



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 160

APPLICANT SX

RESPONDENT S Ltd

The Tribunal orders:

SX's claim against S Ltd is dismissed.

Reasons:

1. The respondent provided monthly software services to the applicant at the cost of US\$6.90 per month from January 2021. In August 2022, the cost of these services rose to US\$69.00 per month. The applicant was charged the higher price for five months before he cancelled the agreement with the respondent. The applicant claims NZ\$600.00 from the respondent.
2. The issues to be determined by the Tribunal were:
 - a. Under what circumstances was the respondent entitled to increase its charges pursuant to the agreement between the parties?
 - b. Did the respondent comply with the terms of the agreement in increasing its charges?
 - c. Is the applicant entitled to a refund?

Under what circumstances was the respondent entitled to increase its charges pursuant to the agreement between the parties?

3. The relevant law is the law of contract.
4. The terms of the agreement between the parties stated that the respondent's charges were subject to change on 7 days notice from the respondent. The terms also provided that notice could be given by way of email or posted on the respondent's website.

Did the respondent comply with the terms of the agreement in increasing its charges?

5. The respondent increased its charges in August but did not give any notification of the change to the applicant until 7 September 2022 when it sent an apology that there had not been any prior notification of the price increase.
6. The applicant told the Tribunal that the respondent's email on 7 September was an apology only and did not constitute notice as it was given retrospectively of the price increase. However, I find that the email that was sent to the applicant on 7 September 2022 constituted notice of the price increase. I say this because the email not only apologised but advised the applicant of the price increase, and it was sent by email which was also in accordance with the terms of the

agreement. I also note that the increase was set out in the respondent's invoices that were emailed to the applicant. Therefore, it is reasonable to find that the applicant had notice of the increase and that it would apply from 14 September 2022.

Is the applicant entitled to a refund?

7. The applicant was correct that the increase could not have applied to the amount charged on 3 September but would apply to every monthly charge after that.
8. The respondent agreed to refund the applicant for the first month he was charged the increased price (which was on 3 September 2022) because it had not complied with its own agreement. This refund was provided after enquiry by the applicant and the respondent admitted it should have been proactive about that.
9. However, as I have found notice of the increase was given in accordance with the terms of the agreement for any payment deducted after 14 September, the respondent did comply with the terms of its agreement for payments deducted after that and the applicant is not entitled to any further refund.
10. For these reasons, the applicant's claim against the respondent is dismissed.

Referee: K. Armstrong
Date: 2 May 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>.