



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 741

APPLICANT **B Ltd**

RESPONDENT **DT**

The Tribunal orders:

The claim is dismissed.

Reasons:

1. In June 2023 TI, DT's ex-husband uplifted a courtesy car from B Ltd for the use of their daughter, NB, while DT's car was being repaired. The car being repaired had been bought by DT for their daughter from B Ltd.
2. On 15 June 2023 NB claims she was driving downhill on the motorway, when she felt the car was losing power. NB's friend, travelling in a car behind, saw smoke coming from the back of the car. NB then 'noted the brakes did not work' and that no time prior to this did the dashboard light up. She pulled off at the nearest off ramp.
3. The courtesy car was then towed by X Ltd back to B Ltd. B Ltd claim the car has suffered 'catastrophic engine failure.'
4. B Ltd are now claiming for \$3,612.50 to replace the engine.

Issues to be determined are:

- (i) Was there a contract between DT and B Ltd?
- (ii) If yes, then did DT breach her obligations by failing to return the car in its original condition. To determine this, we need to determine whether the engine failure was due to DT's daughter driving negligently or an inherent defect of the vehicle?
- (iii) If there is a breach of contract then what loss has B Ltd suffered?

Was there a contract between DT and B Ltd Ltd?

5. The relevant law is the Contract and Commercial Law Act 2017. A contract is formed when parties agree on the terms and conditions under which goods or services will be provided.
6. DT claims that the contract for the courtesy car was between her ex-husband TI and B Ltd as it was him and not her who 'picked up' the car. However the courtesy car was only provided because of the original contract between DT and B Ltd as the original car she bought for NB was being repaired at the time. DT was named on the sale agreement as the purchaser for the original car

and it was registered in her name. When TI picked up the courtesy car he did so on behalf of DT and therefore acted as an agent on her behalf. Despite no paperwork being signed I'm satisfied there was a contract between DT and B Ltd.

If yes, then did the DT breach her obligations by failing to return the car in its original condition. To determine this, we need to determine whether the engine failure was due to DT's daughter driving negligently or an inherent defect of the vehicle.

7. B Ltd called OU, car mechanic from [Mechanic Company], as a witness who confirmed the car suffered a catastrophic engine failure which was the result of the engine overheating causing the head gasket to blow. OU said it could have blown due to a number of reasons, including a cooling system fault or a stone in the gasket. There are a whole range of different scenarios to cause the gasket to blow. In terms of how long the car would take to overheat would depend on the circumstances, but could be 10, 20 or 30 minutes. OU also added that the warning lights would have come on but couldn't check that due to the current state of the car. OU also pointed out that it would be very rare for the head gasket to blow because of the way someone drove the car.
8. Without knowing for certain how the gasket was blown on the balance of probabilities, I do not consider NB's driving caused the damage to the car. I am further persuaded by OU's evidence that this kind of damage could have been caused by the way someone drove the car but that would be very rare. I therefore dismiss the claim by B Ltd.

Referee: DTR Morgan
Date: 22 December 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>.