



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2022] NZDT 185

APPLICANT KQ

RESPONDENT FH

The Tribunal orders:

1. KQ is to pay \$350.00 to FH on or before 14 November 2022.

Reasons:

2. This matter has been part heard and this order should be read in conjunction with the orders dated 11 May 2022 and 2 August 2022.
3. KQ and FQ entered into a contract for the hire of a mechanical bucking bull (“bull”) for the specific purpose of providing entertainment for an activity KQ was holding. The cost to hire the bull was \$950.00.
4. The bull was delivered to the site by staff from FH’s business, FG Ltd. Unfortunately, the bull would not work and after a confrontation between KQ and the staff, they departed and the bull remained on the site.
5. KQ and FH spoke on the phone and plans were made for the bull to be packed into a crate and it was collected the following week.
6. Some days later FH refunded \$600.00 of the hire costs and retained \$350.00 for costs associated with having to make a second trip to pick up the bull.
7. KQ is seeking \$350.00 for the outstanding refund.
8. The issues to be determined are:
 - (a) Did the bull work on the night of the event and if not, what was the cause of the failure?
 - (b) Was the failure of a substantial nature?
 - (c) Is KQ entitled to a refund?

Did the bull work on the night of the event and if not, what caused the failure?

9. I have carefully considered the evidence and I am satisfied that the bull did not provide the service for which it was hired. The staff attempted to get it working and consulted with FH over the phone in an attempt to locate and fix the problem, without any success.
10. I have regard for the fact that FH claims that the problem was caused by 'dirty power' as a result of using a generator. However, whilst this is possible, there is insufficient evidence to find that this was more likely than not.
11. I also have regards for the fact that FH claims KQ had mechanical knowledge and ought to have been able to recognise the failure. However, the bull was supplied for the purpose of providing entertainment and not on the condition that KQ would have the skills and experience to rectify any mechanical or otherwise failures.
12. FH said the fact that bull was working well in the days leading up to KQ's event, is evidence that it had not failed on the night. Whilst this may have been the case, I find there is no causal link between the two occasions as the bull could have failed for various reasons.

Was the failure of a substantial character?

13. By virtue of section 29 of the Consumer Guarantees Act 1993, ("CGA"), where services are supplied to a consumer there is a guarantee that the service will be reasonably fit for any particular purpose; of such a nature and quality that it can reasonably be expected to achieve any particular result that the consumer makes known to the supplier before or at the time of making the contract for the supply of the service.
14. For reasons outlined above, I find that FH has breached his obligations under the CGA as he did not provide a bull that would provide the expected outcome. The bull did not perform at any level despite the staffs' best efforts to get it operational.
15. I find that the failure was "substantial" as that term is defined in the CGA (s36). Failures are considered "substantial" where the services would not have been acquired by a reasonable consumer fully acquainted with the problems that would arise. I am satisfied that KQ would not have entered into the contract had the outcome been known.

Is KQ entitled to a refund?

16. Where a breach is established, a consumer is entitled to the remedies set out in section 32 of the CGA. Where a failure is minor, or can be rectified, the remedy is one of repair, or, if this is not carried out, the reasonable costs of repair elsewhere (s32(a)). However, where there is a failure to repair, or the failure is substantial (s36), there is also a right to cancel (s32(b)). Cancellation entitles a refund (s38). In either case, there is a right to reasonably foreseeable consequential losses (s32(c)).
17. As I found there was a failure of a substantial character, KQ is entitled to a refund of the amount he paid, less the \$600.00 he has already had refunded.
18. For the sake of completeness, I will address the issue raised by FH that on the night of the event, KQ 'kicked the staff off the property and kept the bull as security until such time as he got a full refund'. KQ did not dispute that there were heated discussions, however he disputed that he created a situation which ensured the bull would remain on site. Furthermore, there is no independent evidence for me to make the determination that KQ wrongfully took possession of the bull.
19. Moreover, FH claims that KQ deliberately caused damage to the bull while it was on site. He said he had to make repairs to the bull in order to get it functioning again. However, he raised no evidence to this point.
20. In conclusion, I find that KQ is entitled to \$350.00 and an order is made accordingly. FH was asked at two hearings to supply an address for service and was unable to do so.

Referee: DTR Goddard
Date: 25 October 2022



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>.