



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 637

APPLICANT **EI**

RESPONDENT **JM Ltd**

The Tribunal orders:

The claim is dismissed.

Reasons

Introduction

1. In November 2022, EI started his [truck], when he put his foot on the accelerator, water was sucked through the air filter into the engine resulting in the engine being damaged.
2. EI seeks \$30,000.00 from his insurance company, JM Ltd, to fix the engine, claiming he is covered by his insurance policy.
3. The issues to be resolved are:
 - a. What caused the water to enter the air filter?
 - b. Does the insurance policy cover this eventuality?
 - c. If so, is EI entitled to claim \$30,000.00 from JM Ltd to repair the engine?

What caused the water to enter the air filter?

4. The general principles of the law of contract apply to this dispute. A contract is an agreement that the parties intend to be legally bound by. It involves an exchange of promises and becomes binding when the parties agree on clear and certain terms.
5. The parties agree that the water entered the air filter in or around the air duct intake pipe. The flange in this area was loose and the area around it exhibited signs of penetration. It appears that the loose flange could have been remedied through regular maintenance but wasn't. This same area had previously been sandblasted to remove rust and repainted approximately six (6) years earlier. This indicates that this was a susceptible area and regular maintenance, and checking should have followed. It is also an area that needed to be airtight, and the parties agree it wasn't. Therefore, since it wasn't airtight, any water around this area could enter the air filter through the intake duct.

6. EI accepted that over time some water may have entered the air filter, however he asserts that due to the weather at the time, including a storm, an excessive amount of water entered into the air filter and this excessive amount of water in one event led to the engine being damaged. However, it is unknown, and there was no evidence produced to indicate how much water entered the final time. It could have been no more than had previously been entering or it may have been more.
7. Mr Q was asked to inspect the vehicle as an independent appraisal. He was adamant no water should enter the air filter at all and that the air filter should be regularly checked but at most no later than every 12,000km. Mr Q found that the flange was loose and that there were corrosive holes around the flange. He found there to be deformation to the air filter element to approximately 40-50%. He advised that in his opinion this deformation occurred over time and was not the result of one event.
8. I agree and accept Mr Q's evidence that this was gradual deformation of the air filter by water coming into it around the loose flange and not caused by a one-off storm event. The photograph of the air filter, which clearly shows old and established corrosion, indicates the deformation has occurred over time rather than a one-off storm.

Does the insurance policy cover this eventuality?

9. I find the insurance policy does not cover this eventuality for the following reasons:
 - a. EI says that he is covered under Parts A and Part D of the Exclusions Section of his policy. He says the parts are independent of each other. He says under Part A, the rust and corrosion of area around the flange and the loose flange of the air duct intake, he accepts he is not covered for. He says that part only is what he is not covered for and that any resultant accidental loss to any other part means he is covered for the damaged air filter and subsequent damaged engine. I don't accept that reasoning because the part he refers to and accepts as failing is part of the truck engine's air filter system. The truck engine air filter system includes the air intake duct, the air filter and is an integral part of the engine. It is not a different part of the vehicle and therefore is not saved as a remote part under the Part A exclusions of the policy.
 - b. EI also submits that he is covered under Part D (2) (h) in that this was a result of a storm and therefore his engine and engine parts are covered. Having already found that the cause was not from a one-off storm but through a gradual build up over time, then I find he is not covered under this part.

If so, is EI entitled to claim \$30,000.00 from JM Ltd to repair the engine?

10. Having found that the insurance policy does not cover EI for the damage claimed, I do not need to consider this question. Accordingly, the claim is dismissed.

Referee: Nigel Wolland
Date: 6 November 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>.