



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 678

APPLICANT P Ltd

RESPONDENT Q Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

1. On 22 August 2023, EC, the Director of P Ltd bought on behalf of his company (P Ltd) a damaged car at auction from NB on an 'as is where is' basis, after it had been written off by the owner's insurer, XX. There was no dispute that after the damage the car was held at [panel beaters] for about a month, before it was towed on 14 April to Q Ltd, then to NB's auctions site on 21 June, before the Applicant's had a towing firm tow it to their Panel beaters on 22 August, before it was assessed by the Applicant's engineer on 11 September who identified that there were parts missing.
2. At the hearing, EC, acknowledged and I accept that it is P Ltd that is bringing the claim, and so this has been reflected in the intituling above.
3. P Ltd claims from Q Ltd (the company) \$1995.00, which it reduced at the hearing to \$1578.27, for replacement parts it says went missing while at the company, namely: Door trim, and 2 front sensors (\$392.17), rear tail gate strut (\$114.79), a 16 v battery (\$306.09) and charging cable (\$660.00).
4. The issues to be determined are:
 - a. Did the company breach any duty of care to P Ltd, which caused loss to P Ltd?
 - b. If so, what are the reasonable losses suffered?
5. The law of bailment applies where one party is in possession of property belonging to someone else. The bailee has a duty to exercise reasonable care of the bailor's property. Unless there is a contractual provision to the contrary, and in this case, it was acknowledged and I accept that there was no contract between the parties, a bailee is not liable for damage/loss of goods caused without negligence on his part such as by accident or by act of a third party. To hold otherwise would make the bailee in effect an insurer of the goods which is not the law.
6. P Ltd position is that it expected the missing parts to be present on the car, as those were not parts in the area of the damage to the car at the left front. It says that K who owned the car at the time of the damage, told it that the parts were present when it was towed to the company in April, and that it discovered that they were missing in September 2023.

7. On balance, I do not accept that the company was a bailee for P Ltd's goods. I say this as there was no dispute that at the time the car was in its possession, it was owned by the previous owner K/his insurer, and it was not bought by P Ltd at auction from NB until some months later. Consequently, I do not accept that the company had any responsibility to P Ltd and instead its duty of care was to the owners at the time. For completeness, while I accept that the parts identified in the claim were not on the car on 11 September, on balance, I also do not accept that it has been established that the parts went missing while under the company's control. I say that for reasons which include:
- a. There was a significant time lapse between the time frame of the car as the original owner K stated it was in, and when P Ltd identified missing parts on 11 September.
 - b. While there was no dispute that for some of that time, it was in the company's control, in general, apart from the more limited case of the sensors and trim which the company acknowledged were present when the car arrived at its site but which were subsequently missing when later photographed at the auction house, there were a number of intervening periods where the car was under control of others as set out in the first paragraph, where the parts could equally have been removed at any time in the chain of events;
 - c. While I accept this was less likely with the sensors and trim, I also accept that it was equally possible that those parts could have been removed at the auction house, as I preferred the company's position that the auction house was able to open the car as demonstrated by the side wing mirrors being extended in the photographs.
8. So, as I find that the company has not breached any duty of care to P Ltd, it is not necessary to determine the final issue and the claim against the company is dismissed.

Referee: GM Taylor
Date: 1 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>.