



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 310

APPLICANT NB

RESPONDENT U Ltd

The Tribunal orders:

The claim is dismissed.

Reasons

1. NB purchased a car from U Ltd on 24 January 2023. A week after purchase, the car was broken into and the left front window smashed for entry.
2. After the break-in, the electric control for the left-front window would not work. NB says the window had been working without issue for the first week before the break-in.
3. NB says that the fault with the window has been diagnosed as an electronic issue within the ECU, and that it is therefore unrelated to the break-in. He claims the estimated cost of repair of \$621.00 from U Ltd, saying that the car did not meet the Consumer Guarantees Act guarantee of acceptable quality when it was sold to him. U Ltd contends that the window fault was caused by the break-in.
4. The issues to be determined are:
 - Was the car of acceptable quality when it was sold to NB?
 - What remedy, if any, is available to NB?

Was the car of acceptable quality when it was sold to NB?

5. Initially NB brought no evidence to support his contention that the cause of the window not working was unrelated to the break-in. On the face of it, given the timing and the fact that the window was working without issue until immediately after the window was smashed, it appeared that the two things were very likely to be connected.

6. The matter was adjourned to allow NB to arrange for his mechanic to be available as a witness on the phone. LT, the manager of [mechanics], the company that diagnosed the fault and provided NB with a written estimate for its repair, attended by phone as a witness at the second hearing. He stated that the faulty 'Body ICU' was not caused by the break-in.
7. ST for U Ltd suggested that the force of the impact of the smashed window and/or glass pieces left in the door frame, could have affected the operation of the window.
8. When asked specifically about the timing of the window stopping working immediately after the break-in,LT gave no detailed information to support his stated view that the fault was unrelated to the break-in.
9. Given the compelling inference to be drawn from the timing of the window control failure immediately after the window was smashed, I do not consider the witness' statement, without a supporting explanation, sufficient to establish a cause independent of the break-in and/or to establish that there was any pre-existing fault with the ECU.

What remedy, if any, is available to NB?

10. As the claim has not been established on the balance of probabilities, no remedy is available to NB and the claim is dismissed.

Referee Perfect
Date: 9 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>.