



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

District Court:

Case number: [2022] NZDT 281

**APPLICANT**      **MN**

**RESPONDENT**    **N Limited**

**APPLICANT'S**    **Insurer**  
**INSURER**  
**(if applicable)**

**The Tribunal orders:**

1. N Limited is to pay Insurer \$3,653.53 within 30 days of the date of this order.

**Reasons:**

2. On 8 June 2021 MN took her car to the N Ltd carwash. Soon after she entered the car wash, soap suds were sprayed on the car. The carwash then stopped working.
3. MN found that she could not drive out of the carwash and had to look for the number of the N Ltd office for someone to come and let her out. Eventually, an employee came out of the office and tried to fix the carwash, to no avail.
4. He turned the machine off and MN was able to drive out of the carwash. She asked for a hose to wash off the soap suds but one was not available. The employee, who had to keep serving customers inside the store while trying to assist MN, found a watering can and washed off some of the suds. He was unable to reach all the suds.
5. MN then returned home, about a 25-minute drive, and when she got home she used her hose to try and remove the remaining suds. She noticed the car still had a lot of sud marks on it and called N Ltd. Eventually she was called back by a representative based in [City], who apologised for the damage and advised her to call her insurance company to have the damage fixed.

**Issues**

- *Did the fault in the carwash causing the suds to be left on the car cause the damage to the vehicle?*
- *If so, is MN/Insurer eligible to claim compensation for the cost of remedying the damage?*

*Did the fault in the carwash causing the suds to be left on the car cause the damage to the vehicle?*

6. N Ltd claimed at the hearing that their carwashes malfunction reasonably often, and that there had never been a problem with such damage occurring as a result.
7. In addition, according to N Ltd, the damage (including scratches and dents observable in the photos submitted by MN) was pre-existing damage and not caused by the carwash malfunction.
8. N Ltd also claimed that even if the suds had remained on the car longer than usual, that the car had a clear topcoat of varnish that would have prevented the suds eating through to the paint.
9. MN confirmed at the hearing that she did not claim any scratches or dents were due to the carwash, only the marks from the suds on the body and paintwork. Her witness, D from [Panelbeater] who carried out the repair work on the car, gave evidence that the damage to the vehicle was consistent with being caused by the soap suds, which had left marks and damage of varying degrees on most of the car's surfaces.
10. He said that while the vehicle did have a clear topcoat, that this was not sufficient to stop the suds etching into the paintwork to the extent in some places that they had to be repainted. He also notes that while some damage was able to be buffed out, some of the glasswork had to be replaced because it could not be buffed.
11. While I have taken into account N Ltd's claims regarding the cause of the damage, and accept that carwash malfunctions may indeed occur frequently, I do not have information on at which stage of the carwash malfunctions occur (suds, scrub, rinse etc) and so it is unclear whether these vehicles involved were similarly left with suds on them for a prolonged period of time. Therefore, I do not accept N Ltd's assertion that frequent malfunctions without other vehicles being damaged is evidence in this case that the damage was not caused by the carwash malfunction.

*Is MN/Insurer entitled to claim compensation for the cost of remedying the damage?*

12. Under the Consumer Guarantees Act 1993 (CGA) guarantees are provided for consumers who use services. Section 32(c) provides that if a faulty service causes consequential damage to a consumer's property, the provider may be liable to pay for the cost of the consequential damage, if it was foreseeable. I am satisfied on the balance of probabilities, based on the evidence before me, that the malfunction of the carwash caused suds to be left on the vehicle for an extended period of time, and that it was foreseeable that, given the suds are typically washed off fairly immediately in the car wash, that leaving them on the vehicle for a prolonged period could, (and did) cause damage.

13. When the vehicle was taken to the repairer, the damage was evident on all the surfaces, including the paintwork, rubber seals, chrome and windows. While some of the damage was able to be buffed out, other damage severe and some areas had to be repainted and other parts replaced.

14. I find that MN/Insurer are entitled to claim compensation for the consequential damage caused by the malfunction of the carwash and therefore N Ltd is to pay Insurer \$3,153.35 being insurance loss and \$500 uninsured loss/insured excess; a total of \$3,653.53 for the cost of remedying the damage to MN's car.

**Referee: Kaho**

**Date: 4 November 2022**



## 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>.