



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 592

APPLICANT	NI
RESPONDENT	FI
SECOND RESPONDENT	MI
THIRD OR SUBSEQUENT RESPONDENT	GI

The Tribunal orders:

The claim is dismissed.

Reasons:

1. NI owns a microlight aircraft that he had stored in his parents shed. NI claims the respondents removed his aircraft from the shed without his consent and placed it on gravel, beside another shed on the same property that belonged to NI.
2. The first respondent is NI's sister, the second respondent is FI's son, and the third respondent is FI's partner.
3. NI claims he saw the respondents move the aircraft and he noticed damage to the wings the same day. Further damage was incurred as the aircraft was left outside the shed unprotected from the weather.
4. NI believes the respondents moved his aircraft some time in the first half of 2021, however he did not raise the issue of damage with them until December 2021 when he sent them a letter asking for compensation of \$9000. As he did not receive a reply to his letter, NI claimed in the Disputes Tribunal on 4 March 2022 for compensation for the costs of repairs. Repair costs have now increased to \$15,452.29.
5. The issues for the Tribunal to determine are as follows:
 - i. Did the respondents damage the plane when they moved it?
 - ii. Are the respondents liable for damage arising from the aircraft being left outside in the weather? Did NI take reasonable action to mitigate his losses?
 - iii. If so, what was the damage? Are the respondents liable to compensate NI for the damage?

Did the respondents damage the plane when they moved it?

6. In the event a person negligently or intentionally damages property belonging to another, that person may be liable to compensate the other person for their losses.
7. FI stated, on behalf of the respondents, that they did not cause damage to NI's aircraft. FI agrees they moved the aircraft, but it was at the request of their father. The aircraft had been stored in their fathers shed for some time. In October 2020, FI's parents wanted it removed so they could host a party there. On that occasion, NI moved the aircraft himself and stacked the pieces outside their parents shed on gravel. The aircraft remained there for 4–6 weeks in the weather. NI then put the aircraft back into the shed when their father was away, however when he returned, their father wanted it removed. FI, MI and GI therefore assisted and took it down to NI's shed. It was then stacked against the shed, where it remains.
8. NI agrees he moved the aircraft in October 2020, but doubts damage was caused then. He claims he put it on cardboard to protect it from the gravel and covered it from the weather. A photo produced by FI however shows the aircraft against the shed without covers.
9. The onus is always on the applicant to provide a claim on the balance of probabilities. In this case, it is possible some damage may have been caused when the family moved the aircraft to NI's shed. However, it is also possible that damage could have been sustained when NI moved it in October, when it was stored uncovered against his parents shed, or while it was left uncovered against his own shed.
10. As there are several possibilities for when damage occurred, and no proof damage happened when it was moved by the family, I find it has not been proven the respondents damaged the aircraft when they moved it.

***Are the respondents liable for damage arising from the aircraft being left outside in the weather?
Did NI take reasonable action to mitigate his losses?***

11. NI claims some damage occurred as a result of the aircraft being stacked against his shed and left out in the weather. However, NI had a duty to mitigate his losses. NI knew his father did not want the aircraft in the parents shed and he knew it had been moved, however he failed to take any action once it was moved to ensure it did not deteriorate in the weather. NI stated he did not have anywhere else to put it, however he had a responsibility to care for his own property once it was delivered to his shed from his parents shed.
12. As NI failed to take action to mitigate his losses, I find the respondents not liable for damage caused to the aircraft as a result of it being left in the weather.
13. As there is no evidence the respondents damaged the aircraft when moving it, and as they are not responsible for any deterioration after it was delivered to NI's shed, the claim is dismissed.

Referee: K Edwards
Date: 13 October 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>.