



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

[2023] NZDT 568

**APPLICANT**      **BC**

**FIRST  
RESPONDENT**      **SL**

**SECOND  
RESPONDENT**      **XB Ltd**

**The Tribunal orders:**

The claim is dismissed against both respondents.

Reasons

1. In late May 2023 BC approached SL of XB Ltd to replace the thermostat in her car after she was told by another workshop that was the cause of her car overheating. BC paid XB Ltd \$300.00 for the work but says she noticed the next day that her car was still overheating.
2. On 9 August 2023 BC took the car to NS Ltd and they tested for the cause of the overheating. She told them she had recently had the thermostat replaced and they advised her that it did not appear to have been recently replaced. They replaced the thermostat at that time and charged \$230.00.
3. BC claims \$1000.00 from XB Ltd on the basis that she does not believe they did the work they charged her for - \$300.00 is for a refund and \$700.00 if for stress caused.
4. The issue to be determined is whether or not XB Ltd replaced BC's thermostat in May 2023.
5. I find that XB Ltd did carry out the work they had been engaged to do by BC. SL provided an invoice from [auto parts retailer] dated 24 May 2023 for a thermostat with the order no marked as "[Applicant's first name]". He also provided a statement from the mechanic S who BC had consulted before she took the car to XB Ltd. S stated that he had advised her it could be the thermostat or a blown head gasket that was causing the overheating. He was at XB Ltd's workshop getting a WOF for a customer's vehicle the day that XB Ltd replaced BC's thermostat and says he saw them fitting it to her car.
6. BC's witness, NL, is the mechanic at NS Ltd who replaced the thermostat in August 2023 and told BC that it did not appear to have been already replaced. He gave evidence at the teleconference hearing to that effect, but when he found out that 2.5 months had passed between when XB Ltd replaced the thermostat and when it was brought to his workshop, he changed his evidence and said that he agreed with SL that ongoing overheating of the vehicle in that time could have caused the issues with the thermostat that he observed.

7. BC said at the hearing initially that she had continued driving her car after XB Ltd's repair (even though she says it was still overheating), back and forwards to her Mum's who she was caring for and also a 'small trip' to her daughter's just out of [city]. She later said that she did not drive it at all between XB Ltd's repair and NS Ltd's repair and that her Mum had given her money for a new car, but she was vague on the details of when the new car had been purchased. She says she sold the overheating car after NS Ltd's thermostat replacement because driving it had caused more damage.
8. BC could not remember when she had first told XB Ltd that the car was still overheating – SL says he didn't hear from BC until late July and she referred to trips made in it since the repair. He says if the car had been brought back in straight away he would have suspected more extensive engine issues and would have tested the head gasket, but that initially BC had already had the vehicle diagnosed elsewhere and wanted to try a quick-fix solution.
9. On all the evidence available, I find that XB Ltd carried out the repair it was engaged to do and that the need for further replacement of the thermostat (and any other required work to address the overheating) was not a result of their work on the vehicle. The claim is therefore dismissed.

**Referee Perfect**

**Date: 14 November 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>.