose specialists.

7. I Ltd argued that it also lost revenue because the truck, which is charged out at \$240.00 per hour was off the road. However, there is always a risk with such vehicles that mechanical failures will lead to time out of service. As I Ltd chose to use the truck without first having the work that had just been completed tested, I consider it appropriate that the risk and cost associated with the truck being off the road for further repair falls on that company.
8. Given the lack of clarity around the terms and conditions of the work, I consider it appropriate that the sum of \$660.00 + GST or \$759.00 including GST is deducted from the invoice, to provide some compensation for the immediate losses to I Ltd and recognition of the lack of opportunity for QF Ltd to test or remedy its work.

### **Conclusion**

9. For these reasons I Ltd is to pay QF Ltd the sum of \$776.89, calculated as \$1,535.89 - \$759.00, by the date stated in the order.

**Referee: K Rendall**

**Date: 28 September 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>.