



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 448

APPLICANT CL

RESPONDENT Q Ltd

**2nd
RESPONDENT WN**

The Tribunal orders:

The claim is dismissed.

Background

1. In January 2023, CL suffered an accident whilst on board his boat. He was washed off the back of the boat by a wave and became entangled in the boarding ladder. One of his hearing aids was lost at sea and the other was water damaged.
2. CL had purchased the hearing aids in 2019. They cost approximately \$12,000.00.
3. CL had insurance cover with WN. He held a [Policy] with a personal effects extension. His insurance broker was Q Ltd.
4. CL filed an insurance claim seeking the replacement cost of the hearing aids (approximately \$7,500.00 in January 2023).
5. WN declined the claim.
6. CL's claim in this Tribunal seeks \$5,000.00.
7. The hearing took place on 7 September 2023. CL attended the hearing in person at the [Court]. NS (representing Q Ltd) and NX (representing WN) attended the hearing by phone.

The WN policy

8. The policy states:

We will cover your personal effects for accidental loss or damage while they are on board or being carried on to or whilst being carried off your boat

9. Personal effects are defined as:

Items that are often taken to and from boats and that are not otherwise insured under any household contents policy.

Personal effects include water skis and inflated toys, bedding, plates and cutlery and cooking utensils, compact discs, food and drink, chilly bins, beach gear and towels. Personal effects are not boat gear or fishing or diving equipment. Personal effects specifically do not include antiques, artwork, bicycles, jewellery, money, any valuable papers and documents, car keys, mobile phones, laptops, personal electronics, photographic equipment, sunglasses or property used in any way for professional or business purposes.

Discussion

10. CL submitted that:

- a. He always takes his hearing aids onto the boat and uses them while he is on the boat.
- b. The hearing aids were not insured under a household contents policy. At the time this was because he understood that they were covered under the WN [Policy]. After this dispute arose, he asked Q Ltd to place insurance for them under a household contents policy. None of the insurers that Q Ltd approached, including WN, were prepared to cover the hearing aids under a household contents policy. I understand that this is because CL lives on the boat for six months of the year and he spends the rest of the year visiting and residing with his children.

11. WN's position is set out in several emails to CL declining the claim, and in a submission provided by WN's Technical Marine Manager. WN submit that:

- a. Hearing aids are items that are usually covered under a household contents policy.
- b. Hearing aids are not the type of item that the policy is intended to cover. They are not analogous to water skis, bedding, plates and cutlery (etc).
- c. Hearing aids are "personal electronics".

12. My findings are:

- a. The policy covers accidental loss or damage to personal effects while they are on board.

The circumstances in which CL's hearing aids were lost and damaged meets those criteria.

Q Ltd's advice to CL in an email dated 14 February 2023 that "the policy requires the insured risk (i.e. the vessel) to suffer an accidental loss (and for the claim to be accepted) before any additional benefits can be utilised" is plainly incorrect.

The policy covers the loss of the hearing aids if hearing aids are within the definition of "personal effects".

- b. The question of whether hearing aids could be, or are usually, covered by a household contents policy is irrelevant.

The definition of personal effects in WN's policy does not exclude items that are "usually" or "ordinarily" insured under a household contents policy. It excludes items that are in fact insured under a household contents policy.

In this instance, CL's hearing aids were not insured under a household contents policy.

- c. Hearing aids are items that are often taken to and from boats. CL always took his hearing aids to and from his boat. It is reasonable to think that any other boat owner who uses hearing aids does the same.
- d. Hearing aids are not analogous to water skis, beach gear, etc.

This part of the definition is intended to illustrate the types of items that typically fall within the cover. Per NN's statement, these are items that are commonly brought onto and kept on a board but are not 'boat gear' such as fishing equipment.

However, the list is only illustrative and it is not exhaustive. The fact that hearing aids are not on the list and are not similar in kind to things that are on the list creates an ambiguity.

An established principle of contract interpretation is that an ambiguity in a contract must be construed more strongly against the party who drafted the document.

- e. Therefore, to summarise the analysis so far:
 - i. The loss occurred in circumstances that trigger cover under the policy if hearing aids are within the definition of personal effects.
 - ii. CL's hearing aids were often taken to and from his boat and were not insured under a household contents policy.
 - iii. Hearing aids are not on the list of items that personal effects "includes", but the list is not exhaustive. There can be items that meet the definition of personal effects that are not on the list.
 - iv. The fact that hearing aids are not similar in type to the other items on the list suggests that hearing aids were not intended to be covered. However, this on its own would not provide legal grounds for declining the claim.
 - v. The next question is whether hearing aids are specifically excluded.
- f. Certain items are specifically excluded in the definition of personal effects. The one that is relevant here is "personal electronics".

That term is not defined in the policy.

NX and NS did not refer me to any standard or industry accepted definitions of the term.

The word "personal", in this context, means pertaining to persons. The word "electronics" means a device which requires the flow of electrons through conductors and semiconductors to perform its function.

Applying these definitions, I am satisfied that CL's hearing aids are in the category of "personal electronics". Hearing aids pertain to a person, and they operate by electricity.

13. Therefore I find that the policy does not cover the loss of CL's hearing aids, and WN was entitled to decline the claim.

14. CL's claim in this Tribunal must be dismissed.

Date: 19 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>.