

**BETWEEN**

**AEG**

**APPLICANT**

**AND**

**ZVP Ltd**

**RESPONDENT**

Date of Order: 23 October 2012

Referee: Referee Phillips

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**ORDER OF THE DISPUTES TRIBUNAL**

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**The Tribunal hereby orders that ZVP Ltd is to pay the sum of \$900 to DT Insurance Ltd, AEG's insurers, on or before Wednesday 31<sup>st</sup> October 2012. This order was made without the attendance of the Respondent, ZVP Ltd, at the hearing today, as allowed for by s 42 of the Disputes Tribunals Act 1988.**

## **Facts**

[1] AEG left his trailer with ZVP Ltd on the 10<sup>th</sup> January 2012 for a warrant of fitness (WOF) to be undertaken. ZVP Ltd were quite busy and the trailer was left with the understanding that the WOF would be undertaken within the next day or so and that AEG would be contacted when the trailer was ready for collection. This was the usual relationship between the parties.

[2] AEG was busy with his own bed and breakfast business and didn't consider the trailer until Monday 16<sup>th</sup> January. Upon speaking with ZVP Ltd, it transpired that the trailer had been stolen from the forecourt of the workshop, at best, sometime over the weekend.

[3] In a letter from JK solicitors, ZVP Ltd maintains that AEG had been contacted and believed that he was to collect the trailer that same day and further, that video camera surveillance had been installed so as to deter thefts and thereby protecting its customers' property. ZVP Ltd further maintains that had AEG informed the company that he would not be able to collect the trailer the trailer would have been properly secured overnight.

[4] AEG maintains that no contact was made with him from ZVP Ltd advising him that his trailer was ready for collection. Further, the location of the trailer storage was not within the camera surveillance operating area, so no protection was offered from this. AEG also maintains that upon communication with ZVP Ltd he was advised that the trailer had been at the premises on the Friday upon closing time.

[5] AEG seeks to recover the costs of the market value of the trailer amounting to \$900 (inclusive of GST).

## **Law**

[6] The relevant law is the general law of contract, and the law of bailment – where A (bailee) knowingly and willingly accepts possession of goods that belong to B. The bailee is liable when he fails to take reasonable care of the said goods.

[7] The burden of proof falls on the bailee to prove that he has not been negligent in the care of the goods.

## **Issues**

[8] The issues to be decided are as follows:

- (i) The nature of the relationship between the parties;
- (ii) Whether a bailment has arisen between the parties;
- (iii) Whether AEG was contacted by ZVP Ltd to collect his trailer;
- (iv) Whether AEG's trailer had been stored securely;
- (v) Whether ZVP Ltd had taken reasonable care of AEG's trailer while it was in its possession, and
- (vi) The amount to be paid;

## **Decision**

*What is the nature of the relationship between the parties?*

[9] AEG engaged the motor mechanic services of ZVP Ltd in order to have a WOF undertaken upon his trailer.

*Did a bailment arise as between the parties?*

[10] Yes. The nature of a bailment has arisen between the parties. AEG transferred possession and left his trailer in the care of ZVP Ltd. ZVP Ltd knowingly and willingly accepted the possession of AEG's trailer into its care for the purpose of undertaking a WOF.

*Was AEG contacted by ZVP Ltd to collect his trailer?*

[11] AEG maintains that no-one had telephoned him regarding the collection of his trailer; ZVP Ltd, in its letter from JK solicitors, maintain that a staff member called AEG. Although there is conflict at this point, I am not satisfied that, had the telephone conversation taken place, ZVP Ltd would have satisfied the requirements of bailment and, in turn, satisfied that this was enough to determine they had not been negligent in the care of AEG's goods.

*Had AEG's trailer been stored securely?*

[12] No. The evidence establishes that AEG's trailer was stored unlocked on the forecourt. The video surveillance in operation at the premises did not cover the area in which the trailer was stored.

*Had ZVP Ltd taken reasonable care of AEG's trailer while it was in its possession?*

[13] No. The evidence does not support that ZVP Ltd took reasonable care of AEG's trailer while it was in its possession. The trailer was not secured in any way, despite being left outside. Further, it was not in the view of the video surveillance camera that may have afforded it some protection.

*How much is to be paid?*

[14] The full amount sought shall become payable, amounting to \$900.