



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2019] NZDT 1353

APPLICANT DT

AND BY EMAIL

RESPONDENT BJ Limited
Attn: KC

AND BY EMAIL

The Tribunal hereby orders:

BJ Limited is to pay DT \$19,800 on or before 21 February 2019.

Reasons

1. DT is insured with BJ. On 28 June 2017, she filed a claim with BJ in relation to the theft of her car, a 2008 [Car] which she claimed was stolen outside her house on 27 June 2017. DT was interviewed by BJ's Investigator on 29 July 2017. On 23 February 2018 BJ declined DT's claim. She has now filed in the Tribunal and claims \$20,000, which is the maximum she can claim given BJ has signed the application to extend the financial limit of the Tribunal. DT understands she cannot claim more than \$20,000 which is the upper limit of the Tribunal's jurisdiction.
2. The issues I need to decide are:
 - a. Was BJ entitled to decline DT's claim?
 - b. If not, has that caused DT \$20,000 of loss?

Was BJ entitled to decline DT's claim?

3. DT and BJ are in a contractual relationship. This includes the terms in the "Comprehensive Car Insurance Policy" provided at the hearing. Both parties need to act in accordance with the terms of the policy. There is also a common law obligation of utmost good faith on all parties to an insurance contract.
4. DT says she has acted in accordance with the policy. In the legal submissions filed on her behalf she says she has established a prima facie case her car was stolen and that she is not required to establish how the car was stolen or the methods or motives of the thief. DT says the burden is on BJ to establish she was complicit in the theft or has committed insurance fraud.

5. BJ says DT has not made a 'claim' as she has not established a prima facie case that her car was stolen and the onus is on her to prove that a valid claim exists.
6. The policy sets out the conditions of making a claim. These include conditions that DT was required to:

*'inform us of the **event** and give the full details and circumstances of what has happened, including details of everyone involved'.*

"provide proof of ownership, information and other evidence that we may require".

"provide all reasonable assistance and co-operate with us and our assessors, investigators, lawyers or anyone else we appoint to assist in the making of your claim, its settlement and any defence of a potential claim against you or any action against anyone else".

7. BJ can decline a claim for failure to comply with any of the conditions.
8. The policy also sets out separately policy conditions. These include a requirement to give full and accurate statements. This section of the policy states:

"Your policy with us relies on the accuracy of the information you provide to us. You must provide full and accurate information and answer honestly, correctly and completely all questions we ask you.

If any claim under this or any other policy with us is supported by any incorrect or incomplete information or statement or is in any respect fraudulent, then your claim is not payable and this policy will be automatically terminated from the date that the incorrect information was supplied to us, or the statement or fraudulent claim was made to us. We may also terminate any other policy you have with us at the same time"

9. In the letter of 23 February 2018 declining the claim BJ stated, *"Based on the information we have obtained **the event could not have occurred as stated by you, therefore we have been provided with incorrect, incomplete and/or fraudulent information in support of your claim"***. Further that, *"As incorrect, incomplete and/or fraudulent information was provided in support of your claim and the proviso of Utmost Good Faith has been breached. This places your claim outside the scope of cover provided and your claim is therefore declined"* (emphasis added).
10. From the case law provided by DT before being satisfied on the balance of probabilities strong evidence is required for serious allegations (such as fraud).
11. I am satisfied DT established a prima facie claim. She complied with the conditions of the claim referred to above and BJ has declined the claim on the basis of a policy condition which presupposes a claim has been made.
12. I am not satisfied that BJ has established DT had provided incorrect or incomplete information in support of her claim at the time it was declined. KC for BJ explained that the information was incorrect or incomplete "in some way" and that "something doesn't make sense" with the claim. Although BJ has submitted that DT's car could not have been stolen without a key, the [Automotive Locksmith Company] report concludes it is possible that the vehicle could be stolen without the use of an existing key by someone who was equipped with both the skills, knowledge and tools required. Further I am not satisfied it is established that the immobiliser was working on the car. Although BJ submits this was the case, the previous owners could not confirm the immobiliser was working and there is evidence that [Car] immobilisers can fail.
13. Whilst I understand BJ's position regarding how it would be unlikely for effort to be expended by a thief to steal the car only to set fire to it, I accept DT's submission that she is not required to prove how her vehicle could have been taken and why it was set fire to such a short time after theft.

14. I am also not satisfied that BJ has established DT has provided fraudulent information in support of her claim. If BJ is actually suggesting DT has either directly, or through someone else, arranged for her car to be stolen and destroyed so she can benefit from the insurance proceeds, I am not persuaded there is strong evidence to support that position.
15. BJ has relied in part on information as to DT's motive provided by an unnamed informant who has asked to remain confidential. That information has not been provided as evidence to the Tribunal. The investigator's report suggested this information was retracted, although KC said it had only been 'watered down'. Without hearing that evidence from the informant, I place no weight on it.
16. If that information relates to an issue discussed at the hearing regarding DT seeking compensation for a fault with the brake pads of her vehicle shortly after the purchase of her car around six years ago that does not strike me as strong evidence of her involvement in the destruction of her car for insurance proceeds given the period of time elapsed since that time and minimal sums involved.
17. There is no evidence DT has previous convictions or a previous adverse financial history and she had been making repayments on her car. There has not been evidence put forward that her explanations for parking her car on the road (relating to her property inspection) or the circumstances in which the other key was lost are dishonest. BJ has had the opportunity to investigate these claims.
18. DT has given evidence at the hearings in this matter about being told by a neighbour about the theft of tools and a car. Having listened to both hearings on this point, she has provided more detail in the second hearing than in the first but her evidence has been broadly consistent in that she confirmed at both hearings she learned of this information after the interview with BJ's investigator. There is no evidence that DT has been dishonest in these claims which BJ has had the opportunity to investigate.
19. Therefore, I am not satisfied there is strong evidence it is more likely than not that DT committed fraud and I find BJ was not entitled to decline DT's claim.

Has that caused DT \$20,000 of loss?

20. It was clarified at the hearing that DT has paid no storage fees for her car wreck and so she has no basis for her claim of \$200 for those fees.
21. In relation to the balance of the \$19,800 claimed I am satisfied this was the sum insured and was set by BJ (and not DT) with BJ adjusting it at renewal.
22. Although BJ has provided as part of this dispute evidence that DT's car at the time of loss may have been worth only \$12,500 (and possibly less if it had an oil leak), KC was frank that had the claim been accepted it would likely have been paid out.
23. DT had paid the premiums on an agreed value policy, the value of which was set by BJ, and I consider her loss has been the amount of that policy and so award \$19,800 to be paid as set out above.

Referee: J Costigan
Date: 21 January 2019



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 or a mistake was made.

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 28 days of the decision having been made. If you are outside of time, 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.

Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 28 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, and 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>.