



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

[2023] NZDT 639

**APPLICANT**      **BU**

**RESPONDENT**    **CU**

**APPLICANT'S**    **B Ltd**  
**INSURER**  
(if applicable)

**The Tribunal orders:**

The claim is dismissed.

Reasons

1. BU and CU were involved in an accident in the carpark at the [shop] in [City] on 25 January 2023.
2. Both drivers were attempting to exit the car park.
3. BU was parked in an EV charging car park near the main entrance to the building. She had reversed into the car park, so she exited it forwards, turning to her right onto the main thoroughfare heading towards the [Road] exit.
4. There are several small 'side roads' that join that main thoroughfare. The side roads provide access to parking areas. Those side roads were to BU's left as she drove towards the [Road] exit.
5. CU was attempting to exit from the last of those side roads, turning to his left onto the main thoroughfare.
6. The parties disagree about the circumstances of the collision.
7. BU submitted that as she drove past the last side road, CU drove straight out of it – failing to see her and failing to give way. BU described the accident as a "t-bone", with the front of CU's vehicle hitting square into the left middle of her vehicle.
8. CU submitted that the accident happened after he had turned out of the side road and onto the main thoroughfare. CU submitted that:
  - a. At that point, the exit heading towards [Road] splits into two marked lanes – a left only turning lane and a right only turning lane.

- b. He turned left directly into the left-hand lane, intending to turn left onto [Road] at the exit.
  - c. He had looked right before turning onto the main thoroughfare and there were no oncoming vehicles.
  - d. BU's vehicle then appeared from his right at speed, attempting to overtake him or cut across him, hitting the right front corner of his vehicle.
9. BU is insured by B Ltd. B Ltd paid for the repairs to BU's vehicle. The total repair cost was \$18,910.72.
  10. The claim seeks that amount from CU. The hearing took place by phone on 14 November 2023. Both parties participated in the hearing. NL represented B Ltd.
  11. B Ltd seeks to hold CU liable for the damage on the grounds that he failed to give way to BU, and that therefore his negligence was the cause of the accident.
  12. That would certainly be the case if BU's description of the circumstances of the accident is proven.
  13. The burden of proof is with B Ltd / BU. The standard of proof that applies in the Disputes Tribunal is the civil standard of "more likely than not" or "on the balance of probabilities".
  14. I do not have any independent eye-witness evidence about the circumstances of the accident. NL submitted that B Ltd attempted to recover the CCTV camera recording from the [shop], but the [shop] declined to release the recording unless it was requested to do so by the NZ Police.
  15. I was provided with photographs of BU's vehicle which show that the point of impact was on the middle of the left-hand side of her vehicle. This is consistent with the "t-bone" style accident that BU described, but it is also consistent with the "cutting across" scenario that CU described.
  16. I was provided with one photograph of CU's vehicle. The photograph was taken some months after the accident. It shows only the right front corner of CU's vehicle. There is some damage to that corner. The photograph shows only a glimpse of part of the bonnet beyond the right front headlight – there is no visible damage there.
  17. CU submitted that he only photographed the right front corner because that was the only area that was damaged.
  18. At the hearing, BU and NL challenged CU's statement that the exit lane splits into two marked lanes immediately at the point where CU turned onto it. Their view was that it was still an unmarked single lane at that point, and that it does not divide into two marked lanes until near the [Road 1] exit.
  19. The relevance of this is that it calls into question CU's submission that BU "cut across" him, coming from the lane to his right.
  20. I viewed the site several days after the hearing. I am satisfied that CU's description is accurate. The exit lane divides into two marked lanes immediately after the last side road.
  21. The evidence available to me does not establish that BU's version of events is more likely than CU's. Both versions are credible, and both are consistent with the evidence that I have of the pattern of damage to the vehicles.
  22. Therefore I find that the claim is not proven to the standard of "more likely than not", and the claim must be dismissed.

**Referee: Nicholas Blake**  
**Date: 22 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>.