



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 528

APPLICANT A Ltd

APPLICANT CB

RESPONDENT X Ltd

The Tribunal orders:

1. The claim is dismissed.

Reasons:

1. CB and Ms O of A Ltd took her vehicle to X Ltd for repair of the engine light which kept appearing. After checking the car, repairs were done by replacing the spark plugs, coils and other parts. After taking the car home, it broke down after overheating. A dispute arose between the parties over the repairs not being done with reasonable skill and care.
2. A Ltd claim \$2,350.74 seeking a refund for the repairs they paid (\$1,687.21), the rental car costs incurred (\$168.00) and petrol costs (\$66.01), also the cost for another mechanical assessment (\$429.52).
3. The issues to determine are as follows:
 - a) Were the repairs done with reasonable skill and care?
 - b) Was the car fit for purpose?
 - c) Was there a reasonable opportunity to remedy?
 - d) Is A Ltd entitled to all or any of the \$2,350.74 that is claimed?

Were the repairs done with reasonable skill and care?

4. Under the Consumer Guarantees Act 1993 ('CGA') it implies guarantees into contracts for the supply of goods and services of a kind ordinarily acquired for personal, domestic, or household use. In the case of the supply of services, there is a guarantee under Section 28 of the CGA that the services supplied are provided with reasonable care and skill. The standard is that of a competent person exercising the trade in question.
5. CB and Ms O claim that the repairs carried out on their vehicle by X Ltd was not done with reasonable skill and care.

6. Initially when the engine light in the vehicle appeared they wanted to take it to their regular mechanic, however he was unavailable. So, they took the car to X Ltd. They were told what the issues were with the vehicle and it would cost \$1,600.00 to repair, which they accepted.
7. However, when they drove the car home, it broke down with white steam coming out, just up the road from where they lived.
8. They took the car back into their regular mechanic who said that the repairs were not done properly and there were parts that had been damaged and would need to be repaired. In particular noted was damage to the rocket cover, which was broken, a spark plug needed to be replaced, the water pipe housing appeared to have been forced off and the squaring housing with four bolts.
9. As a result of taking the car to be repaired, the applicants had to hire a car to help them get around for their business.
10. Mr T of X Ltd disputed that he had not repaired the car properly. When the car was brought in to his workshop, it was to look at the engine light. After running a diagnostic, it was found the spark plugs needed to be replaced.
11. Mr T acknowledged the broken rocket cover, which he claims was existing when it was bought to them. Nevertheless, the car engine was running well when they were working on the engine light sensor. The issue which caused the car to break down was not related the work that he carried out, as the cause of the breakdown was overheating of the cooling system.
12. There was a water leak in the water pipe housing which was not something that they had worked on. It was likely to be an existing defect. Mr T said that the car was not in the best condition despite it being serviced regularly. He did not dispute the findings of Mr Y the applicant's regular mechanic. However, he said these issues identified were existing and he cannot be held liable.
13. The parties differ in their positions. On all the evidence before me, I find on the balance of probabilities the issues with the car overheating were more likely than not to be existing. I accept that the cooling system was not the issue that the respondent had to repair and it is unrelated to the engine light sensor. I find that despite regular servicing of their car it is likely there were existing issues which were not picked up or advised to the applicants.
14. I am not satisfied the applicants have provided sufficient evidence to prove that the repairs the respondents undertook were the cause of the cooling system overheating.
15. I there find that the claim is dismissed.

Referee: D Alofivae
Date: 16/10/2023



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.