



(Disputes Tribunal Act 1988)
RESULT OF APPLICATION FOR REHEARING

[2023] NZDT 654

APPLICANT

person or organisation making
the original claim

SE

RESPONDENT

person or organisation originally
claimed against

D Ltd

Result of application for rehearing:

1. A rehearing is refused.
2. The order of 17 August 2023 stands.
3. The stay of proceedings granted on 1 September 2023 has lapsed.

Reasons:

1. On 17 August 2023, the Tribunal made an order for D Ltd to pay SE \$550.00. D Ltd did not attend the hearing.
2. On 1 September 2023, D Ltd applied for a rehearing. It says its general manager had applied for an adjournment due to illness but would have attended despite being unable to “speak/breathe” had she known the hearing was going ahead.
3. The manager and the business owner CV represented D Ltd.
4. SE was unable to attend and provided written submissions on the rehearing request.

Grounds for rehearing:

5. The Tribunal may order a rehearing on such grounds as it thinks fit (s 49 Disputes Tribunals Act 1988).
6. Section 42(1) DTA provides that, where a party does not attend after having been given a reasonable opportunity to do so, the Tribunal may deal with the claim on the information available. Where an order is made under this section, the party who did not attend may apply for a rehearing if there is “sufficient reason” for their non-attendance (s 42(2) DTA). However, it may not be appropriate to grant a rehearing if there is no reasonable prospect of a different outcome.

The hearing process:

7. The Tribunal received an adjournment request on the morning of the hearing from D Ltd's manager. She was advised that she would need to provide a medical certificate and clarify why no-one else could attend the hearing on behalf of the company.
8. At the time the hearing commenced, the Tribunal had not received a medical certificate, any explanation as to why someone else from the company (e.g., its director) could not attend, and it had not received any submissions or evidence from D Ltd.
9. It subsequently transpired, after the hearing was conducted and the decision finalised, that D Ltd had emailed submissions and evidence. Unfortunately, due to the source of the email, it was embargoed by the Ministry's IT system and was not released until after the hearing.

Should a rehearing be granted?

10. D Ltd's manager has provided detailed medical evidence about her condition, which I accept provided her with a valid reason for not being able to attend.
11. It appears that the manager had been suffering from her medical condition for some time and, although its severity has varied, in these circumstances the Tribunal expects alternative arrangements for representation to be made. The business owner, CV, says he was unavailable to attend the hearing in place of the manager, although he cannot now recall the specific reason.
12. The fact that D Ltd documents were not available at the hearing, because of the delay in releasing them, potentially provides strong grounds for granting a rehearing. However, the issue remains whether the written submissions, or any orally submissions, could have reasonably altered the outcome of the case.
13. In its written submissions, D Ltd says SE breached the terms of her contract and has since made unfair and defamatory remarks about the business, although it also accepts that its then operations manager did not follow the correct protocols. In its oral submissions today, it alleges that she has breached the confidentiality terms of her contract by engaging with journalists and social media about her case.
14. In her original claim, SE provided email correspondence between herself and the then operations manager showing that the manager approved a fixed term contract to a specific date and that no subsequent agreement was reached for the contract to resume. While I accept that the manager may not have followed the correct protocols, and that the agreement may have been contrary to some of the standard contractual terms, SE was entitled to rely on the specific agreements made with the manager.
15. Therefore, even if the additional evidence and submissions had been available, they would not have altered the outcome of the claim. Furthermore, in its written submissions D Ltd seemingly accepted SE's entitlement to a refund where it said:

The settlement of the bond of \$550.00 can be released once this matter is resolved as SE is in fact entitled to that money.

16. Although D Ltd attempted to 'walk back' this statement at the rehearing, it accurately reflects the reality of the situation.

17. While it is understandable that D Ltd may want to have its say at a substantive hearing, the Tribunal needs to take both a principled and pragmatic approach to the application. The issues around the bond are quite straightforward and, even based on D Ltd evidence and submissions, it is inevitable that the same outcome would likely result from a new hearing. Therefore, it would be a poor use of the Court's resources and the parties' time to order a rehearing. If D Ltd believes that it has a claim against SE about other matters, then it can file proceedings in the appropriate venue.

Referee: J P Smith

Date: 23 November 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>.