

BETWEEN

EM LTD
APPLICANT

AND

UN
RESPONDENT

Date of Order:

9 November 2016

Referee:

Referee Blyth

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that UN is to pay EM Ltd the sum of \$230.23 on or before 23 November 2016.

Facts

[1] On 12 July 2016 UN phoned EM Ltd to request a service person to come and service his Brivis gas appliance. EM Ltd booked the appointment for 27 July 2016 at 8.30 am. When Mr A from EM Ltd turned up to UN's home at 8.30 am on 27 July 2016 UN informed him that he no longer required him to carry out the service. UN had not cancelled the appointment.

[2] EM Ltd is claiming the call out fee and the mileage fee from UN.

Issues

[3] The issues to determine are:

- a) Is UN liable to pay the call out fee?
- b) Is UN liable to pay the mileage fee?

Is UN liable to pay the call out fee?

[4] The law of contract provides that when a contract is made both parties must adhere to the contract, that is, they must do what they have contracted to do. If either party does not do that – then they will have 'breached the contract' and will have to pay damages to put the other party into the position that they would have been in, had the contract gone ahead.

[5] In this case, the terms of the contract were that EM Ltd had promised to travel to UN's home to service the appliance on a certain date and time and UN had promised to pay the fee.

[6] I therefore find that UN has breached the contract by failing to cancel the service. EM Ltd had relied on UN's 'promise' to earn income for the 1.5 hours they planned to spend working on his appliance. EM Ltd intended to leave at approximately 10 am because they had booked another appointment in Place A at 10.30 am. I accept that EM Ltd had no other way of earning the income (that UN had promised them) between the hours of 8.30 am and 10 am – given that UN only cancelled their service once they arrived at his home.

[7] I therefore find that UN is liable to pay the call out fee claimed of \$130.00 plus GST of \$19.50 = \$149.50.

Is UN liable to pay the mileage fee?

[8] The applicable law is set out in paragraph 4 above.

[9] UN had had a previous dealing with EM Ltd and he was aware that a mileage fee was charged because he had paid an invoice that included a mileage fee (of .90c per km). EM Ltd had to travel to UN's house and back – even though UN no longer required the service. UN's house is a 78km return trip from Street A (which is the cut off point where EM Ltd's travel is no longer included in their call out fee). I therefore find that UN must pay the mileage fee.

[10] EM Ltd were claiming mileage at \$1.50 per km from UN because they say their mileage rate has increased from the .90c per km they charged UN in the last invoice. However, EM Ltd had not given UN 'notice' that the mileage rate had increased. Therefore, I find that UN is only liable to pay .90c per km – as he had paid last time. $78 \text{ km} \times .90\text{c per km} = \70.20 plus GST of $\$10.53 = \80.73

[11] Based on the above reasons, I am ordering UN to pay to EM Ltd the sum of \$230.23 (\$149.50 plus \$80.73).