



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 447

APPLICANT **OC**

RESPONDENT **OQ Limited**

APPLICANT'S **[Insurance company]**
INSURER

The Tribunal orders:

The claim is dismissed.

Reasons:

1. OC contracted OQ Ltd on 27 December 2022 to collect and transport a boat and trailer from [City 1] to [City 2] for a prepaid fee of \$1,400.00.
2. OQ Ltd collected the boat and trailer on 5 January 2023, loading it onto OQ's transporter. Whilst travelling down the highway near [Town], the boat broke free from its trailer and landed on the road, severely damaging it. The boat was reloaded onto the transporter and delivered to [City 2].
3. The OC's insurer assessed the damage and declared the boat a total loss. The insurer paid out the OC for the loss.
4. The OC brings this claim seeking a refund of the \$1,400.00 transport fee from OQ Ltd.
5. OQ Ltd did not appear at the hearing but made a written submission in defence of the claim.
6. The carriage of goods section of the Contract and Commercial Law Act 2017 (CCLA) applies. Pursuant to s248, liability is determined according to the kind of contract of carriage.
7. The contract terms are set out in the 27 December 2022 invoice that was sent to OC for prepayment. The contract was "at owner's risk", therefore no liability and recommending insurance be arranged. An "at owner's risk" contract means the carrier is not liable for the loss of or damage to the goods except where such loss or damage is intentionally caused by the carrier.
8. OQ Ltd completed the contract and is not liable for the loss, therefore the contract fee is not refundable, and the claim must be dismissed.

Referee: L. Mueller

Date: 11 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>.