



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2019] NZDT 1357

APPLICANT **DE**
 As Trustee of E Family Trust

APPLICANT **FM**
 As Trustee of E Family Trust

APPLICANT **XE**
 As Trustee of E Family Trust

RESPONDENT **SQ**

RESPONDENT **JBH New Zealand Limited**
INSURER

The Tribunal hereby orders:

The claim is dismissed.

Reasons

1. Late in the evening on 24 June 2018, a farm ute owned by the E Family Trust (EFT) and driven by EFT's farm manager, Mr IT, collided on State Highway 12 with a bull owned by SQ that had got out of its paddock. The bull died in the collision and the ute was a total loss, with Mr T fortunately uninjured.
2. EFT claims \$10,180.00 being the value of the ute plus the \$180.00 Tribunal filing fee, on the basis that Mr Q negligently allowed his stock to stray onto the highway.
3. The issues to determine are:
 - Was Mr Q negligent in allowing his stock to make their way onto the highway?
 - If so, what are EFT 's reasonable losses?

Was Mr Q negligent in allowing his stock to make their way onto the highway?

4. I find that EFT have provided insufficient evidence to prove negligence on Mr Q's part. Section 5(2) of the Animal Law Reform Act 1989 states that, in determining whether or not a person is liable by way of negligence for damage caused by an animal straying onto a particular highway, consideration shall be given to the common practice in the relevant locality in relation to fencing, and the taking of other measures to prevent animals straying onto highways in the locality.

5. This means that there is no strict liability on animal owners if stock find their way onto a highway, rather they must have departed, in a negligent manner, from the common practice for fencing in their locality.
6. Mr E for EFT acknowledged at the hearing that the fencing in place around the paddock in which the stock were originally contained on the date of the collision is standard adequate farm fencing for containing the age and type of animals in question. The fencing around the paddock included a 6 strand, 7 wire Taranaki gate and an electric fence.
7. However, Mr E contends that there was long kikuyu grass growing around the electric fence which is likely to have shortened it, rendering it ineffective, and also that the animals were likely hungry based on the statement in JBH's investigator's report to the effect that Mr Q had not been to the paddock "for some days", in which case the fencing could not be expected to have contained them.
8. Mr E also raised various other inaccuracies around location of photos referenced and other statements made in the investigator's report but the relevant facts around the original location of the stock and the fencing at that location were established at the hearing.
9. In response to Mr E's contentions above, Mr Q replied that he would usually have been at the paddock every day and does not remember telling the investigator that he had not been at the paddock for some days. Mr Q also states that the gate that was lying on the ground is not indicative of animals having broken through it and makes the point that it would have sustained damage if an animal had hooked into it and lifted it. He speculates that a neighbour with whom he has had previous run-ins may have opened his gate deliberately but can provide no evidence of such an occurrence.
10. However, EFT's evidence around the length of kikuyu possibly leading to a shortening of the electric fence and/or the animals being hungry, is similarly speculative because the photos provided of the area were taken some months after the incident. Given that the fencing of the paddock was otherwise of acceptable standard, the evidence relating to reasons the fencing may have been compromised at the time is insufficient to prove negligence on Mr Q's part.
11. For the reasons above, Mr Q has no liability for EFT's reasonable losses and the claim is dismissed.

Referee:

Date: 25 October 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>.