



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 170

APPLICANT LW

RESPONDENT QT Ltd

The Tribunal orders:

1. QT Ltd is to pay to LW the sum of \$150.00 on or before 28 June 2023.
2. LW is not liable to pay \$75.00 or any further amount to QT Ltd in respect of the breach notice in dispute in this claim.

Reasons:

1. On 19 February 2023, LW parked her car in a parking spot outside a property owned by a third party company. The area was private and the parking spots were managed by QT Ltd. ("QT Ltd")
2. On 5th April 2023, LW checked the post-box of her old address and discovered a letter from QT Ltd referring to a breach notice that had been issued on 19 February 2023.
3. LW immediately emailed QT Ltd and advised that this was the first she had heard about a breach notice and explained that the notice had been sent to her old address.
4. Some further correspondence was entered into between the parties. LW paid \$245.00 to QT Ltd on 12 April 2023. QT Ltd responded that as the amount had not been received by the due date, a further fee of \$75.00 was due. LW refused to pay that amount and indicated that she would take the matter to the Disputes Tribunal.
5. LW is seeking a refund of the \$245.00 paid, a declaration that she is not liable for the further amount of \$75.00 sought by QT Ltd and \$200.00 for stress and anxiety.
6. There was no attendance at the hearing by or on behalf of QT Ltd. The absence of a party does not prevent a matter from going ahead.
7. The issues the Tribunal has to consider are:
 - a. Did LW trespass on land by parking in a private car park without authorisation?
 - b. Did LW enter into a contract with QT Ltd by parking where she did and what were the terms of that contract?
 - c. Is LW entitled to a refund of any of the \$245.00 paid by her to QT Ltd?

- d. Is LW entitled to a declaration of non-liability for any additional fees?
- e. Is LW entitled to \$200.00 for stress and anxiety?

Did LW trespass on land by parking in a private car park without authorisation?

- 8. A trespass onto land occurs when a person causes either a person or some object to directly intrude onto or interfere with someone else's land. It is a trespass to park a vehicle on private property without authority.
- 9. LW has trespassed onto the third party company's land by parking in a private car park without authorisation. I find it more likely than not that QT Ltd was acting as agent for the third party company in relation to the carpark. QT Ltd is entitled to a remedy as a result of LW's trespass. The appropriate remedy when someone makes use of another's land, but does not damage the land, is recovery of a reasonable rate of compensation for the period of the unlawful use.
- 10. LW did not dispute that she had parked on private land without authority.

Did LW enter into a contract with QT Ltd by parking where she did and what were the terms of that contract?

- 11. A contract may be defined as a legally binding agreement or a promise or set of promises between two or more parties that the law will enforce. For a contract to be formed there needs to be an agreement, an intention to create legal relations and consideration. There also needs to be certainty and clarity as to what is being agreed between the parties.
- 12. Photographs attached to an email sent by QT Ltd to LW show the presence of signage in the area where she parked. One sign indicates that this area was a bus stop for the third-party company and there was no parking permitted. There was also another sign which indicated no parking. While the copy of the photo produced to the Tribunal was small and difficult to read, I find it likely that this sign was the same as the one visible on QT Ltd's website. LW accepted there was signage there but says she did not read it on the day she parked there and has not read it since.
- 13. I find it more likely than not that the signage indicated that this was private property and was monitored and enforced. It stated that "*vehicles parked here without the authority of the owner of this car park will be issued with an infringement notice and liable for a \$95.00 infringement fee.*"
- 14. I am satisfied that by parking in this area, LW accepted the terms that she would be liable for a \$95.00 infringement fee if she did not have the authority of the owner. The signage is displayed in close proximity to where LW parked.
- 15. However, the other terms of the contract that appear to be relied on by QT Ltd are not so clear. The signage goes on to state that "*By parking here you agree to abide by QT Ltd's terms and conditions.*" The terms and conditions are not set out on this sign and there was no evidence that the terms and conditions were displayed anywhere in the vicinity of this parking area. Rather the sign refers the reader to a website for full terms and conditions.
- 16. I do not accept this is sufficient to form a binding contract in this situation. Drivers are entitled to know exactly what terms and conditions they are agreeing to at the time they park their car. Some drivers may not be able to access the internet to view a website immediately prior to parking their car.
- 17. The sign also states, in print smaller than the print on the rest of the sign, that "*non-payment will result in further fees and enforcement costs.*" The sign does not set out what those further fees are. Only when the terms and conditions are viewed on QT Ltd's website is the fee of \$75.00 per week set out.

18. I find that LW is bound to pay \$95.00 for parking in this area without authority as that was what was set out on the signage and what she agreed to when she parked her car in that area.
19. I am not satisfied that LW is bound to pay the \$75.00 per week fees imposed by QT Ltd as that was not set out on the sign and there was no evidence before me of the terms and conditions being made readily available to her at the time she parked her car.

Is LW entitled to a refund of any of the \$245.00 paid by her to QT Ltd?

20. As I have not been satisfied that there was any agreement between the parties that a fee of \$75.00 per week was due for non-payment of an infringement fee, I am satisfied that a sum of \$150.00 should be refunded to LW.
21. In relation to the \$95.00 infringement fee, I have to consider whether that fee is exorbitant or unconscionable in regard to QT Ltd's interest in the performance of the parking contract.
22. Similar issues to those discussed in this claim have been discussed in the UK Supreme Court decision in *Parking Eye*
23. Talking all matters into account, I am satisfied the initial infringement fee charged by QT Ltd of \$95.00 is not exorbitant or unconscionable. LW remains liable to pay that amount and she has already done so. QT Ltd is entitled to retain that \$95.00.

Is LW entitled to a declaration of non-liability for any additional fees?

24. For the reasons set out above, I am satisfied that LW is not required to pay any additional fees to QT Ltd.
25. LW paid \$245.00 to QT Ltd on 12 April 2023. QT Ltd indicated that a further \$75.00 was due as the amount had not been paid by the due date of 7 April 2023.
26. Even if there had been an agreement between the parties that these fees be paid, I find this demand for a further \$75.00 after receipt of payment of \$245.00 to be unenforceable. At this stage the parties were in discussion about whether the full amount was payable. It appears that QT Ltd treated LW's emails to it as an appeal. Two emails from QT Ltd refer to consideration of her "*appeal*". One email was dated the 7 April 2023 and one was dated 12 April 2023.
27. I accept that LW was given the impression by QT Ltd from the letters sent that if she lodged an appeal, the time would stop running until a decision on that appeal was reached.
28. It is good practice for a company such as QT Ltd to allow for a period of time after communicating its decision on an appeal for payment to be made.
29. QT Ltd emailed LW on 12 April stating that "*after consideration of your appeal*" it did not agree to waive its additional fees. LW should have been given an opportunity to pay the amount before further fees were added on. LW paid on 12 April upon receipt of QT Ltd's decision and so no further fees should have been incurred.
30. However, as I have found there was no agreement regarding the payment of these further fees, LW is not liable for them.

Is LW entitled to \$200.00 for stress and anxiety?

31. LW said this incident caused her a lot of stress and anxiety in having to deal with QT Ltd and she felt bullied by them in its correspondence.
32. I am not satisfied that LW is entitled to any compensation for stress and anxiety. LW indicated at the hearing that she had other personal matters to deal with around this time and while this contributed to her situation, it did not cause it.

33. QT Ltd is to pay to LW the sum of \$150.00 on or before 28 June 2023.

34. LW is not liable to QT Ltd for the amount sought of \$75.00 or any further amounts in respect of this breach notice.

Referee: P Byrne
Date: 7 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>.