



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 673

APPLICANT **DF**
RESPONDENT **FX**
APPLICANT'S **J Ltd**
INSURER

The Tribunal orders:

FX shall pay J Ltd \$7,038.69 by 23 November 2023, or according to any payment arrangement agreed to by J Ltd by that date. Any default on such a payment arrangement shall render the full remaining balance due within 10 working days of default.

Reasons:

1. DF' parked car was damaged when FX drove into the rear of it.
2. FX claims that she was momentarily blinded by sunstrike and that DF' car was illegally parked therefore she is not completely to blame for the collision.
3. For FX to be held liable for the costs to repair DF' vehicle, it must first be proven that FX was negligent.
4. A finding of negligence requires a duty of care, a breach of that duty and damage as a direct result of that breach. All drivers owe a duty of care to all other road users and adjacent property owners.
5. FX came around the corner and was blinded by the sun but continued driving past the day care centre, where she was headed, and drove into the rear of DF' vehicle parked in front of the next property. Continuing to drive when one cannot see where they are going, particularly past a day care centre at drop off time, is a breach of the duty of care and therefore negligent.
6. FX claims that the collision occurred because DF was parked less than a metre from a driveway, in an area of yellow dotted lines.
7. The rule regarding not parking within a metre of a driveway is for the safety and visibility of a driver entering or exiting the driveway, which neither party was doing.
8. Parking in an area with dotted yellow lines is prohibited. The photos indicate that DF' vehicle was parked beyond the yellow dots. FX claims that the photo was taken after the vehicle was shunted forward by the collision, however the debris on the road shows that the collision occurred there, and the vehicle was not shunted forward any significant distance, if at all.

9. FX claims that if DF had parked a metre ahead of where he parked the collision would not have happened because the sunstrike would have ended, and she would have been able to see his parked car. FX is unable to explain why a metre would have made a difference or how she knows that the sunstrike would stop a metre later.
10. There is no evidence that DF's vehicle was illegally parked or that the location of his parked vehicle contributed to the cause of the collision.
11. Accordingly, the Tribunal finds that DF was not negligent.
12. In the absence of any contributory negligence by DF, FX is solely liable for the damage caused to DF' vehicle and is liable to J Ltd for the repair costs.

Referee: L. Mueller

Date: 31 October 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>.