



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 763

APPLICANT MS

RESPONDENT D Ltd
(amended)

The Tribunal orders:

D Ltd shall pay MS \$2,400.00 by 25 January 2024.

Reasons:

1. MS purchased a second-hand vehicle from D Ltd on 24 March 2022 for \$19,000.00, of which \$1,500.00 is still owing. MS also purchased a [warranty policy] for \$1,100.00, which is also still owing.
2. The vehicle had numerous defects and D Ltd agreed to collect the vehicle from MS in November 2022 but failed to do so until 18 March 2023, the vehicle having done 6845 kms since purchased. D Ltd had the vehicle collected by a tow truck and taken to a mechanic for assessment. It was determined that the engine required replacement.
3. MS filed this claim for \$30,000.00 on 26 April 2023 against a different company, seeking the repaired vehicle back or a replacement vehicle and consequential losses from being unable to work for 6 months due to not having her vehicle. The claim was amended at the first hearing on 26 June 2023 to name the correct Respondent. The new Respondent was represented at the hearing, therefore the hearing continued.
4. Initially, D Ltd advised MS that they were going to replace the engine in the vehicle and return it to her. It was then decided that D Ltd would supply MS with a replacement vehicle, but failed to do so until 7 September 2023, following the second adjourned hearing for this claim. MS is satisfied with the newer, lower mileage replacement vehicle.
5. MS seeks the balance of her claim, which is for lost income for 5 months @ net \$1,200.00 per week, being \$24,000.00, which she has reduced to \$5,000.00 and the balance of the contract price waived.
6. D Ltd argues that they offered MS a courtesy car but were unable to deliver it from [City 1] to [City 2] due to staff shortages, illness and the holiday shutdown. MS refused to go to [City 1] to collect the courtesy car and chose not to go to work, going onto social welfare instead.
7. D Ltd has offered MS \$1,100.00 in compensation, citing all the costs they have incurred as a result of the defective vehicle it sold to MS, which are not relevant here as it was D Ltd's obligation to remedy the defects by repair of the defects or replacement of the goods, within a reasonable time, pursuant to the Consumer Guarantees Act 1993.

8. At the third hearing, the remaining issue of compensation was further discussed. MS now claiming she had been earning between \$900.00 - \$1,200.00 net per week when working as a district nurse and was receiving \$563.00 per week on the benefit, being a difference of \$487.00 per week.
9. Whilst the Tribunal agrees that D Ltd seriously failed to meet its obligations to MS under the Consumer Guarantees Act 1993 within a reasonable time, the Tribunal finds that it was unreasonable for MS to choose not to work for 5 months rather than take an afternoon to travel to [City 1] and collect the courtesy vehicle.
10. MS has a duty to mitigate her losses and should have brought her claim much earlier, perhaps in October 2022, and collected the courtesy car when it was offered in November 2022 and claiming the costs to collect it rather than not working for 5 months.
11. The Tribunal awards the \$5,000.00 MS seeks but deducts the outstanding amounts due under the contract, leaving a balance payable to MS of \$2,400.00.

Referee: L. Mueller

Date: 18 December 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>.