



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

District Court: Taumarunui

Case number: CIV-2021-068-000059

**APPLICANT**        **Dennis Arthur Smith**  
2A Para Street  
Taumarunui 3920

**RESPONDENT**     **Laurie Bull**  
8 Para Street  
Taumarunui 3920

**SECOND**            **Carolyn Bull**  
**RESPONDENT**    8 Para Street  
Taumarunui 3920

**The Tribunal orders:**

The claim by Dennis Arthur Smith is struck out.

With respect to the counterclaim by Laurie Bull and Carolyn Bull, Dennis Arthur Smith is to pay \$560.00 to Laurie Bull and Carolyn Bull by the 5th September 2022.

**Reasons**

**The claim by Mr Smith**

1. Mr Smith claims from Mr and Mrs Bull for a contribution of \$1248.00 towards the erection of a new fence along the boundary between a property he claims to have occupation of and Mr and Mrs Bull's property. He relies on the provisions of the Fencing Act 1978 (the FA) and has served a notice under s.10 of the FA on Mr and Mrs Bull setting out the details of the fence proposed to be erected requiring them to pay 50% of the cost to which Mr and Mrs Bull have issued a cross notice under s.11 of the FA.
2. Jurisdiction
3. The claim is struck out because the land Mr Smith claims to occupy is designated on its title, SA52A/116 as being "Railways purposes" land. As s.3(1)(c) of the FA provides that nothing in the FA applies to land held for railways purposes, the Tribunal has no jurisdiction to hear the claim. The Tribunal's jurisdiction is set out in s.10 of the Disputes Tribunal Act 1988 as being primarily in contract, quasi-contract and tort where property damage, loss or destruction has occurred. As the claim does not fall within any of those areas of jurisdiction and there is no legislation other than the FA that provides for liability to contribute towards the cost of erection of a boundary fence the Tribunal has no jurisdiction to here and decide Mr Smith's claim.

**The counterclaim by Mr and Mrs Bull**

4. Mr Smith admits removing a section of the existing fence between along he boundary between the property he claims to occupy and Mr and Mrs Bull's property. He did this after serving the s.10 notice and receiving the s.11 notice from Mr and Mrs Bull objecting the proposed work on the fence. Mr and Mrs Bull now claim the costs of \$560 for re-erecting the section of fence.
5. Mr Smith disputes liability for the costs of re-erection on the grounds. He served a letter on Mr and Mrs Bull before starting work on the fence advising them he would be going ahead to which letter he received no reply. He maintains the existing fence was not adequate and needed replacing. He

claims he has a half interest in the fence so cannot be held liable for demolishing something that he co-owns. He has commenced the erection of a new 1.8m high paling fence with the posts on "his land" and if he continues with the rails and paling on "his" side of the boundary he will be within his rights to do so.

6. The issues to be decided then are whether Mr Smith is liable to replace the section of fence he removed and, if so, what amount should be paid.

## Findings

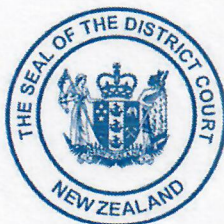
### Liability

7. I find Mr Smith is liable to pay for the replacement of the section of fence he removed.
8. Service of letter
9. Mr Smith points to a letter he served on Mr and Mrs Bull advising them he would be proceeding with the removal of the existing fence. Mr and Mrs Bull failed to object to his taking that action therefore they can be regarded as having given tacit approval to his proposed actions.
10. I find Mr and Mrs Bull's failure to respond to that notice as not amounting to any form of approval or consent. They had issued a cross notice objecting to a new fence so that was their last word on the matter. They did not need to keep objecting no matter how many notices were served thereafter.
11. Adequacy of existing fence
12. Mr Smith strongly submits that the existing fence was not adequate. If this claim had been validly made under the FA I would have agreed with him. However, the FA has no application to this counterclaim as it does not have application to the claim. This is simply a claim for compensation where property has been damaged or destroyed where no permission has been given for those actions.
13. Half interest in the fence
14. It may well be that the fence is half owned by each neighbour. However, just because someone owns a half share of a particular property, that does not mean they have any right to damage or remove or destroy it. The only way Mr and Mrs Bull's half share in the fence can be restored is by Mr Smith re-erecting it at his cost. ] X
15. Constructive remedy by continuing the erection of the new fence on Mr Smith's land
16. An obvious solution to the removal of the existing fence is for Mr Smith to continue with the erection of the new fence on his land. However, he proposes to erect a 1.8m high fence which Mr and Mrs Bull do not agree to because they consider it to be unreasonably high. That is their prerogative to not agree. Consequently, I find their claim for an order that Mr Smith pay for the re-erection of what he removed is the only course I can order being within the jurisdiction of the Tribunal. |

### How much should be paid/

17. I find the amount claimed to be reasonable ✓
18. Mr and Mrs Bull have provided a quotation for the work from a contractor that I find to be reasonable. Mr Smith has made no specific objection to the amount, just to having to pay. ✓

Referee: G R Meyer  
Date: 5<sup>th</sup> August 2022



NOT  
CORRECT.  
IT IS ONLY  
ONE  
WAY!