



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 497

APPLICANT BI

RESPONDENT H Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

1. When the train arrives at the [Town] station, the area gets busy with people disembarking, catching buses, and connecting with other sight seeing operations. It was busy in February this year when BI decided to take an often used short cut through the car park area instead of using the designated footpath, which is the longer route to the main shops.
2. BI was aware a bus was pulling out and he was not sure the driver had seen him, so he headed back towards the footpath walking between the car parks, keeping an eye on the bus as he did so. As he walked past a parked trailer owned by H Ltd, he tripped over the drawbar and had a nasty fall, sustaining injuries on his head and wrist. He later discovered one arm of his glasses was cracked and there was a scratch across one of the lenses. BI claimed from H Ltd for the cost he incurred to replace his glasses.
3. The issues to be resolved are:
 - (a) Did H Ltd owe a duty of care to warn people of the existence of its trailer draw bar resting on the ground, and if so, did it breach that duty of care?
 - (b) What reasonably foreseeable loss can BI show he has incurred that he is entitled to be compensated for?

Did H Ltd owe a duty of care to warn people of the existence of its trailer draw bar resting on the ground, and if so, did it breach that duty of care?

4. The law of negligence imposes a duty to take reasonable care to ensure that another person does not suffer a loss as a result of another person's act or omission. BI considered that H Ltd owed users of the carpark area a duty of care to ensure that the unattached drawbar of its trailer, that was resting on the ground, was marked as a hazard by placing a cone there, or some hazard tape. BI said it was a grey drawbar and it rested on grey asphalt so that it did not stand out in his peripheral vision. Although there is a footpath for pedestrians to use to get to the shopping area, it was common for people to take the short route through the car park. H Ltd therefore could reasonably foresee that pedestrians would walk in that area and its trailer drawbar was a trip

hazard. The supporting evidence that it created a hazard is that since the incident, H Ltd had parked the trailer the other way, so that the drawbar faces towards a berm.

5. NC, director of H Ltd, said the trailer was used by mini-vans to transport customer's luggage. When it is not being used, it was parked in a park that was designated for coaches. H Ltd had owned the trailer for about eight years and in that time there had been no incident where someone had tripped on the drawbar. He considered that BI's fall was an unfortunate accident, however, denied that H Ltd had created a hazard or breached any duty of care. NC agreed that H Ltd now park the trailer in the opposite direction, however, he said that as a company who took safety seriously, it wanted to take all reasonable preventative measures to minimise anyone from getting hurt if there was something H Ltd was able to do to prevent that. He denied it was evidence that H Ltd was negligent in parking the trailer the other way around.
6. It was accepted that H Ltd was entitled to park its trailer in the coach park. The issue is whether the draw bar resting on the ground, without something to alert someone to the tripping hazard, constituted a danger so that H Ltd was required to alert car park users of that danger.
7. The trailer is of a reasonable size and is clearly seen. It is the sort of thing that could be expected in a carpark and of course, must have a drawbar. The drawbar is not such an unusual item that it would take someone by surprise. Further, there is the potential for several different things to act as a tripping obstacles in a car parks, such as speed humps, car reversing ridges, drains and kerbs. A pedestrian walking in the carpark therefore must be vigilant of the hazards around them.
8. I find that a drawbar laying on the ground is not such an unexpected item that it constitutes an unreasonable hazard that a car park user would not expect to encounter. I am therefore not satisfied that BI has shown that H Ltd has parked something in the car park that created an unexpected or unreasonable hazard that imposed a duty of care on the company to alert users of the car park of that potential risk it had created.
9. In arriving at that finding however, I am aware that BI not only broke his glasses but also fractured his wrist and injured his head. It was a nasty fall that left BI shaken. However, I am unable to find that his fall was caused by H Ltd breaching a duty of care to prevent the occurrence from happening.
10. As I have found that H Ltd did not owe a duty of care to hazard mark the trailer drawbar, the claim is dismissed.

Referee: Ms Cowie DTR
Date: 20 September 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>.