



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1325

APPLICANT TN

RESPONDENT LI

The Tribunal orders:

1. LI is to pay to TN the sum of \$250.00 on or before 1 September 2020.
2. The ownership of the cat "A" is vested in LI.

Reasons

1. Ms N used the services of a cat rehoming agency run by NQ to find a new home for her cat, "A". Ms N is a cat breeder, and Ms N was seeking another home for A as she did not enjoy living with other cats.
2. Mr I responded to the advertisement put out by the agency. Mr I ended up taking A but was unsure at the time whether he would be the right home for her, so did not commit to a full adoption. Everyone involved called the arrangement a "fostering" of the cat.
3. Not long after the rehoming, Ms N became concerned about what the cat was being fed, and about a lack of communication from Mr I. She sought a return of the cat. The parties fell out, and after first agreeing to return the cat, Mr I and his partner later refused. By that time, they had decided they wanted to keep her.
4. Ms N has filed a claim seeking the return of A. Ms N named Ms Q as a co-applicant, but it became clear at the hearing that Ms Q was not seeking any remedy herself from Mr I. The claim was therefore one between Ms N and Mr I, with Ms Q in support, and as a witness for, Ms N.
5. The issues to be resolved are: (a) What were the terms upon which A was fostered? (b) Is Ms N entitled to demand return of A? (c) If not, should Mr I pay any sum for A?

What were the terms upon which A was fostered?

6. The law of contract applies. A legal obligation arises under a contract where the parties decide to exchange something of value following an offer and an acceptance and intend the arrangement to be legally binding. The obligations cover anything that the parties expressly agree, and any other term that is later considered to be implied by law or custom. Where there is a dispute about what certain terms mean, then those terms are defined objectively. Any ambiguity about a term is resolved not by looking at what the parties thought the term meant, but by considering what a

reasonable person would consider the term meant, having regard to the context of the arrangement.

7. Had Ms N simply asked someone else to look after her cat, there could well have been no contractual obligations created. However, in this case, I find that the fostering of A created legal obligations that were intended to be legally binding. The parties did not sign a contract, but there was a discussion about the terms of the arrangement, and a rehoming agency was involved in the placement. The parties were not known to each other prior to the arrangement. I am satisfied there was sufficient formality in the arrangement that this went beyond simply passing on a cat to another home.
8. I find that the arrangement was expressly agreed to be a fostering arrangement. All parties had used the word “fostering” as an alternative to a full adoption. Mr I had made it clear that he was not sure about committing to a full adoption until he saw how he bonded with A. At the same time, his texts made it clear that full adoption was on the cards but wanted to meet her first. Ms N agreed to this. Ms Q emailed Mr I and stated:

“I spoke to T this morning and she would be agreeable to having her fostered. She just wants a kind and safe home for her without other cats. So even if you don’t want to adopt her it would be great for her to have somewhere to stay without other cats harassing her till I can find her a forever home...”
9. No contract was signed. However, I am satisfied based on the above exchange that the obligation created upon acceptance of the fostering was to take A on a fostered basis to see if it worked out, and to provide a kind and safe home.
10. Usually, the agency charges a fee for adoption of \$75.00. However, this did not start out as an adoption, A was not a cat owned by the agency, and no fees were paid.
11. Ms N was concerned that she had specified certain food, and that this was not being provided. There was a discussion about food before A was handed over, but this was verbal, and exactly what was specified could not now be determined. However, given what Ms N and Ms Q explained in the hearing, I accept that to be “safe”, A’s diet must be largely raw meat, rather than cat nuts. In that sense, there was an obligation to ensure this occurred.
12. As a consequence of there being no written agreement, there was no detail provided at the time about at whose option the cat would remain at Mr I’s home. Ms N stated that the arrangement entitled her to seek return of the cat at any time. She remains the registered owner. However, Mr I states that he considered the fostering arrangement was a trial, that at his option this could become an adoption.
13. “Fostering” of an animal can occur in many contexts, and with varying degrees of control being handed over. Having considered the context in which this took place, and the communication between the parties, I am satisfied that it was reasonable to interpret the arrangement as a fostering for the purposes of a trial, and that Mr I could therefore opt to adopt if the arrangement worked out. It is a big commitment to take on a new animal, and reasonable for a person to want a trial. On the other hand, it is also important for the welfare of the animal that a suitable arrangement, once found, is not disturbed. Ms N considered that a “fostering” of an animal gave her rights of visitation, a right to seek return at any time, regular communication, and a right to see and specify food given. This could have been arranged, but Mr I needed to be notified that these were the terms prior to his fostering of A by putting these terms into a signed agreement. I do not find that these terms are so well known to the general public that they would be implied by custom, and they are not so obvious they go without saying so that they could be implied by law.
14. There is a reference to a right to adopt in the email from Ms Q. She stated that “even if you don’t want to adopt her it would be great for her to have somewhere to stay”. This infers that he can decide to adopt if it suits. I have had regard to the fact that, at the handover, Mr I said that if he fostered her, he would be happy to do so for up to five years if it took that long to find an adoption home. He states that this was intended to show his reliability as a fosterer, and her commitment to

that arrangement, even if he decided not to adopt. Ms N points to this as evidence that she could ask for the cat back at any time. This statement is open to interpretation in both ways. Mr I presented as an accommodating and patient person, and I consider this statement was made to give Ms N confidence in the arrangement, even if he could not commit to adopt. To use this against him to now say he had not wanted a trial, with an option to adopt, would be unreasonable, without having made the obligation to return on demand clear, and in writing.

15. In summary, I find that the parties agreed to the following terms:

- (a) Mr I would take A as a foster arrangement:
- (b) He would provide a kind and safe home, which included the need to have a high proportion of meat in her diet;
- (c) The purpose of the fostering was to make sure he was happy, and A was happy. If not, he would still look after her for some time until the right home was found. If things worked out, he would want to adopt her.

Is Ms N entitled to demand return of A?

16. I find that Ms N is no longer entitled to demand return of A. This is so for the following reasons:

- (a) Whilst Ms N remains the registered owner of the cat, she has handed A over on the basis that her home is not suitable on the above terms. These include the right of Mr I to keep her if he decides to adopt her. Mr I does wish to adopt her.
- (b) It has not been established that Mr I has breached the obligation to feed A appropriate food. He explained what he has fed her. He has spent over \$400.00 in vet bills (and just recently had her vet checked again).
- (c) A has now been with Mr I for a year. A will have bonded to Mr I, and his partner. They have bonded to her. Ms Q has visited the cat and reports that the cat appears well and settled.
- (d) It would therefore be contrary to an objective interpretation of the initial arrangement, and to the substantial merits and justice of the case, to undo the arrangement.

17. I have had regard to the fact that Mr I failed to keep up regular communication with Ms N. I agree this has occurred. However, Mr I did not sign up to any terms requiring close communication and is not legally obliged to maintain this. Ms N became concerned in 2019 that the cat had been to the vet for a broken fang and had oral health issues. She inferred from this the cat was not being looked after and demanded to know more, and then to have the cat returned. There was insufficient evidence of any maltreatment, and in fact clear evidence of good care in seeking immediate vet treatment. I recognise that this outcome could well result in a lack of contact for Ms N with A in the future. This is not what she intended, but had she had an expectation of a home where she could remain a part of A's life, she needed to make this clear at the start.

18. I have had regard to Mr I's partner's suggestion to Ms N early on in the arrangement that they were feeding the cat nuts. This is not proof that the home is not safe and kind, nor that they were failing to feed the cat any meat. It is noted that, during Ms Q's welfare check after the hearing, she noted that there was a bowl of nuts available to the cat. Ms Q reiterated the need to feed the cat a high proportion of meat. Mr I explained at the hearing that A is fed cat nuts, but that this was only a part of her diet, and that they had gone to some trouble to feed her plenty of venison, which they have in large quantities in their freezer. Mr I also proposed to make arrangement to send receipts for cat feed to prove this, but there was no agreement reached at the hearing to resolve the case, no order can be made regarding this. An obligation of that nature is not something the Tribunal can order, as it is unenforceable. I am satisfied that Mr I is feeding meat, and without further proof of any health issues, concerns regarding feeding and welfare were not able to be substantiated.

19. I have had regard to the fact that Mr I's partner promised to return the cat, and then did not turn up to the arranged collection point. This occurred after some accusatory exchanges about A's diet. This was very hurtful and disappointing to Ms N, and understandably so. Mr I's partner had explained that the cat went under the house and could not be caught. Whatever the reason, Ms N was understandably believing there was some element of deceit involved. I do not believe this was the case, but Mr I's partner's actions escalated the dispute. However, the suggestion that the cat would be returned at that time did not create a legal obligation. This is so for the following reasons:

(a) The arrangement gave Mr I a right to adopt if he thought A was happy, and they had bonded;

(b) Mr I's partner was feeling harassed by the allegations being made and did not agree to them. Ms N had acted out of frustration that her terms were being ignored, but she was unable to establish that her expectations of ongoing involvement, communication and a right of return at any time were part of the deal. Ms N's accusations, which were based on incorrect assumptions about her rights, and A's wellbeing, had caused the partner to question whether the arrangement could work. The partner made an error to agree to meet, and then change her mind. This caused significant disappointment and hurt. However, there was no negotiated amendment to the parties' underlying rights. The contractual obligation to let Mr I decide remained.

(c) By the time this occurred, Mr I had had A in his care for some months. This was enough time to make a decision about whether he would want to keep A. It would have been appropriate at that time to offer to pay the adoption fee, or some other agreed sum to make it clear the arrangement was now an adoption, but as the parties had fallen out, this did not take place. No fee was discussed at the start. Once a claim was filed, matters remained as they were until the hearing, by which time a year had passed since the arrangement began. It was clear from the commitment Mr I made to the cat, in the suggestions he made, that the cat is loved, and is safe and well in his care.

20. In the end, the answer to the legal rights of the parties in this case must always accord with the best interests of A. Ms N did foster A, not adopt her. However, she was looking for a new home, and the fostering was, by any objective measure, a trial. That trial worked out. A year down the track, the cat should be able to stay where it has settled. Mr I's partner has fallen out with Ms N, and let her down with the suggestion of a return, which did not eventuate. However, this followed communications from Ms N which were out of turn, based on how the arrangement could be legally defined. Ms Q has checked on the cat, and also noted in the hearing the importance of A's interests in this matter, and that a year has now passed. The cat should therefore now be treated as adopted by Mr I.

Should Mr I pay any sum for A?

21. Mr I had offered to pay a donation to the cat rehoming agency shortly after he took A. The agency did not follow up on this. He then offered at the hearing to pay the agency \$250.00. I find that Mr I should pay this sum to Ms N. Ms Q, whose agency would have benefitted from the donation, supports this outcome.

22. No sum was negotiated at the start, should adoption occur, but the usual agency fee of \$75.00 is not applicable, as this arrangement is with Ms N, not the agency.

23. Any payment arguably goes beyond any legal obligation, as none was negotiated at the start, but it is reasonable to imply an obligation to pay something upon an adoption being confirmed. Ms N sought \$500.00, but to achieve a sum beyond what was offered required some proof of a negotiated arrangement.

24. Ms N sought ongoing visitation rights. Such an order cannot be made. Any ongoing relationship can only be on a mutual and voluntary basis. The parties have fallen out, and until there is a recognition by each of the disappointments the other has suffered, which I am confident can occur over time, Mr I and his partner cannot be legally obliged to be involved.

Conclusion

25. I was impressed by the passion that Ms N showed for A, and I understand why she brought the claim. I was equally impressed with the commitment Mr I showed to A, and all the suggestions he made to try and make a workable arrangement for the future that met Ms N's needs. I trust that Ms Q's positive welfare check, and the information shared in the hearing, will give Ms N confidence in the arrangement moving forward.
26. I am satisfied that the outcome is accordance with the substantial merits and justice of the case. I would not have made this order, regardless of the legal technicalities, if I did not have every confidence in Mr I as a cat owner, and that A is loved, safe and well.

Referee:

J Robertshawe

Date: 11 August 2020



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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 28 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>.