



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

**District Court**

**[2023] NZDT 329**

**APPLICANT ND**

**APPLICANT UT**

**RESPONDENT HX**

**The Tribunal orders:**

The application is dismissed.

UT is to pay HX \$1257.20 on or before the 24<sup>th</sup> of August 2023.

**Reasons:**

**Introduction:**

UT and HX are neighbours at rural properties in [Town]. UT is the registered owner of a [dog] named A. The dog is cared for by ND, the daughter of UT.

HX has a small flock of sheep numbering about ten.

On the 26<sup>th</sup> of February 2023, A slipped his collar. At around 6:15am HX saw his sheep running around the paddock being chased by a dog. He had lost a sheep to a dog attack the previous day and got his rifle.

HX got to where the sheep were and saw the dog standing over one of his lambs. He yelled at the dog and shot and killed it. Five of his sheep were injured.

UT is claiming \$3,000.00 for A and HX is claiming \$1257.20 for the cost of the vet tending to his injured sheep.

The issues to be decided are:

- a) Was HX legally justified in shooting A?
- b) Was there evidence that A had injured HX's sheep and if so, should UT as the registered owner of A be responsible for paying the vet bills?
- c) Is HX responsible for paying \$3,000.00 to UT for the loss of A?

Section 60(1) of the Dog Control Act 1996 provides that where an owner of stock finds a dog running at large among their stock they may forthwith, either seize or destroy that dog. There is no dispute A was running at large among HX's sheep.

**Was HX legally justified in shooting A?**

Both UT and ND thought HX should have taken some other action, including notifying them as the owners. ND said it took HX 10-15 minutes to get his rifle, in that time he could have called them. ND said that she had been told by the SPCA that shooting the dog was a last resort.

HX said when he saw his sheep being chased by a dog, he was thinking about the sheep that had been killed the previous day and he thought the worst. He also said he couldn't have contacted UT or ND because he hadn't seen A before and didn't know who the owner was.

After a discussion of s.60(1) of the Dog Control Act 1996, the parties agreed HX was legally justified in shooting A.

**Was there evidence A had injured HX's sheep and if so, should UT as the registered owner of A be responsible for paying the vet bills?**

ND disputed there was evidence that A had injured HX's sheep. She said when she examined A there was no blood around his mouth or anywhere other than the gunshot site. She thought if her dog had attacked the sheep resulting in 50 plus sutures, there should have been blood around his mouth.

She posited there may have been another dog that attacked the sheep. She said that when one of HX's sheep had been killed on the day prior, A had been at home restrained by his collar. This was not challenged.

ND also said that she knew there had been a dog attack on sheep locally, after A had been shot.

HX pointed to the circumstances when he shot A. He said when he was at the house prior to grabbing his rifle, he had only seen one dog chasing his sheep. He said when he got to the race the sheep were in, there was only one dog, it was standing over one of his lambs.

I am required to decide whether it was more likely than not A injured the 5 sheep. I accept that there may have been another dog locally that had been worrying sheep. But I find that in circumstances where there had only been one dog sighted, and A was found standing over one of the sheep, that A was responsible for the injuries to the 5 sheep.

Section 63 (1) of the Dog Control Act 1996 provides that, the owner shall be liable for damage done by the dog.

HX produced a report from the vet who treated his sheep and an invoice that he paid for the care provided. The costs \$1257.20, were a reasonably foreseeable consequence of the damage done by A and I find UT is liable to pay those costs.

**Is HX liable to pay \$3,000.00 to UT for the loss of A?**

ND said that she had paid \$3,000.00 for A. HX is responsible for the death of A and for the loss. The issue is whether he is liable to pay for that loss given he has been found to be legally justified in shooting A?

Costs can only be awarded against a person for an act or omission that is prohibited by law.

Section 60(1) provided a legal justification to HX for an act that would otherwise have been unlawful. I find that HX is not liable to pay UT \$3,000.00 for the loss of A.

**Referee:** Verdun Tawhara  
**Date:** 2<sup>nd</sup> day of August 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>.