

**BETWEEN**

**ADI**

APPLICANT

**AND**

**ZWR Ltd**

RESPONDENT

Date of Order:

8 April 2011

Referee:

Referee Davidson

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that the Applicant's claim is dismissed. Pursuant to s 11(2)(b) of the Disputes Tribunals Act 1988 the Applicant, ADI, must pay the Respondent, ZWR Ltd, \$93.33 (incl GST) within 7 days of the date of this order.**

## **Facts**

[1] On the evening of 12 November 2010, ADI's children parked his vehicle at ZWR Ltd's car park in Auckland and paid for parking until 8:00 am the following morning. Upon their return later that evening, however, they found the car park was closed and they were unable to recover the vehicle. ADI returned to the car park with his children in the morning to find that ZWR Ltd had given him a ticket for parking beyond the period that had been paid for.

## **Law**

[2] The law governing this claim is the law of contract.

## **Decision**

[3] ADI argued at today's hearing that his children had not seen the signs at the entry/exit to the car park which stated that it closed at 10 pm. ADI said that his children had been misled by the sign in the car park next to the ticket machine which said: "This is a 24 hour 7 day Pay and Display car park."

[4] I accept that ADI's children did not see the signs at the entry/exit displaying the closing time for the car park and that on the basis of the sign they saw at the ticket machine that they formed the view that the car park was open 24/7.

[5] ADI's children had paid for parking until 8:00 am the following day. This was prominently displayed on the parking receipt obtained by ADI's children. The terms and conditions displayed at the ticket booth state that in the event that the parker stays beyond their paid parking time, ZWR Ltd may issue a Parking Breach Notice and this is what occurred. ADI argued that it was unreasonable for ZWR Ltd to issue the Parking Breach

Notice as he was prevented from recovering his vehicle as the car park had closed. While the car park may have been closed when ADI's children returned to his vehicle later in the evening, the car park did reopen at 7:00 am. The overnight parking purchased by ADI's children expired at 8:00 am providing him with an opportunity to return to the parking building when it reopened and remove his vehicle so as not to be in breach of the terms and conditions.

[6] I find that the signs displaying the car park closing time and the terms and conditions displayed adjacent to the ticket machine are incorporated into the parking contract between the parties. I accept that ADI's children may not have seen the signs, but on the balance of probabilities I find that they were reasonably visible and there to be seen at the only entry and exit to the car park and, as such, sufficient to put parking customers on notice.

[7] I accept ZWR Ltd's argument that the reference to 24/7 on the sign next to the ticket booths was not a representation that the car park was open 24/7 but rather that ZWR Ltd charged customers for using the car park 24/7. The Tribunal makes its decisions on the balance of probabilities, that is to say, that something is more likely than not. In percentage terms 51% may be considered more likely than not and I have to say that ZWR Ltd's failure to clarify the wording of its 24/7 sign at the ticket machine or alternatively to post a clear notice there regarding closing times puts this claim very close to the bottom of that threshold. In other words, I find on the balance of probabilities that ZWR Ltd's signage at its Auckland car park is not misleading but it leaves a lot to be desired and this may be something that ZWR Ltd may wish to address.

[8] I note that it is incumbent on operators of self service-type businesses to ensure that the terms upon which their service is provided is made abundantly clear and that their signage does not create confusion in the minds of customers. This is because where confusion is created there is no one there to clarify the confusion.

[9] On the basis of the foregoing, I find that ADI's children breached the terms and conditions of their contract with ZWR Ltd by not retrieving his vehicle from ZWR Ltd's Auckland car park before 8:00 am and on this basis ADI's claim must be dismissed.