



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 179

APPLICANT TD

RESPONDENT X Inc

The Tribunal orders:

The claim by TD against X Inc is dismissed.

Reasons

1. TD was a member of X Inc for a number of years. TD now brings a claim against X Inc for \$4000.00.
2. The issues to be resolved are:
 - (a) Was there a contract between TD and X Inc?
 - (b) If so, did X Inc breach the terms of the contract by passing a by-law?
 - (c) If not, did X Inc repudiate the contract?
 - (d) If not, did TD resign from X Inc or is she still a member.
 - (e) If so, does the Disputes Tribunal have jurisdiction to hear a claim in relation to TD's application to re-join the club?

Was there a contract between TD and X Inc?

3. The general law of contract applies. A contract, or legally binding obligation, is created by an offer, acceptance, exchange of value. The terms of a contract are formed at the beginning, not at the end. What was agreed is looked at objectively, i.e. by looking at what was said and done. The law of contract requires parties to a contract to adhere to the terms of that contract unless there is a legal reason not to do so.
4. It was not disputed by X Inc that TD paid a fee to join the club and in return the club provided her with the use of facilities and the opportunity to play [sport].
5. Further it was not disputed by X Inc that a contractual relationship existed between TD and X Inc. I am satisfied, based on the simple principles for the formation of a contract that there was in fact a contract between X Inc and TD.
6. Further it was not disputed and accepted by X Inc that the X Inc constitution comprised the written terms of the contract.

If so, did X Inc breach the terms of the contract by passing a by-law?

7. TD submitted that X Inc passed a by-law as the result of a decision made on 16 November that was repugnant to the rules of club, in particular rule 24.1. TD submitted that the decision to require members to provide proof of Covid vaccinations before they could enter or participate was repugnant to both the rules of the club and the provisions of the law. TD submitted that it is not within the ambit of the power of the club to create rules which impinge on the civil rights of the members of the club.
8. TD said that the requirement that members provide proof of covid vaccinations is from her perspective a requirement that she disclose her medical history. She said that there should have been a special meeting to make a decision about club members and the requirement for them to disclose their medical history. TD said the club were making it up as they went and she doesn't accept that the club had a right to make such a by-law.
9. TD said that as soon as she was asked for proof of vaccination she requested the guidelines that were sent to X Inc's committee. TD said her request was ignored and the second time that she attempted to go about her business as a club member she was asked again and again her request was ignored. TD said that because the club didn't explain to its members why they had made the decision, the club failed in its constitutional commitment to its members.
10. TD provided the copy of an email from TI referring to the advice that was sent out to the clubs in order to assist them in dealing with the Covid 19 vaccination issue, and that the letter stated that "no medical history is required, only a vaccination pass or proof that the member had the required number of shots".
11. TD stressed throughout the hearing, that it was her civil right to refrain from disclosing her medical history and in her view disclosing whether or not she had the required vaccinations was the same as disclosing her medical history.
12. I have considered TD's legal submissions, her oral submission in relation the passing of the by law and the written material TD has provided. I am not satisfied that TD has proved that it is more likely than not that X Inc breached the terms of the contract that they had with TD by virtue of her membership with the club. I have also taken into account the following.
13. I have reviewed the terms of the contract namely the X Inc constitution and I am satisfied that the club had the authority provided by section 9(h) to make by laws and that all members of the club including at the time TD were bound by the Committee decision. TD was unable to point to where in the terms the Committee breached its obligations. I accept that rule 2.4 entitled Bylaws provides: "the Committee may from time-to time make, alter or rescind bylaws for the general management of the club, so long as these are not repugnant to these rules or the provisions of the law. All such bylaws shall be binding on members of the Club. A copy of the bylaws shall be posted in the club rooms.
14. I do not accept TD has proved that the making of the by-law or the by-law itself was repugnant to the rest of the constitution rules or to the law itself.
15. I further take into account the submission of X Inc in that they took advice from the Ministry of Health, the [Regional Sporting Association] and the [National Sporting Association] before making the decision that they did. I also accept that it is common knowledge that at the time many organisations were making similar adjustments on the advice of the Ministry of Health.
16. Further I take into account X Inc's submissions that they had the civil rights of the majority of their members in mind considering the average age of their members.
17. For these reasons TD has not proved this aspect of her claim.

Did X Inc repudiate the contract?

18. The Contract And Commercial Law Act 2017(CCLA) Section 36 provides that:

(1) A party to a contract may cancel the contract if, by words or conduct, another party (B) repudiates the contract by making it clear that B does not intend to—

(a) perform B's obligations under the contract; or

(b) complete the performance of B's obligations under the contract.

19. TD described an incident in which she described being goaded for her beliefs and the police being called. She said she had to leave the club grounds because of the abuse she received. TD emphatically denied that she had screamed or argued in the way the witness statements allege on behalf of X Inc. TD said because of the behaviour she was forced to send a letter of resignation about three days later.

20. TD through her lawyer submitted that the club had repudiated the contract because they had made it clear that they did not intend performing their obligations which were to provide the members with the opportunity to enjoy the benefits of belonging to the club.

21. I am not satisfied that TD has proved this aspect of her claim. When I consider that I find that the club was entitled to make the by-law and did not breach the contract I do not accept that in doing so the club repudiated the contract. Further I am unable to make a decision about what exactly happened on the day TD left the club however, I do not accept that there has been evidence provided that X Inc repudiated the contract because of the by-law which effectively denied TD entry to the club.

If not, did TD resign from X Inc or is she still a member.

22. TD submitted that although she provided the club with an email of resignation and accepted a reimbursement of the annual fee on a pro rata basis, she had no choice but to resign because of the club's behaviour and the passing of the by-law.

23. I do not accept that TD has proved that she was forced to resign. I accept her own submission that she was angry after the altercation at the club. TD has not proved that her displeasure at some of the members and her perception of how they behaved and the passing of the by-law culminated in her being forced to write a letter of resignation.

24. Further, because of my findings above I do not accept that the passing of the by-law which TD clearly did not agree with and found she could not comply with meant that her eventual resignation was not an informed choice.

25. TD submitted that the members can resign subject to the rules of the club, by giving notice to the secretary and that this process was not followed. She submitted that therefore she is still a member of the club.

26. I am satisfied that when TD submitted her email of resignation and the committee considered it, the required notice was given because it was submitted to the secretary as required.

27. For these reasons I am satisfied that TD has not proved that she is still a member of the club.

If so, does the Disputes Tribunal have jurisdiction to hear a claim in relation to TD's application to re-join the club?

28. The second part of TD's claim addresses TD's application to re-join the club after the by-law was uplifted.

29. Because of my findings above in relation to TD resigning, I am satisfied that when TD's letter of resignation was accepted by the committee the contractual relationship between TD and the X Inc had ended.

30. The Disputes Tribunal's jurisdiction is limited to certain aspects of the law. The disputes Tribunal jurisdiction precludes the Tribunal from considering Equitable claims. Because I have found that the contract ended between TD and X Inc sometime before she re applied to join the club, that aspect of TD's claim cannot be considered under the jurisdiction for contract law. For these reasons that aspect of TD's claim has not been proved and is also dismissed.
31. For these reasons there is no need for me to consider the issue of damages and the claim by TD against X Inc is dismissed.

Referee: K Johnson
Date: 27 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>.