



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 747

APPLICANT U Ltd

RESPONDENT T Ltd

The Tribunal orders: T Ltd is ordered to pay U Ltd the sum of \$297.85. Payment of this sum is ordered no later than 10 January 2024.

Reasons:

- 1) On 28 July 2023 a technician employed by the applicant attended the respondent's premises in [Town 1] to assist with the non-functioning of a machine which has both electrical and gas components. Upon attending, the technician found that the problem related to the gas componentry, and the technician (an electrician) was unable to assist.
- 2) The respondent says that it engaged the services of the applicant on the basis of an understanding, and expectation, that its technicians would be able to assist including with reference to any issue with the gas componentry. T Ltd states that the applicant was specifically asked to attend to the 'certifying' of a gas burner. The applicant's technician only attended for a very short time, and did not actually take any action.
- 3) The parties had a contract for the applicant to attend the respondent's premises and attend to an issue with a cooking implement. The specific factual question, here arising, is whether, if the respondent made it clear that what was sought was the certifying of a gas burner, the applicant was under a duty to inform the respondent that it was unable to assist with any such requirement, and failed to do that.
- 4) The question identified in the preceding paragraph raises the issue of what was precisely said between the respondent's manager SH, on the telephone, and the applicant's receptionist, KK, when the initial contact was made. SH is sure he told KK that he wanted the gas cooker to be certified.
- 5) For her part, KK can recall the conversation, but not all of what was said. She is, however, confident that she was not told the cooker needed certifying, because if she had been told that, she would have informed SH that this was not something the applicant was able to do. I accept KK'S evidence, which I found to be convincing. It seems to me to be most unlikely that if KK was told the gas cooker needed certifying the conversation would have gone much further. SH would have been told that he needed to contact someone else.
- 6) Possibly, with the benefit of hindsight, KK could have inquired further. However, she makes the point that potential customers are often very vague, and general, in their telephone contacts and this particular cooker did have electrical componentry which possibly needed attention.

- 7) It is, therefore, my view that the applicant is entitled to be paid for the time of its technician. The invoice of \$412.85 is made up as to a minimum charge of \$200.00 plus mileage of \$159.00, plus GST.
- 8) I consider the applicant's minimum charge of \$200.00 for an hour to be, in these circumstances, grossly excessive. I am of the view that a minimum charge of ½ an hour would be more reasonable, having regard to a) the likely misunderstandings in the communications between the parties, b) the point, which I accept, that the technician's attendance on site was brief in the extreme and even cursory and c) the applicant technician's visit to the respondent was clearly by way of a minor stop-off whilst on a journey further north to a customer in [Town 2].
- 9) I am not going to allow interest. It seems to me that, although not ultimately successful, the respondent has raised, at the earliest opportunity, a genuine bona fide dispute. In the result I allow the applicant \$100.00, plus \$159.00 for mileage, plus GST. This is \$297.85.

Referee: GP Rossiter
Date: 15 December 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>.