



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2023] NZDT 138

**APPLICANT** TT

**RESPONDENT** BQ

**The Tribunal orders:**

**BQ is to pay TT \$6,539.00 within 28 days.**

[1] BQ engaged TT to do the electrical work for a house in [Suburb 1] which he, BQ, was building for himself. A dispute arose between the parties, and TT did not complete the work. TT's claim is for \$9,585.00, the value of the work which he says he provided to BQ. The sum includes another, smaller, job that TT did for BQ on another site in [Suburb 2], and a disbursement for the power connection.

[2] With regard to BQ's house, TT said that the arrangement was that BQ would provide all the materials, and TT was to provide only the labour. The materials were to be provided by S Ltd, which had been given the plans for the house and calculated and provided the necessary materials. However, said TT, many items were not provided to the site, and he was obliged to spend considerable time going to the premises of S Ltd himself in order to obtain what was necessary. An account with S Ltd was set up and, said TT, each time he made a purchase on that account a representative from S Ltd was obliged to contact BQ so that he could approve it. This all caused delays, TT said, and accounted for many hours of his time.

[3] TT said that he had not provided a written quote of any kind, but had made it clear that it was a "charge up" job, so that the sum payable would depend upon the amount of time that he spent on the work. His claim was that he had worked for 160 hours, at a rate of \$50.00, which included his time spent sourcing materials. He said that he had completed some 80 - 90% of the total work that he had agreed to provide. His expectation had been that the total electrical work would be done in about three weeks: one week for the pre-wire, one for the fit-off inside the house, and one for the mains cabling, switchboard, sewage tank, and other necessary tasks. He said, however, that he had required four weeks, a total of 160 hours, because of the extra time that he had spent in obtaining materials.

[4] TT provided evidence of the hours that he had worked or spent at the site of the house. On some days, he had worked for several hours, and on others, only one or two. That was because, said TT, he had been held up because of lack of materials and the frequent need to go and fetch those that were missing. Eventually, he said, the delays were such that he had to obtain and continue with other work.

[5] TT said that he had not left dangerous live wires on the site. He said that any wires that had been live in his absence had been taped or inside connectors, and so were safe.

[6] The smaller job in question related to a small unit at a yard owned by BQ in [Suburb 2]. That work entailed pre-wiring and the installation of four sockets and two lights. The work was not completed because the parties fell into a dispute and, said TT, he had charged only for the work and materials that he had provided. He had invoiced \$383.00 for them. He denied that BQ had given him any timber in

exchange for his work; he said that timber that BQ had offered had previously been used for boxing and was unusable for his, TT's, purposes, and he had declined to take it.

[7] BQ said that he had first met TT via Facebook in early 2021, and TT had done the job at [Suburb 2]. He said he had asked TT how much he would charge to do the electrical work for the house that he was building in [Suburb 1], and TT had said he would charge \$1,800.00. BQ said he had considered that TT must have underquoted; he asked him to reconsider, and TT had said he would do the work for \$3,000.00. BQ pressed TT to provide a written quote, but did not receive one. BQ said that he therefore regarded \$3,000.00 as the contract price.

[8] BQ said that TT had begun work on the [Suburb 1] house on 16 March 2021. The materials had been provided by S Ltd, who had had a copy of the plans and specifications and was to provide the necessary materials. Despite this, TT had told him on occasions that some materials had not been supplied to the site. BQ had put TT in direct contact with S Ltd in order to assist him to obtain anything that was required.

[9] BQ's main defence to the claim was that, in his view, TT had done only about three days work in total. That had been done, said BQ, in the latter part of March 2021. BQ provided copies of messages exchanged between him and TT that were intended to establish that he, BQ, had made constant attempts to contact TT and to persuade him to come to the site to complete the work. Finally, BQ had engaged another electrician to finish the job so that he could complete the necessary compliance formalities. BQ provided evidence that he had had to postpone two [City] City Council inspections because TT had not returned to complete the electrical work. This had caused stress and expense to BQ and his family.

[10] BQ said, which TT did not dispute, that he had paid for all the materials that were used. However, BQ's view was the three days of work that he believed TT had done amounted to about 25% of the total contracted for. BQ provided evidence that he had paid U Ltd \$1,629.62 to complete the electrical work and to certify compliance. He also provided a "quote" from M Ltd that the initial pre-wiring work would have cost \$1,725.00.00.

[11] BQ said that TT had left live wires on the site, which were dangerous. He provided photos of another electrician's investigating the wires, which indicated that some were live.

[12] The copies of messages that the parties exchanged, and which were dated from between early April to July 2021, indicated not only that BQ was repeatedly pressing TT to come to the site and complete the work, but also that there were problems for TT with a lack of necessary materials.

## **The issues**

[13] The questions for me to decide are:

- what were the terms of the parties' contract; and
- what payment, if any, BQ should make to TT.

## **What were the terms of the contract?**

[14] I accept that the parties discussed the contract price, as would have been expected, and that possible figures for the work were mentioned. It is also clear from messages that BQ pressed TT to provide a written quote, which TT did not do. Having considered the parties' arguments about this, I consider it more likely than not that the parties went on to agree that the contract would be a "charge-up" one, and that BQ would pay for the hours that TT worked. I consider that likely precisely because TT did not provide a written quote. TT's conduct, in keeping a record of the hours he worked and invoicing for those, is consistent with that. There is nothing to indicate that BQ protested about being invoiced on an hourly basis, or that he expressed surprise at the way in which TT calculated the sum owing. Rather, BQ's objections were that TT did not carry out the work in a timely way, and caused delays to the building project.

## **What payment should BQ make to TT?**

### *The [Suburb 1] house*

[15] I consider that TT completed the initial pre-wiring satisfactorily, and should be paid for that. As TT's hourly rate is \$50.00, he should be paid \$2,000.00 for the pre-wiring work.

[16] I do not think that TT is entitled to be paid for all the hours for which he claims. I accept his evidence, as supported by copies of messages that he sent at the time, that not all the necessary materials had been available at the site. Clearly, he spent some time in obtaining materials, and had to obtain BQ's permission for the expenditure. However, I do not think that TT's method of dealing with this was as efficient as it could have been. Once he realised that there were some materials missing, he should have informed BQ of the need for the supplier to revise what was needed, and to provide the materials that were indicated by the plans and specifications as necessary. TT, as he proceeded with the work and discovered, as he said, on many occasions that materials were missing, repeatedly went to S Ltd to obtain them. In my view, this was an inefficient way of dealing with the problem, and a revision of the materials would have prevented the need for TT's repeated trips to obtain materials.

[17] I accept that TT may have needed to obtain other work and that, on occasions there may not have been a full day's work on BQ's site. However, TT's time sheet records frequent short days, which I do not think are all attributable to the need to obtain materials. His email responses to BQ's requests indicate that he was not always willing or able to carry on with the work, although the parties' contract remained on foot. This resulted in some delay in City Council inspections, as BQ established. In total, TT worked over a period of some six months, a drawn-out period in the circumstances.

[18] Doing the best I can with the evidence available, I must consider what is a fair sum that BQ should pay TT for the work that he did after the initial pre-wiring work was done. It is clear that TT did some more work, as his record-keeping indicates, but I must also take into account that he himself caused some delays, and that not all of his repeated trips to obtain materials would have been necessary if he had undertaken a revision of the materials. My calculation cannot be a mathematical exercise, and I must have regard to the effect of the delays upon BQ. Taking an overall view, I consider it fair and reasonable that TT should be paid for another two weeks' work, which is \$4,000.00. The extra hours he used to work and to obtain materials for which he claims can, in my view, fairly be offset by the delays that caused difficulties to BQ and for which TT was responsible.

[19] Apart from the issue of live wires, BQ has not complained about the quality of TT's work. I do not think that the evidence provided establishes that TT left dangerous wires exposed in the house. The electrician who completed the work in the house did not comment on dangerous live wires, and there is no evidence that TT's work endangered anyone else on the property.

### *The [Suburb 2] work*

[20] I consider that TT has proved that he did the work he described on BQ's [Suburb 2] office. I accept that he did not take timber in lieu of payment, and BQ did not provide any evidence that TT did so. BQ should pay TT \$383.00 for this work, in accordance with TT's invoice.

### *The power connection disbursement*

[21] TT provided evidence that he paid for the initial power connection. BQ should reimburse TT for that payment, which is \$156.00.

## **The result**

[22] BQ must pay to TT a total of \$6,539.00. This sum comprises \$6,000.00 for the [Suburb 1] house work, \$383.00 for the [Suburb 2] work, and \$156.00 for the power connection.

**Referee: C Hawes**

**Date: 4 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>.