



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

**District Court**

**[2023] NZDT 384**

**APPLICANT      QF Ltd**

**RESPONDENT    O Ltd**

**The Tribunal orders:**

1. O Ltd is to pay QF Ltd \$3,412.70 on or before 22 September 2023.
2. The counterclaim is dismissed.

**Reasons:**

1. QF Ltd is an entertainment agency. O Ltd operates the O Ltd hotel in [City]. O Ltd booked a band called the NM trio to perform for two nights at a [themed] Christmas event that O Ltd was running. QF Ltd says that O Ltd has not paid the full agreed price and did not provide all the accommodation for the band that had been agreed. QF Ltd seeks an order that O Ltd is liable to pay it \$4,206.20.
2. O Ltd has filed a counterclaim. It says the entertainment the band provided was not fit for purpose and that it had to pay partial refunds to the people who attended the function. O Ltd seeks an order that QF Ltd is liable to pay it damages of \$6,800.00.
3. The issues to be resolved are:
  - a. Is QF Ltd entitled to payment of the balance of the contract price?
  - b. Did O Ltd breach the contract by failing to provide accommodation?
  - c. If so, what, if any damages is QF Ltd entitled to?
  - d. Is QF Ltd liable to pay O Ltd damages for breach of contract?

**Is QF Ltd entitled to payment of the balance of the contract price?**

4. I find that QF Ltd is entitled to payment of the balance of the contract price, which is \$3,412.70.
5. The law that applies is the law of contract. O Ltd contacted QF Ltd about hiring a band to play for two nights at [themed] themed end of year/Christmas events. QF Ltd sent O Ltd videos and quotes from three possible acts. QF Ltd says that the three acts were all jazz bands, which is what it thought would be appropriate for the theme of the evening.
6. O Ltd said it would like to book one of those acts, which was the NM (the band).
7. QF Ltd then sent O Ltd a contract which provided that the band would play for two nights for three hours each night from 8 pm. The contract price was \$2,520.00 plus \$550.00 for travel plus GST.

The total price was \$3,702.50. O Ltd was also to provide a double rooms and breakfast and dinner for each of the band members. Full payment was to be made 14 days prior to the date of the performance.

8. O Ltd agreed to the terms proposed by QF Ltd. QF Ltd sent two invoices – one for a deposit and the second for the balance of the contract price. O Ltd included a request that the band dress appropriately for the [theme] theme.
9. O Ltd paid the deposit – which was \$289.50. The balance owing was \$3,412.70. This was not paid by O Ltd prior to the events.
10. The band performed at both events. QF Ltd say that the band performed jazz standards from the 1920s and 1930s, which is very similar to the style of music featured in the live video which QF Ltd had sent to O Ltd. QF Ltd says the band performed what they said they would, and QF Ltd is entitled to full payment of the contract price.
11. O Ltd has refused to pay the balance of the contract price. It says that the singer of the band arrived late and set up in casual clothes while guests were already in the room. It says the band started late – O Ltd was expecting them to play background music from 5.30pm. It says that the music the band played was too slow to dance to, and the hotel received complaints from the guests, and the band refused to change the style of music they played. O Ltd says it was expecting a party or dance band, and not a slower paced jazz band. O Ltd say the music the band played was not suitable for the event.
12. O Ltd accepted that it did not specify a dance or party band when it asked to book a band for the events. It says that this should be obvious, and that QF Ltd had provided a dance band for a previous [themed] night (in around 2019) and should have known what was required.
13. QF Ltd says that it was unaware that a dance band was required. QF Ltd's standard practice is always to send live videos of each act to their clients, which means that the client has an indication of the type of music an act performs when choosing to book the act. QF Ltd say that if O Ltd had asked for a dance or party band QF Ltd would never have sent videos of jazz bands.
14. At the hearing a member of the band said that the band had prepared a set list of the type of music that had been included in the live video sent to O Ltd. He said that this was performed professionally at both events. He said that during the first night O Ltd asked them to play dance music, and the band did their best to accommodate this by playing the most up-tempo music they had prepared. He said a drummer would have been needed to play proper dance music, and it was not possible to arrange this, or to alter their style of music because they had only prepared jazz music.
15. The band member described the clothes the band wore, which seem to me to have been acceptable for the theme of the night. It seems that the singer arrived later than had been planned and may have set up on stage wearing casual clothes, but I do not consider this to have been sufficiently unprofessional to justify any reduction of the contract price.
16. O Ltd says they expected the band to start playing background music from 5.30pm, but the contract specifies that the band will play for three hours from 8pm – and it seems that the band started at around this time, and was prepared to play for three hours both nights.
17. I find that QF LTD is entitled to payment of the balance of the contract price. I accept that O Ltd was hoping for a party band, but this was not communicated to QF Ltd when the band was booked. I consider it is most likely that the band played the style of music that was featured in the live video that QF Ltd sent O Ltd when the band was booked. It seems most likely that this music was played professionally during the night. The band did what it could to try to play more upbeat music, but I accept that it was not possible or reasonable to expect them to become a party band when that is not what O Ltd had booked.

18. For these reasons I find that QF Ltd is entitled to payment of the balance of the contract price, which is \$3,412.70.

**Did O Ltd breach the contract by failing to provide the accommodation it promised?**

19. I find that it is most likely that O Ltd did make rooms available for the band, and so there has been no breach of the contract by O Ltd in this respect.
20. The contract included a requirement that O Ltd provide a hotel room, breakfast and dinner for each of the band members for two nights.
21. QF Ltd said that O Ltd did not provide two of the rooms and claimed damages of \$793.50 for this failure.
22. O Ltd said that it reserved three rooms for the band, but only one of the rooms was used.
23. At the hearing the band member said that the singer of the band stayed at the O Ltd, but the other two members of the band did not. One stayed with family in [City] and the other stayed with his parents who had booked a room at the hotel. The band member said they were not told that there were rooms available for them at the hotel.
24. QF Ltd accepted at the hearing that this may have been because of a communication problem between it and the band members.
25. I am satisfied that it is most likely that O Ltd made rooms available to the band as required by the contract, and that these were not used because QF Ltd did not tell the band members other than the singer that rooms were available. For this reason, O Ltd is not liable to pay any damages to QF Ltd in this respect.

**Is QF Ltd liable to pay O Ltd damages for breach of contract?**

26. I am unable to make a finding that QF Ltd breached the contract with O Ltd, and so the counterclaim is dismissed.
27. O Ltd says that it received numerous complaints about the band during the events, and then received 9 written complaints afterwards. The tenor of most of the written complaints is that the band was not suitable for dancing.
28. O Ltd say it made a decision to refund of \$40.00 to each of the 170 guests who attended over the two nights as compensation for the disappointing entertainment. O Ltd seeks an order that QF Ltd is liable to pay it the \$6,800.00 in refunds that it paid to the guests.
29. O Ltd would need to establish that there has been a breach of contract by QF Ltd in order for any entitlement to damages to arise.
30. I find that O Ltd has been unable to establish any breach of contract by QF Ltd. As noted above, I consider that O Ltd chose the band based on a live video of the band, and that the band performed that style of music at the two events. O Ltd actually wanted a dance or party band rather than a jazz band, but this requirement was not made clear to QF Ltd until the night of the first event, when it was too late for QF Ltd or the band to reasonably do anything about it.
31. For these reasons I find that O Ltd has been unable to establish that QF Ltd breached the contract and so the counterclaim is dismissed.

**Referee: L Trevelyan**  
**Date: 16 August 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>.