



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 646

APPLICANT **BE**

RESPONDENT **IC**

The Tribunal orders:

IC is to pay BE \$2,120.00 on or before 20 December 2023.

Reasons

1. BE bought a [vehicle] from IC via Trademe for \$3,800.00. It was advertised as being in great condition for its age and having no issues apart from minor scrapes on front and rear bumper. However, the first day that BE drove it, it would not change out of first gear for at least five minutes. He had the car assessed by a mechanic who advised that it needed to have the gearbox replaced or the transmission rebuilt at a cost of around \$2,000.000 to \$3,000.00.
2. Because of the uncertainty around the repair cost BE decided to sell the car and buy another car instead. He advertised the car and explained that it had a fault which needed to be fixed. He sold it for \$1,800.00.
3. BE claims \$2,000.00 for the loss he suffered when he sold the car, \$120.00 for the mechanics diagnostic report and \$90.00 for the filing fee.
4. IC did not attend either hearing (22/11/23 and 29/11/23) and did not send any submissions in defence of the claim.
5. The issues to be decided are:
 - a) Did IC make a misrepresentation by saying that the car was in great condition and aside from a minor scrape on the front and back of the car had “nothing major” wrong with it?
 - b) If so, is BE entitled to claim \$2,120.00 for the losses suffered as a result of the misrepresentation?
 - c) Is BE entitled to claim costs of \$90.00?

Did IC make a misrepresentation by saying that the car was in great condition and aside from a minor scrape on the front and back of the car had “nothing major” wrong with it?

6. Section 35 of the Contract and Commercial Law Act 2017 provides that if a party to a contract has been induced to enter into it by a misrepresentation (whether innocent or fraudulent), made by or on behalf of another party to that contract, they can claim compensation from that other party as if were a term of the contract that has been broken. A misrepresentation is a

misstatement of past or present facts (and includes half-truths) but does not include an opinion. A misrepresentation need not be the sole inducement to the contract, but it must be a significant factor which influences a person to enter into the contract. Where there is more than one misrepresentation, a person only needs to prove that one or more induced them to enter the contract.

7. I find that IC did make a misrepresentation by saying that the car was in great condition and aside from a minor scrape on the front and back of the car had “nothing major” wrong with it. I make this finding for the following reasons:

- a) The evidence from [auto mechanic] is credible and compelling. It shows that the transmission fluid was dirty and contained high levels of metal fragments which indicated wear of internal components. The vehicle would not change gear properly and [auto mechanic] recommended that the gear box be replaced, or the transmission rebuilt to fix the fault. This clearly shows that the car was not in great condition. It had a serious fault.

- b) I have considered the fact that when BE told IC that the car would not change out of first gear, she said that on colder mornings she would have to rev it higher to get it to move out of first gear. She said that she always warmed it up for 5 – 10 minutes before driving it. BE said that when he inspected the car before buying it, he took it for a test drive. The car was already warm, and the gear problem did not occur. However, when he drove the car the next day from a cold start, the problem with it failing to change from first gear was obvious. It appears that IC deliberately concealed the problem by making sure the car was warm before the test drive.

If so, is BE entitled to claim \$2,120.00 for the losses suffered as a result of the misrepresentation?

8. BE is entitled to be restored to the position he would have been in had the representation been true. BE was unable to use the car due to the serious nature of the fault. Given the uncertain cost of the repairs, which all depended on accessing suitable second-hand parts, I accept BE was left with the only option of selling the car to mitigate his losses. The evidence clearly shows that he sold the car for \$1,800.00, which was \$2,000.00 less than the purchase price. This was because he revealed that the car had a transmission fault. I find that the claim for \$2,120.00 is proved. This includes the \$120.00 diagnostic cost which BE would not have incurred had the car been in great condition without a serious fault which needed to be investigated.

Is BE entitled to claim costs of \$90.00?

9. Section 43 of the Disputes Tribunal Act 1988 sets out the grounds of when costs can be awarded. If a claim is brought that is frivolous, vexatious, or unnecessarily prolongs any proceedings by engaging in conduct intended to impede prompt resolution then costs may be awarded.
10. The filing fee falls into the definition of costs. The claim is not frivolous or vexatious nor has any party unnecessarily prolonged the proceedings. Therefore, costs cannot not be awarded.

Referee: Sara Grayson
Date: 29 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>.