



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

**District Court**

**[2023] NZDT 358**

**APPLICANT** X Ltd

**RESPONDENT** LG

**The Tribunal orders:**

LG as trustee of LB is to pay X Ltd \$6781.55 by 18 August 2023.

**Reasons**

**Introduction:**

1. X Ltd was contracted by LB trustees to provide forest operations and management services for the harvest of forestry at LB's property at [address].
2. X Ltd carried out all works, including to contract and pay sub-contractors on LB's behalf.
3. X Ltd was paid the revenue from the sale of logs and deducted the sub-contractors' invoices before passing on the balance of revenue to LB.
4. The last lot of logs were sold in late November 2022 with payment made soon after to X Ltd. Fencing was not able to be reinstated until January 7 because of bad weather and the Christmas break. X Ltd decided not to with-hold the final payment owed to LB until fencing was completed, invoiced and deducted, and instead invoiced LB on 31 January 2023. LB refused to pay.
5. X Ltd has paid the fencing invoice of \$6781.55.
6. X Ltd claims the fencing cost of \$6781.55 plus legal fees, a total of \$9731.55.
7. The issues to be resolved are:
  - i. Did X Ltd have actual authority (implied) to contract fencing reinstatement work?
  - ii. Can X Ltd claim legal fees in the Disputes Tribunal?

**Did X Ltd have actual authority to contract fencing reinstatement work?**

8. The law of agency applies, in this case actual authority whether express or implied. The principal (LB) is bound by every contract made by the agent (X Ltd) within the authority of the agent. If an agent enters into a contract with a third party (the fencer) within the scope of its actual authority, the result is to create a contractual obligation between the principal and the

third party. Implied authority is given by the conduct of the parties and the circumstances of the case.

9. LB submits X Ltd did not tell the trustees this cost was outstanding, did not seek approval from the Trust as required by clauses 8.1 and 9.1, took away LB's opportunity to provide its own fencer and this cost was covered by post operations already paid by deduction.
10. However, X Ltd's uncontested evidence is that LB was in full agreement for X Ltd to manage all sub-contracts in the job without applying clauses 8.1 and 9.1, and to deduct the sub-contracted costs from the revenue it received from the sale of logs before paying the balance to LB.
11. X Ltd acted reasonably by not with-holding the final payment, its mistake was not giving LB a heads up prior to making the payment that a fencing invoice was still to be received for payment by LB.
12. However, this mistake does not provide a legal basis for LB to avoid payment because X Ltd had implied authority to contract the fencer on behalf of LB as it had done for all other sub-contracted works.
13. If X Ltd with-held the final payment until the fencing invoice had been deducted it is likely the parties would not be here today.
14. LB produced a spreadsheet in evidence from another forest management company on the basis it supported LB's argument that fencing was included in post operations and therefore not owed by LB.
15. However, the spreadsheet identifies post operation clean-up and fence removal and repair as separate items. I agree with X Ltd's response on this evidence that it supports X Ltd's position and not LB's.

**Conclusion:**

16. I find X Ltd had actual authority (implied) to contract a fencer to carry out reinstatement work and thus to receive payment from LB for this work. It was always LB's cost.

**Can X Ltd claim its legal fees in the Disputes Tribunal?**

17. The claim also seeks legal costs of \$2950. Under section 42 of the Disputes Tribunal Act 1988, the Tribunal has no power to award such costs except in certain limited circumstances (as set out in s 42). None of those circumstances apply in this instance. Therefore, this part of the claim must be dismissed.

**Referee: J Savage**

**Date: 28 July 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>.