

23 May 2023

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Our ref: OIA 104731

Tēnā koe Jayson

Official Information Act request: Disputes Tribunal case

Thank you for your email of 19 May 2023, to the Ministry of Justice (the Ministry), requesting under the Official Information Act 1982 (the Act), information about your case before the Disputes Tribunal (the Tribunal). Specifically, you requested:

"...In 2020 I lodged an appeal regarding the decision made in the dispute's tribunal regarding a decision on whether a Rehearing should be granted. The referee refused to rehear a case despite an obvious error at that time. After that we contacted the court contact centre, and they advised it can be appealed. (We rang the contact centre and asked if it could be appealed, they consulted someone higher up and then they said it could be appealed.) The referee's refusal to grant a rehearing came with an information sheet how to appeal. The person at the counter accepted the application after checking that it had the decision paper with it. They promptly accepted both the application and the payment. However, once the application was filed, I was contacted by a case officer, Graham McKay that the decision regarding granting a rehearing couldn't be appealed. After making further enquires to the call centre we were still told it could be appealed, In the end I contacted the Ministry of Justice itself and that's when their answer changed. It seems like a memo went out and the staff changed their story. We dug further and talked with experts, lawyers, and an ex-referee, they all including a practicing referee and the appeal judge today said a decision like this could be appealed. I would like to know the following:

- 1) The referee and the appeal judge said it could be and should be appealed. So why did your case officer say it couldn't?*
- 2) Since when has the Ministry of justice stopped processing appeal applications regarding rehearing's?*
- 3) The appeal application was promptly lodged in the required twenty days, When is my application going to be processed?*
- 4) Can you please confirm if you still claim that these can't be appealed, or do you refute what the judge and referee has said?*
- 5) If you refute this, can you please confirm what the highest decision-making power that cannot be challenged is a disputes tribunal referee?*
- 6) When a claim is reheard do people have the right to appeal the decision made in the rehearing?*
- 7) What specific clause in the law states that it can't be appealed? (decisions regarding rehearing). I would like to be very specific e.g., act, section, clause etc.*

8) *If you stick to the story that it can't be appealed, then what mechanism have you got in place to prevent corruption by referees? Without certain mechanisms, it would make it very easy for the referee to get away with their errors or to exhibit favouritism. Please reply via FYI, as I wish the case details to remain anonymous."*

Please be advised that while the Ministry provides administrative support to the Tribunal, as a division of the District Court, it is a judicial body that operates separately and independently of the Government, Ministers, and their officials. The Act reflects this division, and tribunals, in their judicial functions, are not subject its ambit under section 2(6)(b). I must therefore refuse your request under section 18(g) as the information requested is not held by the Ministry and there are no grounds for considering it is held by any other agency subject to the Act.

The Ministry also cannot provide legal advice. You may want to seek independent legal advice as a lawyer is best placed to advise you of your options and to discuss the matters you have raised. Free legal information and/or advice may be available from your local Community Law Centre. There is more information at: communitylaw.org.nz/ There is also comprehensive information about appeals and re-hearings on the Tribunal's website at: disputestribunal.govt.nz/

If you require any further information, please contact Media & Social Media Manager Joe Locke at media@justice.govt.nz

Please note that this response, with your personal details removed, may be published on the Ministry's website at: justice.govt.nz/about/official-information-act-requests/oia-responses.

You have the right to make a complaint to the Ombudsman under section 28(3) of the Act. The Office of the Ombudsman may be contacted at: info@ombudsman.parliament.nz or by phone on 0800 802 602.

Nāku noa, nā



Antony Paltridge
Team Leader, Ministerial Relations, and Services