



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

[2023] NZDT 625

**APPLICANT**      **BC**

**RESPONDENT**    **KC**

**The Tribunal orders:**

The claim is dismissed.

**Reasons**

**Introduction**

1. BC took his vehicle gearbox to KC to repair because it was slipping out of gear. He seeks \$3,778.11 from KC for the repair cost of the gear box and the removal and installation of the gearbox by a third party.
2. The issues to be resolved are:
  - a. Was the service provided by KC completed with reasonable care and skill?
  - b. Was the work completed fit for purpose?
  - c. If not, has the failure being remedied within a reasonable time?
  - d. If not, is BC entitled to claim \$3,778.11?

**Was the service provided by KC completed with reasonable care and skill?**

3. The Consumer Guarantees Act 1993 applies to this case. When a person in trade supplies a service, that service comes with guarantees that the work will be completed with reasonable skill and care; and, that the end product being supplied will be fit for purpose. If there is a departure from one or more of these guarantees, then this can amount to a failure. Where this occurs, the consumer will have the choice of a refund or repair as a remedy. Where in circumstances a remedy is not met within a reasonable time frame, then in addition to a refund, if sought, the consumer can claim damages resulting from the failure which are reasonably foreseeable.
4. I find that there is insufficient evidence to say that KC has not provided his service with reasonable care and skill for the following reasons:
  - a. It was accepted by both parties that KC does not remove gearboxes from vehicles, instead they are removed and brought to him. They are then collected and installed back into vehicles.

- b. KC advised, and it wasn't contested, that he stripped down the gearbox and replaced parts with new factory parts from the manufacturer. He advised that when he had done this and tested the gearbox it worked. The testing was not under engine pressure, nor in the circumstances could it be, and BC was aware of this at the time of engaging KC to fix the gearbox. BC rightfully did not contest this.
- c. BC argued once it was reinstalled it was worse than before KC worked on it. The problem I am faced with is that there are other people involved in handling and working around the gearbox once it was collected from BC. For example, BC provided an email from QI. I inquired whether QI was to be called as a witness however BC said no. Of note is that QI says in part of his email:

*.. We would also need to double check the shifter bush is seated correctly as that can cause jumping...*

BC confirmed that he replaced the bushes after the gearbox was re-installed.

- d. QI also suggested in the email, that BC's problem could be fixed by grinding down parts of the gear box so it wouldn't jump out of gear. KC accepted that this was an option, however replacing worn parts with factory manufactured parts was also an option.
- e. When I look at the service provided by KC, the service was to work on a gearbox that had been removed from the vehicle that was jumping/slipping out of gear. KC replaced worn and tapered parts with new factory parts and once done, the issue as it was presented to him, was fixed. There is no counter evidence at that point in time to say it wasn't. It may have been different had it been KC reinstalling the gearbox into the vehicle, he then would have been able to ensure it was correctly fitted and seated and test it under engine pressure. BC was aware in engaging KC that this would not be done and was therefore accepting of the limits of the service provided. Accordingly, there is no evidence at the point in time of the gear box leaving KC's workshop that he had not completed his service with reasonable care and skill.

#### **Was the work completed fit for purpose?**

5. For the same reasons set out above, I find that the gearbox was fit for purpose when it left KC's workshop because the issue presented to KC in the circumstances was fixed when it left his workshop.

#### **If not, has the failure being remedied within a reasonable time? And if not, is BC entitled to claim \$3,778.11?**

6. Having found that the service was provided with reasonable skill and care and that the gearbox was fit for purpose when it left the workshop, then there has not been a failure and BC is not entitled to claim \$3,778.11, therefore, the claim is dismissed.

**Referee: Nigel Wolland**  
**Date: 4 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>.