



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**District Court**

**[2023] NZDT 64**

**APPLICANT JY**

**RESPONDENT B Ltd**

**The Tribunal orders:**

The claim is dismissed

**Summary of Reasons:**

[1] The hearing was convened by teleconference. Both parties appeared at the hearing.

**Background**

[2] The applicant took his vehicle to the respondent for a warrant of fitness (WOF) inspection on 23 November 2022. The applicant paid the respondent \$40 for this service. The vehicle failed the inspection. The respondent identified two faults: water and oil on the power steering belt and faulty brakes.

[3] The applicant claims that when he asked the respondent to further identify the cause of the failures, its staff were unhelpful<sup>1</sup>. The applicant also claims the respondent agreed to provide a quote. When a quote was not supplied within 3 days, the complaint was escalated to the company's director, EG. The applicant claims EG was also unhelpful, suggested he take his work elsewhere and refused to provide a quote.

[4] The applicant claims he is entitled to compensation for this poor service and seeks the cost of the repair required to bring his vehicle up to warrantable standard, \$825.13, a refund of the warrant cost, \$40 and the Tribunal filing fee.

[5] The respondent admits providing the WOF inspection but denies any liability.

[6] The respondent claims the fee of \$40 is reasonable for the inspection and within the industry standard. The applicant has not provided any evidence it was negligent in providing the inspection.

[7] The respondent also submits it is entitled to subcontract the work to the neighbouring authorised provider and the applicant was not required to pay extra because the work was subcontracted.

[8] The respondent also denies it provided poor customer service. It carried out the inspection with reasonable care and skill, its employees tried to explain to the applicant that the vehicle had failed the warrant and identified the two areas that required attention, the power steering belt and the brakes. The

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<sup>1</sup> The applicant claims he was given contrary information about why the belt failed. He found this misleading.

respondent submits that it only contracted to provide an inspection service to identify non-compliance with the legislation and never agreed, nor was paid, to provide a detail mechanical report beyond reporting the failures against the WOF standard.

[9] EG decided not to provide a quote and advised the applicant that he would need to take his vehicle elsewhere for repair and provided details of the NZTA complaints procedure. EG also assured the applicant that he could return for a second inspection at no further cost.<sup>2</sup>

### **Issues**

- i) Is the applicant entitled to a refund because the respondent subcontracted the WOF inspection?
- ii) Was the inspection carried out complaint and with reasonable care and skill?
- iii) Is the applicant entitled to any compensation because of poor customer service?
- iv) Is the applicant entitled to a refund of the Tribunal filing fee?

### **Issue 1**

[10] The respondent contracted with the applicant to provide a WOF inspection. The respondent provided this service. At hearing the applicant admitted that he did not have any complaint against the inspection itself.

[11] There was no agreement between the parties on how the service would be completed and by whom. The only legal obligations are to provide the service with reasonable care and skill, at a reasonable or agreed cost and by an authorised person. The price was agreed in advance and is within the normal range. The respondent confirmed at hearing that the person carrying out the inspection was authorised to do so. In the absence of express agreement, the respondent is entitled to subcontract the work.

[12] Further there is no evidence before me that the applicant was disadvantaged by this or has suffered any loss because of it. There is no basis on which to return the cost of the inspection to the applicant purely because the work was subcontracted.

### **Issue 2**

[13] The applicant has not provided me with any evidence the inspection was not carried out with reasonable care and skill. At hearing the applicant admitted as much but later raised that because the applicant identified oil and water on the power steering belt, he was required to replace it with a new belt rather than simply clean it. The applicant claims this caused him additional cost.

[14] I have carefully reviewed the WOF checksheet. Nowhere does the respondent say the belt must be replaced, it simply lists the fault. How the applicant addresses this and the response from other WOF providers is not the liability of the respondent.

### **Issue 3**

[15] The applicant's main complaint is poor customer service. I found the respondent's evidence the more persuasive. It seems the applicant misunderstood the work he contracted for and expected the respondent to provide a service he did not pay for. The WOF inspection was carried out in compliance

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<sup>2</sup> EG's letter of 2 November 2022.

with the law.<sup>3</sup> The applicant was provided with the WOF checksheet. He might have wanted further information from the respondent, but the respondent was not obliged to provide it. However, in this case I accept the respondent did try to assist the applicant, but the applicant was unable to hear the advice offered, that is, take his vehicle to a mechanic and arrange the repair at his own cost.

[16] The respondent is not required to carry out the repair nor provide a quote. The respondent is entitled to choose who it does business with. I understand the applicant asked for a quote and when one was not forthcoming within 3 days forcefully made his position clear to EG. He is entitled to do so. The respondent is also entitled to decline to carry out any further work for the applicant. The applicant's written application, EG's letter of 25 November 2022, and text messaging provided supports my view that the applicant was assertively insisting the respondent provide a service he had not contracted nor paid for, a detail mechanical report, and the respondent was politely declining.

[17] I can find no cause of action nor loss in the applicant's claim. The applicant is seeking the cost of bringing his vehicle up to warrantable standard, because it appears, he considers the respondent's staff were not helpful enough and did not clearly identified the cause of the oil found on the power steering belt, nor supply a quote to repair within 3 days. As stated above there is no legal obligation to provide a quote. The cost of bringing a vehicle up to warrantable standard lies with the owner of the vehicle, not the company that rightfully declines a WOF. If every issuer of WOF's was required to pay for the repair because the customer was unhappy with how he or she is talked to, the system would quickly become unworkable. The applicant's remedy is to go elsewhere next time.

#### **Issue 4**

[18] Under s 43 of the Disputes Tribunals Act 1988, costs shall not be awarded against a party to any proceedings before a Tribunal except in certain circumstances, including frivolous or vexatious claims, claims knowing lodged outside of jurisdiction or unnecessarily prolonged proceedings.

[19] None of these exceptions apply in this case. More important costs are generally not ordered if a party is not successful.

[20] The application is dismissed.

**Referee: Hannan DTR**

**Date: 21 July 2023**

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<sup>3</sup> There is no evidence before me to the contrary.



## 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 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>.