



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 257

APPLICANT **EO**
RESPONDENT **UO**
SECOND **LO**
RESPONDENT
THIRD OR **U Ltd**
SUBSEQUENT
RESPONDENT

The Tribunal orders:

UO and LO and U Ltd shall pay EO \$40.00 on or before Monday 17 July 2023.

Reasons:

1. EO lives in [Country]. She and her partner, Mr O, visited New Zealand and owned a [campervan] during their time in New Zealand. EO took the campervan to UO and LO's business, U Ltd for a warrant of fitness (WOF) on 9 June 2020, prior to selling the vehicle so she could return to [Country].
2. U Ltd gave the campervan a pass on its WOF on 9 June 2020. EO and Mr O sold the campervan to Ms L for \$19,800.00. Ms L took the campervan for a further WOF on 6 July 2020, at which time the vehicle failed its WOF. The garage found extensive issues with the vehicle, including structural rust. NZ Transport Agency investigated EO's complaint against U Ltd for issuing the WOF despite the van's extensive issues and upheld her complaint. Action was taken against U Ltd for issuing the WOF.
3. In a separate Tribunal claim by Ms L, EO and Mr O were ordered to pay \$17,066.00 to Ms L by the Tribunal in a decision dated 7 March 2022, as damages for misrepresentation in relation to the WOF for the van.
4. EO claimed that the WOF should not have been issued by U Ltd and sought \$17,286.00 from UO and LO and U Ltd, being \$17,066.00 for reimbursement of what was awarded against her by the Tribunal on 7 March 2022 in Ms L's claim against her, \$40.00 for the WOF fee and \$180.00 for reimbursement of the filing fee.

Should the warrant of fitness have been issued?

5. During the hearing, UO and LO acknowledged that the WOF should not have been issued for the van on 9 June 2020.

What losses, if any, resulted from the warrant of fitness being issued?

6. EO disputed that it would have cost \$17,066.00 in repairs to bring the van back to a warrantable standard. She said they had no opportunity to obtain alternative quotes at the time of the earlier Tribunal hearing.
7. In the Tribunal decision of 7 March 2022, the Referee commented that Mr C, who provided the repairs assessment at the hearing, and who was experienced in dealing with rust problems, had his repairs assessment thoroughly tested at the hearing by Mr O and by the Referee. Mr C had stated that the campervan was only worth around \$2,000.00 with all the rust in it. The Tribunal was satisfied that \$17,066.00 was a fair amount for repairs to the van. He said that, if Mr O had known that the warrant should not have been issued to him for the campervan, he would have been unable to sell it for the price that he did. The Referee thought that the Tribunal decision restored the correct balance which should have applied at the time of the sale to the value of the campervan, but for the error of the issuer of the WOF.
8. I consider that the appropriate time to ascertain the value of repairs required to bring the campervan to a warrantable standard, was during Ms L's claim, which resulted in the Tribunal's decision of 7 March 2022. In my view, Mr O had an opportunity then to fully test the evidence of the value of repairs required to the van. Given this, I affirm that the value of repairs that was more likely than not required to bring the van to a warrantable standard was \$17,066.00.
9. UO said they regretted the issue of the WOF for the campervan on 9 June 2022, and have experienced many consequences since that time. He maintained that, had EO been told by them at the time that the van had failed its WOF due to the structural rust, she still would have had to pay for repairs to the van to bring it to a warrantable standard, before re-presenting it for a WOF. He claimed that the structural rust in the vehicle had not been caused by his company or the issuing of the WOF. UO said further that there were many issues dealt with in the repair quote at the earlier Tribunal hearing, that would never have been picked up on a WOF anyway. He believed that rust in the campervan would have been an unknown issue at the time EO purchased the van, and it would likely have not been picked up even then.
10. EO confirmed that she would have had to pay for repairs to the campervan, had it failed its WOF with U Ltd, but she believed it should have been picked up by U Ltd on the WOF in June 2020 or even on an earlier WOF her van had with U Ltd. She maintained that she may have been able to obtain repairs quotes for lower amounts than that obtained by Ms L for the earlier Tribunal claim against her, had U Ltd not issued the WOF in June 2020. She said she intended to sell the campervan for the best price possible.
11. Section 32 Consumer Guarantees Act 1993 (CGA) provides that, where the failure of a guarantee cannot be remedied or is of a substantial character, the consumer can obtain from the supplier of services damages in compensation for any reduction in value of the product of a service below the charge paid by the consumer for the service. Additionally, a consumer can obtain from the supplier damages for any loss or damage to the consumer resulting from the failure which was reasonably foreseeable as liable to result from the failure.
12. EO has to prove her claims to the balance of probabilities standard, i.e. that is it more likely than not that something happened.
13. In my view, there is insufficient evidence of any reduction in value to the van that directly relates to the issuing of the WOF on 9 June 2020. EO then must prove that the loss to her resulting

from the issuing of the WOF by U Ltd was reasonably foreseeable as liable to result from the WOF being issued.

14. I accept the evidence that the structural rust and other issues discovered in the campervan did not relate to the issuing of the WOF on 9 June 2020 but were caused separately to this. EO said she would have had the campervan repaired anyway, had it failed its WOF with U Ltd on 9 June 2020. The only issue for her would have been the amount of the cost of repairs. I have affirmed the repair value of the campervan found by the Tribunal in its decision of 7 March 2022, where this issue was fully canvassed at that hearing. No evidence was adduced by EO of any alternate disposal plans for the campervan, had it failed its WOF on 9 June 2020, other than repairing it.
15. Therefore, EO has not proved it more likely than not that the loss she incurred in the repairs cost to the campervan was reasonably foreseeable as liable to result from the issuing of the WOF in error. Her claim for the repair costs of \$17,066.00, awarded against her from the Tribunal decision of 7 March 2022, is dismissed.
16. However, U Ltd should not have issued the WOF to EO on 9 June 2020. Therefore, I award EO \$40.00 as reimbursement of her WOF fee to U Ltd.
17. Costs shall not be awarded against any party to Tribunal proceedings, pursuant to section 43 Disputes Tribunal Act 1988. Therefore, EO's claim for reimbursement of the filing fee of \$180.00 is dismissed.

Referee: C Price

Date: 30 June 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>.

