



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 591

APPLICANT **U LTD**

RESPONDENT **B Ltd**

The Tribunal orders:

B Ltd is to pay \$30,000.00 to U LTD on or before 12 December 2023.

Reasons

1. U LTD ('U LTD') engaged ('B LTD') in October 2021 to convert a truck, which they had recently purchased for \$48,702.50, into an arboriculture truck by making some modifications.
2. B LTD provided a quotation for \$28,382.00 to build a tip bin for the truck. U LTD paid \$10,000.40 upfront and sold their existing truck in anticipation of completion of the new truck.
3. B LTD says that there was a delay of more than weeks in obtaining the hoist required for the job and other parts. In January 2022 U LTD advised B LTD that their business was in danger of closing if they did not get a converted truck back soon and they engaged an independent engineer to inspect what work as done and what work needed to be completed. The relationship between the parties deteriorated from this point and in March 2022 B LTD insisted that U LTD collect the unfinished truck.
4. U LTD were given a verbal price of \$45,000.00 by their engineer to strip back B LTD's work and start again. As U LTD were not in a financial position to be able to do that, they sold the truck at [autioners] as it was, and achieved a sale price of \$23,419.55 (after commission).
5. U LTD claim losses to the limit of the Tribunal's jurisdiction of \$30,000.00, including a refund of \$10,000.40, \$268.00 for the purchase of strops to secure the vehicle when B LTD left it on a roadside to be collected, \$6709.77 for the cost of alternative truck hire, and \$25,282.95 being the loss in value between purchasing and selling the truck.
6. The issues to be determined are:

- Did B LTD breach the contract by failing to provide its service to a reasonable standard and within an agreed (or reasonable) timeframe?
- Did B LTD agree to pay the cost of U LTD's alternative truck hire?
- What damages resulted from any breach of contract by B LTD?

Did B LTD repudiate/breach the contract by failing to provide its service to a reasonable standard and/or within an agreed (or reasonable) timeframe?

7. While there is no evidence that a contractual deadline was agreed by the parties (although an initial timeframe/time estimate may have been discussed), it is clear that the job was delayed beyond either of the parties' initial expectations. K for B LTD says that delay was largely due to parts supply issues (including an initial 6 week period to get the required hoist for the job), and he mentions parts supply issues to H as a reason for pulling out of the contract in a text in mid-March 2022.
8. However, K has provided no evidence, such as documents showing when various parts were ordered and received, that supports his contention that parts supply was the sole or main reason for the delay. K acknowledged that he had also been struggling with other events in his life at that time and did not cope well with the time pressure of this job – this is consistent with U LTD's comprehensive description of K's behaviour and actions in response to their attempts to find out what was holding up the job and arranging for other parties to assist with moving things forward.
9. Based on all the information supplied by both parties, I find that U LTD's reasonable efforts to make progress on the job by engaging another engineer to inspect the truck in early 2022 led to B LTD's repudiation of the contract (K made it clear to U LTD that he was going to perform no further work under the contract). U LTD was therefore justified in cancelling the contract at that point and in collecting the truck in its partially-finished state. The standard of the work carried out will be addressed further below.

Did B LTD agree to pay the cost of U LTD's alternative truck hire?

10. I find that the text from K/B LTD relating to U LTD's truck hire costs is not a binding agreement because it says that the truck lease costs would be deducted from the final bill and as the contract was never completed, there was no final bill and the full contract price never became due. However the truck lease costs will be considered as part of the overall damages suffered as a result of B LTD's repudiation of the contract and this is addressed further below.

What damages resulted from any breach of contract by B LTD?

11. At the final hearing U LTD provided a quotation (written retrospectively) by the transport engineer who had given a verbal estimate to complete the conversion at the time they recovered the truck from B LTD. At the time, the engineer's verbal estimate had been around 45K because he assessed the work as needing to be undone and started again. That price had come down to 35K when the engineer prepared the written quotation, which notes that the painting cost included was only an estimate.

12. The quotation includes “removal and disposal of the existing structure” - H says the engineer told him, but was not willing to commit to writing, that B LTD’s work was illogical (in design) and that there was no other remedy than to remove or dispose of his attempts at the project and to begin again. This is hearsay evidence so I cannot make a finding that B LTD’s work, had it been completed, would have resulted in a sub-standard outcome. However, it is not uncommon, when a contract involving an element of design is abandoned part-way through, for it to be difficult or impossible for the next supplier to simply ‘pick up where the first supplier left off’. I therefore find that restarting the project from scratch, with its associated costs, was a reasonably foreseeable result of B LTD’s repudiation.
13. I also accept that, by that stage, U LTD was not in a financial position to be able to complete the work (at greatly increased cost), so had to mitigate their losses by selling the truck. In considering whether the full difference in purchase price and final sale price is available as damages resulting from the repudiation of the contract by B LTD, I must take into account the variables that can affect a sale price achieved.
14. Those can include price fluctuations in products of the type over time, the size of the market for the type of goods, and the efforts of the seller to achieve the best price possible (as opposed to a ‘fire sale’ price). There was no evidence produced about the first two variables. With respect to U LTD’s efforts to achieve the best sale price, H explained that he attempted to sell privately for 6 months, but was limited in the platforms he could advertise through because a WOF was not attainable in the state the truck was in, so it was only able to be advertised on [redacted] (and not [redacted] or other similar platforms). In those 6 months, he says they received a top offer of \$15,000.00. The truck eventually sold through [auction] for \$25,875.00, \$23,419.55 after commission is removed.
15. Based on the above, I am satisfied that U LTD made all reasonable efforts to achieve the best price for the truck in the condition it was in when received back. At the first hearing, K raised the point that the deck and box that he installed could simply have been taken off and U LTD would have had a roadworthy cab and chassis. Presumably this is what they had started with and paid \$48,702.50 for. U LTD did not respond to this point so there was no evidence available to the Tribunal about what sale price might have been achieved for the truck if this had been done (or what that removal work alone would have cost, as the quotation provided did not itemise any costs).
16. However, even though I don’t have the information about what sale price the truck might have achieved if returned to the state it was purchased in, I am accepting the actual loss claimed for the truck of \$25,282.95 because of the effect B LTD’s delay and eventual repudiation had on U LTD’s business and the position it left them in. I consider that this meant U LTD had little option but to recoup what they could without incurring more expense (such as paying for work to return the truck to cab and chassis).
17. Further, the loss of value in the truck was in addition to the \$10,000 paid to B LTD, for which U LTD received no benefit. Damages resulting from these losses alone come to \$35,282.95, above the Tribunal’s limit of \$30,000.00 so the remaining claimed costs do not need to be addressed and B LTD is ordered to pay \$30,000.00 to U LTD.

Referee Perfect
Date: 14 November 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>.