



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 226

APPLICANT SI

RESPONDENT B Ltd

The Tribunal orders:

The claim is dismissed.

Reasons

1. SI has income protection insurance with B Ltd. In April 2021 he injured his right foot during his job as a plumber. He visited a podiatrist over a number of months and carried on working as best he could.
2. The injury did not improve and by September 2021 he was terminated from his employment – he acknowledges that his performance had been significantly affected by the injury. He attempted to replace his income as best he could during the lockdown at that time and in the months beyond.
3. In August 2022 SI made contact with B Ltd to enquire about lodging a claim under his income protection insurance – he says he did not do so earlier because he didn't want to be dealing with the process that has since ensued. B Ltd advised that he would need to see a doctor about the injury if he hadn't already and that the policy waiting period of 90 days would begin once that consultation had occurred, assuming other criteria were met.
4. SI visited his GP on 2 September 2022, B Ltd accepted the clinical evidence provided and began paying under the policy (monthly payments of around \$6300, which are ongoing to date) from December 2022 as per waiting period under the policy.
5. SI believes B Ltd should have accepted evidence of injury and treatment from his podiatrist and back-dated the cover to the time his income reduced in September 2021.
6. He claims \$29,684.39 representing several months of cover, abandoning any claim for the full period between when his employment ended and when cover by B Ltd began.

7. I find that the terms of the insurance contract are clearly laid out in plain language and that SI unfortunately does not meet the criteria to enable his claim to be backdated. The policy requires that “your sickness or injury and incapacity to work must be supported by clinical evidence that is approved by us, and you must be following advice about that sickness or injury from a registered doctor. Following the advice of a registered doctor means you are following that advice on an ongoing basis, including recommended courses of treatment and rehabilitation.”
8. Even though SI submits and has provided evidence to show that he had consulted GPs in 2018 and 2019 about foot problems that may well have been connected to the injury that occurred in April 2021, that does not satisfy the policy criteria. He would have to have seen a GP on an ongoing basis after the injury and from when his income was reduced after his employment ended in order to be receiving monthly payments for that period. Under the policy, because he first consulted a GP about the foot injury in September 2022, the 90 day waiting period started from then, and B Ltd correctly began making monthly payments from December 2022.
9. Based on the above, I find that B Ltd is not in breach of their contract of insurance with SI and the claim for payment representing backdated cover must therefore be dismissed.

Referee Perfect
Date: 26 April 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>.