



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

District Court

[2023] NZDT 60

**APPLICANT** RN

**RESPONDENT** UM

**The Tribunal orders:**

UM is to pay \$4,422.62 to RN by 14 March 2023.

**Reasons**

*Has UM breached the contract with RN?*

1. UM contracted with RN for the education of KH. UM agreed to the Terms and Conditions of the RN. She agreed to pay fees that were due for the service that RN provided.
2. UM has not paid for part of the fees due in 2021. She has also not paid fees due in lieu of notice after she withdrew KH from RN in 2022. UM has breached the contract with RN. The outstanding amount for fees has been proved.

*Should interest be ordered?*

3. The amount due has been outstanding since 20 May 2022. Interest is ordered as is provided for in s.20(1) of the Disputes Tribunal Act 1988 (the Act). Interest is due on \$4,327.94 from 20 May 2022 to today. Interest calculated by the Ministry of Justice Civil Debt Interest Calculator from 20 May to today is \$94.68. Fees were outstanding before 20 May however the final invoice for payment was presented in April for payment by 20 May 2022.

*The Tribunal and witness summons*

4. UM appeared for the hearing but decided to remove herself from the hearing by disconnecting from the teleconference. Prior to the hearing UM had requested three witnesses be summoned by the Registrar. This was referred to me and I declined the request. The Registrar emailed UM to inform her of that decision and that a decision about witnesses would be made at the hearing. At the commencement of the hearing today UM raised this issue and was told again that witnesses may be summoned after I have heard from both parties and determined the connection between the persons UM named and the applicant's claim. UM did not accept that. She said she had spoken to several lawyers, and none could find the authority for the Tribunal to decline her request for witnesses. She stated that the Tribunal process was witness tampering, a breach of natural justice, a breach of the Bill of Rights and that she wanted an

adjournment of the hearing. She said that she would not take part in the hearing unless I adjourned and summoned the witnesses. I told UM that the hearing would proceed with her or without her and that it was her choice. She disconnected from the call.

5. Section 44 of the Disputes Tribunal Act 1988 provides:

‘Subject to this Act and to any rules made under this Act and any practice notes issued under Section 6C(1)(ha), the Tribunal may adopt such procedure as it thinks best suited to the ends of justice.’

6. Rule 14(1) of the Disputes Tribunal Rules 1989 (the Rules) gives the Tribunal discretion to summon a person to the Tribunal.

‘The Tribunal may at any time during any proceedings, by a summons in the approved form, summon any person- ’

7. The Act and Rules do not state a Tribunal must issue a witness summons at the request of a party. The Tribunal has discretion regarding the issuing of a witness summons except as is provided for in rule 14(3).

‘A summons must not be issued under subclause (1) unless a Registrar believes on reasonable grounds that the attendance of the witness is necessary or expedient for the proper determination of the proceedings.

8. UM was informed that a witness summons could be issued after the connection between the witnesses and the case had been established. The connection between the people UM named as witnesses and this case remains unknown. UM made no submission to the Tribunal regarding a defence of the claim. I do not know why she has not paid RN's fees. The Tribunal will not inconvenience people by requiring them to appear for a hearing until it is determined that that person's evidence is relevance to the issues that the Tribunal must determine. That is the reason why Rule 14(3) is in place. It protects people from unnecessary attendances at the Tribunal. It prevented the Registrar (and the Tribunal) from issuing witness summons before the hearing.

**Referee: B M Smallbone**  
**Date: Monday, 27 February 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>.