



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 378

APPLICANT DT

RESPONDENT TX

The Tribunal orders:

1. TX is to pay to DT the sum of \$8,500.00 on or before 21 August 2023.
2. DT is to return the [car] to TX at his address in [town 1] on or before 21 August 2023. The parties are to complete the necessary documentation to transfer ownership of the vehicle back to TX within 48 hours of the return of the vehicle.

Reasons:

1. In May 2023, TX advertised a [car] for sale on [online platform].
2. DT was interested in the [car] and arranged to view it in [town 1].
3. A written contract was entered into between the parties in relation to the sale of the vehicle. The contract contained a clause allowing for the return of the vehicle to TX and a full refund to DT in certain circumstances.
4. Within 7 days of the purchase of the vehicle, DT had the [car] inspected at a garage in [town 2]. As result of that inspection, he contacted TX and said he wished to return the vehicle and get a refund.
5. There were some messages between the parties regarding that but ultimately TX indicated he was not willing to give a full refund of the purchase price.
6. DT is seeking \$8,818.00 which is \$8,500.00 for the purchase price of the vehicle, \$138.00 for a mechanical check and \$180.00 for the Disputes Tribunal filing fee.
7. The issues the Tribunal has to consider are:
 - a. What was the agreement between the parties regarding the sale and possible return of the car?
 - b. Is TX obliged to take back the car and give DT a refund of \$8,500.00?
 - c. If no agreement regarding the sale of the car can be enforced, did TX misrepresent the car at the time of sale?

- d. If yes, did that induce DT to buy the car?
- e. Is DT entitled to any compensation?
- f. Is DT entitled to \$138.00 for a mechanics check?
- g. Is DT entitled to \$180.00 for the Disputes Tribunal filing fee?

What was the agreement between the parties regarding the sale and possible return of the car?

- 8. A contract may be defined as a legally binding agreement or a promise or set of promises between two or more parties that the law will enforce.
- 9. The parties signed a contract or agreement in relation to this matter dated 17 May 2023.
- 10. The contract stated – *“if within 7 working days the vehicle is inspected by a recognised garage/mechanic and found not to be as advertised and have issues exceeding \$500 worth of repair work, the full \$8,500 will be refunded on return of the vehicle to the sellers address in the same condition as when purchased on 17th May.”*
- 11. I am satisfied that the written document produced to the Tribunal was the agreement between the parties regarding the sale and possible return of the car.

Is TX obliged to take back the car and give DT a refund of \$8,500.00?

- 12. It was not disputed by TX that DT took the vehicle to a garage/mechanic within 7 working days of the purchase. While TX made some comments about whether the mechanic was commenting on the condition of the vehicle with a view to generating work, TX did not dispute that R Ltd was a recognised garage/mechanic.
- 13. What was in dispute was whether the vehicle was found to be not as advertised and have issues exceeding \$500.00 worth of repair work.
- 14. TX said the report from R Ltd did not find any major fault with the car. He said the issues raised in the report were maintenance issues and matters a person would expect to have to attend to on a 20-year-old vehicle. He said in relation to the cam belt that while there did not appear to be any evidence that it had been replaced, there was also no evidence it had not been. He said no issues with the cam belt had been identified and if there were issues, they would be evident on driving.
- 15. He said the brakes were repaired in February 2020 when he had the car, and it is not unusual for the brakes to require attention again now. TX said DT was aware of an issue with one of the tyres and that was specifically noted on the agreement. He is unsure why 2 other tyres were recommended be replaced. He said the vehicle had a previous issue with an oil leak that was addressed, and the presence of an oil leak noted by R Ltd is likely to be related to that rather than a current issue. He said the issue about the transmission, where a flush was recommended, is just a recommendation rather than an issue requiring repair.
- 16. TX disputed that the vehicle was not as advertised. He said it was as advertised. He said it was *“well maintained”* as stated in the advert, for a 20-year-old vehicle.
- 17. I find it more likely than not that the vehicle was not *“well maintained”* and therefore was not as advertised.
- 18. DT stated his information, from online research and advice received, was that a cam belt should be replaced somewhere between every 60,000kms to 100,000kms or every five to six years. He said TX had owned the vehicle since 2014 and there was no evidence in the service invoices provided to DT that the cam belt had ever been replaced during that time.

19. TX had no recollection of personally having the cam belt replaced while he owned it but said there was no evidence to say it had not been.
20. The Tribunal is required to determine a claim on the balance of probabilities. It must decide which version of events is more likely than not to be true.
21. I find it more likely than not that the cam belt has not been replaced since 2014. TX had no recollection of it being done. The Tribunal was told the service records show no note of it being done. R Ltd noted on its inspection report that there was no evidence of the last cam belt replacement. The vehicle had over 218,000kms on it at the time it was sold to DT.
22. I am satisfied that this supports the claim that the vehicle was not as advertised as it was not "*well maintained.*" A well-maintained vehicle would have had its cam belt replaced sometime between 2014 and 2023.
23. The estimate provided by R Ltd notes that a cam belt kit was \$533.91 plus GST. While not separated on the estimate, there would be labour associated with that work as well. The cam belt issue alone requires repairs that are over \$500.00. Even without the other issues this would entitle DT to return the vehicle as per the agreement.
24. I accept DT's submission that it was a combination of issues that resulted in him seeking to return the car. An oil leak was found to be present and required further investigation. DT was not willing to pay a further amount to have the oil leak investigated as the cost of the replacement cam belt alone was going to cost more than \$500.00. As the cost of the general inspection was \$138.00, the cost of further investigating the oil leak would likely be more than that again.
25. TX submitted that the point of the agreement between the parties was to protect DT in the event of a major or significant issue found. He said there was no major or significant issue found.
26. The agreement between the parties does not refer to a major or significant issue. It sets the minimum level at \$500.00 worth of repairs. That is the amount chosen by the parties themselves. The cost of a replacement cam belt is already in excess of that amount.
27. R Ltd estimated the costs of addressing the issues the vehicle has as \$2,851.40. There was also an estimate provided verbally by DT of \$1,004.00 to replace two tyres.
28. I find the replacing of the tyres was a recommendation and so that alone is unlikely to have allowed a return of the vehicle. However, as the cam belt by itself would allow the return of the vehicle under the agreement, I do not need to consider the other issues further.
29. The vehicle was not as advertised as it was not well maintained. It is more likely than not that the cam belt had not been replaced since 2014 and the brakes required attention even though there was evidence that they had been repaired in 2020.
30. TX said that DT has now had the car in his possession since May 2023 and has used the car. He says that means if the car was to be returned to him it would not be in the same condition as when purchased on 17 May 2023. He said some allowance should be allowed for that.
31. DT wanted to return the car to TX almost immediately after he had the car inspected by R Ltd. He messaged TX on 23 May 2023 advising him of the outcome of the inspection. TX replied that it seemed to him that they were struggling to find fault but if DT felt that this did not represent what he paid for a 2003 [car model] then he could return the car as agreed and he would return his money. DT replied that he had spoken to the mechanic about what would be necessary, and he did not want to have to replace a few things initially just to have peace of mind. He said he would be driving the car over to TX the following day.
32. There were some further messages between the parties which ended with TX stating that DT had not "*proven a substantive issue with the vehicle that warrants its return.*" He suggested that DT list the vehicle for sale himself if he was not happy with it.

33. I find that this was a clear indication from TX that he was not going to accept a return of the vehicle from DT. TX repudiated the contract as he made it clear he did not intend to carry out his obligations under the contract. I reject TX's argument that because DT did not drive the car back to him in May that that meant DT had not carried out his part of the contract. There was no obligation on DT at that stage to return the car to TX as TX had made it clear he would not accept its return and would not be refunding the money.
34. TX was in breach of the contract by not accepting a return of the vehicle back in May when DT offered to drive it back to [town 1]. He cannot now expect a reduction in the amount he has to refund DT as a result of his own failure to perform the contract as agreed.
35. DT is entitled to return the vehicle to TX and receive a full refund of \$8,500.00.
36. I do not need to consider the issues regarding misrepresentation, inducement and compensation as the contract sets out what is to occur if the car was not as advertised and had issues exceeding \$500.00 of repair work. DT is entitled to return the car and get a full refund of the purchase price as that is what was agreed between the parties.

Is DT entitled to \$138.00 for a mechanics check?

37. The written agreement between the parties was silent on who was to pay for the mechanical check.
38. The Tribunal was told that part of the reason this clause was put into the written agreement was because DT did not have the time to have a mechanical check carried out prior to purchase. The fact that he was living in [town 2] and TX was based in [town 1] made it more difficult to arrange a mechanical check.
39. DT is not contractually entitled to the fee for the mechanical check.
40. Had the check been carried out prior to purchase or had the check been carried out and no faults found, there was no suggestion that TX would have been liable to pay for that check.
41. I find that the cost of the mechanical check was part of the due diligence that any potential purchaser may carry out prior to purchasing a vehicle. The fact that it was carried out after the purchase does not make TX liable for that cost.
42. DT is not entitled to \$138.00 for the mechanical check.

Is DT entitled to \$180.00 for the Disputes Tribunal filing fee?

43. Section 43 of the Disputes Tribunal Act 1988 ("DTA") means that costs cannot be awarded against a party to a Tribunal hearing except in certain circumstances. I am not satisfied that any of the exceptions as set out in s43 of the DTA apply. I cannot, therefore, make any award in respect of those costs.
44. TX is to pay to DT the sum of \$8,500.00 on or before 21 August 2023.
45. DT is to return the [car] to TX at his address in [town 1] on or before 21 August 2023.
46. Both parties are to attend to the necessary documentation for the transfer of ownership of the car into TX's name within 48 hours of the car being returned.

Referee: P Byrne
Date: 1 August 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>.