



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 516

APPLICANT E Ltd

RESPONDENT IU

**APPLICANT'S
INSURER** X Ltd
(if applicable)

**RESPONDENT
INSURER** Z Ltd
(if applicable)

The Tribunal orders:

1. IU is liable for the damage to E Ltd's van.

Reasons

2. I conducted a teleconference hearing today. In attendance were LM (E Ltd's driver), EU (E Ltd's branch manager), UO from X Ltd, and IU. I attempted to call in Z Ltd's representative, but the 0800 number provided did not give an option to enter the extension number for the representative. After discussion with the parties available, it was agreed that Z Ltd's presence was not necessary for the purposes of determining liability. Should Z Ltd wish to challenge the quantum of repairs for E Ltd's vehicle, a fresh application will be necessary. Quantum was not discussed before me and is not considered in this decision.
3. E Ltd owns the [business] through which leases and launders work clothing for various businesses. On 27 February 2023, LM, one of E Ltd's delivery drivers, was driving a pickup and drop-off run to [business] clients, when a collision occurred between the delivery van he was driving (the Van), and IU's vehicle. LM had driven this particular route for some six months prior to the collision.

Issue- How did the collision occur?

4. How the collision occurred is disputed is the issue I need to resolve.
5. LM says he was driving along [road], having indicated to turn right into the parking area of a client, when IU ran into him while attempting to overtake on the right.
6. IU says LM had been parked on the right hand side of [road], and pulled into his path suddenly, without indicating. IU says he was unable to stop in time and the collision occurred.
7. Looking at the photos of the vehicles after the collision occurred, I note that the Van's driver's door and right front wheel were damaged, and the damage to IU's vehicle is to the front left wing

and both left-hand doors. The damage of both vehicles could be consistent with either description of the accident.

8. However, the Van was equipped with an e-road GPS device, which records the location of the van, when and where the van's ignition is turned on and off, and which records the speed and position of the Van during manoeuvres. The records derived from this data show that between 8:16 am, when the Van's ignition was switched on, and approximately 8:17am, when the collision occurred, LM travelled 250 m from a client site off [road], to the site of the collision. It shows that the LM had slowed to 13 kilometres an hour and begun to turn, when the collision occurred. The data shows that the Van did not stop to the side of [road] before the collision occurred. The GPS record shows that the accident occurred as LM has described it, rather than as IU has described it.
9. I find that IU failed to give way, attempting to overtake the Van rather than slowing, and this failure to follow the road rules cause the accident.
10. Therefore, I order that IU is liable for the damage to the Van.

Referee: CD Boys

Date: 3 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>.