



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 136

APPLICANT LN

RESPONDENT K Ltd

SECOND RESPONDENT EU

APPLICANT'S INSURER J Ltd

The Tribunal orders:

1. The claim is dismissed.

Reasons:

1. LN and a K Ltd truck being driven by EU were involved in a collision at about 8.30am on 7 June 2022 on [Road]. LN alleges she was driving on a straight road when she slowed behind a truck that was stopped on the road, she indicated right and as she pulled out to pass the truck reversed into her vehicle. LN states the road was a 100kph zone and the morning was clear and the weather fine. LN denies she was speeding and if she had been going fast the collision would have spun her around and caused a significant amount of damage and neither occurred. LN states the truck was not indicating but had its hazard lights on and her running lights were on. LN, and her insurer J Ltd, claim \$1986.10.
2. EU says he was heading along [Road], had slowed down a lot to turn left but couldn't and saw the next driveway on the right. He states it was foggy in patches. He states he was indicating right, checked his rear view mirrors, couldn't see anything, had just started to turn right, heard a bang and saw LN coming down the right hand side of the truck. He states he did not see LN's vehicle behind him at any time in his rear vision mirrors. EU denies he caused the collision.
3. Both parties provided evidence including photos of the damage to the vehicle, the clarity of the day, GPS and time data of the truck's travel on that day from Eroad, a witness report, several photos of the road and google maps information.
4. JO, a director of K Ltd, told the Tribunal EU was not reversing and referred to the onboard record of Eroad/GPS data as confirmation EU was not reversing.
5. DB, a passenger in the truck, told the Tribunal they were on their way to a job, that EU had passed the driveway they were going to, so he slowed down, came to a stop and went to turn into another driveway went she heard a clang and a car appeared in front of the truck. In a written statement presented to the Tribunal DB stated EU was indicating because she heard the indicator.

6. During the hearing both drivers gave evidence they were clear about their legal obligations in this driving situation. That is, LN was clear she had to indicate right and not pass until the way was clear and the manoeuvre could be made safely, and EU was clear he had to indicate right and not move across the road until the way was clear. It was agreed at the hearing that damage was sustained to the front passenger side of LN's vehicle, and the damage was caused by a collision with the right rear of the truck.
7. The issues I must decide are:
 - a. Who has caused the collision and/or have both drivers contributed to the collision?
 - b. Is the amount claimed reasonable?

Who has caused the collision and/or have both drivers contributed to the collision?

8. The damage to LN's vehicle and the point of collision with the truck suggest that either EU has reversed at the time LN is passing or LN has misjudged the position of the truck when passing. The damage indicates a low speed collision.
9. The facts in dispute are whether EU had his right hand indicator on, whether EU reversed and whether LN was speeding.
10. On these matters I find EU most likely had his hazard lights on because he agreed this in a recorded audio call that was played to the Tribunal and the noise of hazard lights is likely the same as indicators. I am unable to make a finding as to whether EU most likely reversed. I do not accept the Eroad/GPS data because an email provided by LN shows that the Eroad units only record every 250m when travelling in a straight line and therefore they are not sensitive enough to record a short straight line reversing manoeuvre. Both drivers were adamant in their evidence; LN that the truck did reverse and EU that the truck did not reverse.
11. Because I am unable to make a finding on the single fact being was EU reversing that determines who caused the collision, I have no option but to dismiss this claim.

Referee: C Murphy
Date: 6 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>.