



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 126

APPLICANT EU

RESPONDENT BQ

The Tribunal orders: BQ is ordered to pay EU the sum of \$3,447.50. Payment of this sum is ordered no later than 21 July 2023.

Reasons:

- 1) There was no appearance of the respondent and the hearing proceeded in his absence. On 27 February 2023 the applicant bought a vehicle from the respondent. This was via Trade Me. The price paid was \$7,500.00.
- 2) The relative Trade Me advertisement stated: “[Car] complete rolling body-Description- Complete less 4x4 gearbox. Engine complete suspect big end bearing running suit rebuild (Link g4 etc) Reg on hold.”
- 3) There were photographs of the vehicle with the Trade Me advertisement which showed wheels affixed to it. The vehicle was received by the applicant without wheels. The applicant further says that the vehicle did not have certain parts consistent with the description of it as being “complete less 4 X4 gearbox.” EU seeks compensation for his contended losses.
- 4) The relevant law is the Contract and Commercial Law Act 2017. The issues to be determined by the Tribunal are:
 - a) Was there a misrepresentation by the respondent?
 - b) If so, is the applicant entitled to compensation?
- 5) A ‘misrepresentation’ is false or inaccurate statement by one party to a contract which induces or causes the other party to enter into the contract. Where there has been a misrepresentation the party to whom it is made may be entitled to compensation for any losses resulting from that.
- 6) The applicant was entitled to expect that he would receive the vehicle a) as described in the text of the advertisement and b) as shown in the photograph within the advertisement. The photograph showed the vehicle as having wheels. It also referred to the engine as being “complete less 4X4 gearbox. To the extent that it did not have these things, the vehicle was misrepresented. The vehicle, as supplied, did not have wheels, and there were, also, items missing from the engine that had nothing to do with the gearbox. In this regard, the applicant has supplied a quote from [Tyre Company] for a set of wheels and tyres in the amount of \$2,516.00.
- 7) Further to the above, the applicant has also supplied an invoice from [Auto Shop] for the sum of \$989.00. This comprises the cost of a) used [Car] shifter and shifter cables, b) used rear diff mount, c) set of used front and rear axles d) used top gearbox mount and e) freight of these items. I intend allowing the amount of this invoice less the sum sought for the gearbox mount of

\$50.00 plus GST-\$57.50. I consider the advertisement does suggest that the gearbox and anything connected with it would not be with the engine. If this item is excluded the net sum awarded for this invoice is \$957.50.

8) The applicant is awarded the total of the sums in the above 2 paragraphs, \$3,447.50.

Referee: GP Rossiter

Date: 4 July 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>.