



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

**District Court**

**[2023] NZDT 285**

**APPLICANT        DQ**

**RESPONDENT     H Ltd**

**The Tribunal orders:**

The claim by DQ against H Ltd is proved.

1. H Ltd is to pay DQ the sum of \$8500.00 on or by 5:00 pm on 01 August 2023.
2. DQ is to make the car available for collection by H Ltd on or before 5:00pm on 03 August 2023.

**Reasons**

1. DQ the applicant purchased (the car) from the respondent on 01 April 2023. DQ now brings a claim against H Ltd \$8,500.00.
2. The hearing was originally scheduled for 08 June 2023 at which time KI who is a motor vehicle trader explained that he wasn't aware of the hearing. The hearing was adjourned to provide KI with a second opportunity to attend.
3. When I rang KI at 11:30 on 11 July 2023 at the scheduled time for the commencement of the hearing, I left a message on KI's answer phone explaining that I would call him back but if he did not answer then the hearing would proceed without his input.
4. KI didn't answer the second time I rang. I have checked the records on the file and I note that KI was advised by letter and email to [email] of the impending hearing.
5. For these reasons the hearing proceeded without KI's input.
6. Background:
7. DQ confirmed that he purchased the car from [garage] on 01 April 2023. DQ provided a copy of the vehicle offer and sale agreement confirming the date. The agreement was signed by both DQ and KI on behalf of H Ltd.
8. DQ explained that within two days after the purchase he experienced problems with the car and contacted KI who told him it won't be serious and to take it to a mechanic and have it checked out to see where we can go from there.
9. DQ explained that he took the car at the first opportunity on 14 April 2023 to '[City] Automotive'. The Mechanic at [City] Automotive invited him into the shop to explain what was wrong with the car. DQ said there were three other mechanics looking at the car engine at the same time who

confirmed the diagnosis. DQ was told that the CV joint and strut mount on the front passenger side needed replacing but most importantly the turbo needed replacing as the car had been running on a faulty turbo with the potential to cause major damage.

10. When DQ emailed KI, KI eventually responded that KI wanted a second opinion and that KI would fix the car. However, DQ rejected the suggestion and told KI that the problems with the car are substantial, and he was rejecting the car and wanted a refund.

11. The issues to be resolved are:

- (a) Does the Consumer Guarantees Act 1993 (CGA) apply?
- (b) If so, are the problems with the car of a 'substantial character'?
- (c) If so, is DQ entitled to reject the car and obtain a refund?

### **Does the Consumer Guarantees Act 1993 apply?**

12. Because H Ltd is in 'trade' and DQ is a consumer, the statutory guarantees in the CGA apply to the claim. Further, the Offer and Sale agreement confirms as such in clause 8 of the terms and conditions.

### **If so, are the problems with the car of a 'substantial character'?**

13. The CGA section 6 provides that *"Where goods are supplied to a consumer there is a guarantee that the goods are of acceptable quality ...having regard to the nature of the goods"*

14. The CGA Section 18 provides *"options for suppliers where goods do not comply with guarantees:*

(3) *Where the failure cannot be remedied or is of a substantial character within the meaning of section 21, the consumer may-*

- (a) *Subject to section 20, reject the goods in accordance with section 22, or*
- (b) *Obtain from the supplier damages in compensation for any reduction in value of the goods below the price paid or payable by the consumer of the goods.*

15. The CGA section 21 provides: *a failure to comply with a guarantee is of a substantial character in any case where—*

(a) *the goods would not have been acquired by a reasonable consumer fully acquainted with the nature and extent of the failure.*

16. I am satisfied after hearing from DQ, that although I accept that the car is an older model, the problems DQ described in relation to the car are "of a substantial character". I am satisfied that DQ would not have entered into the contract to purchase the car if he had been fully acquainted with the nature and extent of the problems.

### **If so, is DQ entitled to reject the car and obtain a refund?**

17. Because of my finding that the failure of the guarantee is of a "substantial character", I am also satisfied that DQ is entitled to reject the car and obtain a refund of the purchase price.

18. For these reasons I find the claim by DQ against the respondent company H Ltd is proved on the balance of probabilities.

19. For these reasons DQ is to make the car available for collection by H Ltd on or before 5:00 pm on Thursday 03 August 2023.

20. The respondent company is to pay DQ the sum of \$8500.00 on or before 01 August 2023.

**Referee: K Johnson**  
**Date: 11 July 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>.