



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 456

APPLICANT SE

RESPONDENT D Ltd

The Tribunal orders:

D Ltd is to pay SE \$550.00 by 31 August 2023.

Reasons:

1. In May 2022, SE provided entertainment services to D Ltd. D Ltd deducted bond money from each of her payments and has refused to return the bond.
2. SE attended the hearing. D Ltd did not attend. On the morning of the hearing the Tribunal received an email from the manager at D Ltd saying she had been unwell for a couple of weeks, and her health was getting worse. She requested an adjournment.
3. The registrar advised the manager that for an adjournment to be considered (i) a medical certificate would need to be provided, and (ii) D Ltd would need to explain why no-one else from the company was available as a representative.
4. In response, the manager advised that she would seek a medical certificate at 2:00pm (the start time of the hearing). Her response did not address the second issue of an alternative representative.
5. The hearing notice was sent out on 15 June, two months ago. If the manager has been unwell for two weeks, she has had ample time to make alternative arrangements for someone else (such as the director) to represent the company. The company has not provided a response to the claim or any documentation to support a defence. In the circumstances, I am not satisfied that the grounds for an adjournment have been met.

Background

6. SE signed a contract to provide entertainment services to D Ltd. The contract included deduction of a bond up to \$1,000.00 from payments made to her. The contract provided that deductions could be made from the bond if she caused damage or loss (such as failing to turn up for rostered shifts, being rude to customers, or leaving without notice).
7. At the outset, she advised D Ltd that she could work up to 24 May, after which she would be travelling overseas. D Ltd confirmed by email that she would be rostered until 24 May. It said it would hold onto her bond, she could keep her "bracelet", and she could be added back into the roster on her return if that worked for her.

8. SE provided services from 2 May to 24 May 2022. Bond money totalling \$550.00 was deducted from payments to her.
9. On her return, D Ltd told her they would need to have a meeting before adding her back into the roster. For practical reasons, she decided it was not viable to travel to [City] for work, but she offered to help out for a week or two. She subsequently returned her bracelet, but D Ltd refused to return her bond. In an email dated 28 March 2023 it stated:

As per our emails, I have advised that any outstanding bond has been forfeited. From record [sic], you went on holiday for a month and never returned to the club, nor was any formal resignation sent in.

Is SE entitled to her bond back?

10. The law of contract applies. D Ltd has alleged that SE breached the terms of the contract by going on holiday for a month and not formally resigning.
11. It is clear from the emails that D Ltd knew from the outset that SE was only available until 24 May. It agreed to this by confirming in writing that she would be rostered to that date.
12. There was no definite agreement that she would resume work on her return from overseas. This was raised as an option but, on her return, D Ltd said a meeting would be required before she could be added back onto the roster.
13. In summary, there was effectively a fixed term contract until 24 May 2022, and there was no agreement for SE to resume work after that date. Therefore, no resignation notice was required.
14. As a result of these findings, D Ltd is not entitled to retain SE's bond, and it must therefore be returned.

Referee: J P Smith

Date: 17 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>.