

BETWEEN

AED

APPLICANT

AND

AEE

SECOND APPLICANT

AND

ZVR

RESPONDENT

Date of Order:

26 November 2010

Referee:

Referee Benson

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that ZVR is to pay \$2,789.90 to the Applicants within ten days of the date of this order.

Facts

[1] AED and AEE brought a claim against ZVR for the value of sheep killed, veterinary bills and associated expenses, following a dog attack (a total of \$2,789.90).

[2] Under s 63(1) of the Dog Control Act 1996, the owner of a dog is liable for damage done by the dog, and it is not necessary to prove that damage was attributable to neglect by the dog owner.

[3] ZVR did not dispute the calculation of the AED and AEE's claim, but argued that he was not liable as the dogs which made the attack were not identified as his dogs.

[4] The issue whether the damage was done by ZVR's dogs was determined on the evidence (the balance of probabilities or what most likely happened).

Evidence

[5] The evidence was as follows. At some time, probably early on the morning of Wednesday 14 July 2010, there was a dog attack on the Applicants' sheep at their property, resulting in the deaths of and injuries to numerous sheep.

[6] At about 7.30 am on 14 July, the Applicants' neighbour identified two dogs on the Applicants' property. At about 1 pm that day, the neighbour saw the same dogs running away on the adjacent property (owned by the Applicants' daughter and where the Applicants had sheep).

[7] At about 1.45 pm, AED saw two dogs on her property worrying a sheep. AED caught the dogs on her property and contained them in a shed. The neighbour was present when the dogs were brought to the shed and identified them as the same dogs she had seen on both

occasions earlier that day. The dogs had ownership tags, which were traced by Animal Control Services (on behalf of the Auckland City Council) to ZVK and his partner.

[8] ZVR and his partner acknowledged to Animal Control Services that they were the owners of the dogs and consented to destruction of the dogs.

Decision

[9] The Tribunal finds that the dogs which made the attack on the AED and AEE's sheep were probably owned by ZVR. The neighbour had a clear sight of the dogs on the AED and AEE's property and the neighbour's property a short time after the attack. The neighbour made a convincing identification of ZVR's dogs, when caught on the AED and AEE's property, as the dogs she had seen earlier that day. AED saw ZVR's dogs worrying a sheep on her property before she caught them. ZVR was identified as an owner of the dogs and he acknowledged that he was an owner of the dogs.

[10] ZVR argued that the dogs were not photographed on 14 July, when they probably would have been covered in blood, given the large number of sheep attacked. However, the Tribunal accepted the evidence of the witness from Animal Control Services (who had 23 years' experience as a dog control officer, including attending stock attacks by dogs) that blood on attacking dogs was often not present as it had come off on vegetation and in streams. The absence of a photograph of the dogs was not significant in the face of the other compelling evidence that the damage was done by ZVR's dogs.

[11] ZVR argued that the attacks could have been carried out by other dogs. However, this was only a remote possibility and not accepted. Firstly, ZVR's dogs were positively identified in the area and were caught worrying sheep on the day of the attack. Secondly, there were no sightings or any other evidence of other dogs about the Applicants' property on 14 July or at any other relevant time (the last stock attack on the Applicants' property was about 15 years earlier).

[12] For these reasons, ZVR was liable to pay \$2,789.90 to the AED and AEE.

