



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 397

APPLICANT **QL Ltd**

RESPONDENT **JM Ltd**

The Tribunal orders:

The application is dismissed.

Reasons:

1. The applicant claims that its [van] was damaged during a break in at his premises on or about the 28 July 2022. The applicant took his vehicle to [auto mechanic] for repair. [Auto mechanic] quoted \$7,179.34 to repair damage that Mr L says occurred as a result of the break in. The applicant made a claim for the costs of the repairs with his insurers, the respondent, on the 1 August 2022.
2. The respondent assessed the vehicle and disputes that some of the damage was incurred as a result of the break in incident. The respondent approved a claim of only \$743.91 for the damage being panel and paint damage to the door, which it says was the only damage incurred in the break in.
3. The respondent says damage to the tailgate and locking system was either pre-existing or as a result of wear and tear and is therefore not covered by insurance.
4. The applicant is claiming \$7,950.00 from the respondent for the repair of the locks and tail gates on the doors.
5. The claim was part heard over 3 hearings on the 31st of January 2023 and 24th of May 2023 and today. I have made orders after each of the hearings on the 31st of January and 24th of May.
6. The only issue for determination is: Was the damage to the tailgate and the latches as a result of the break in on the 28 July 2022?

Procedural issues.

7. At today's hearing Mr L objected to Ms G attending by telephone as a representative of the respondent company because she has a law degree and because she was on the telephone and Mr L could not verify who was with Ms G.

8. Mr L submits that lawyers are not allowed to represent parties at Tribunal hearings and that he is disadvantaged because of the Respondent being allowed to have a lawyer representing them and he cannot have his lawyer present.
9. Section 38(3) of the Disputes Tribunal Act 1988 allows the Tribunal to hear from a representative of any party provided that that representative has sufficient authority and knowledge of the matters in dispute. Ms G is the specialist customer resolution manager in her employment with the respondent. She has been an integrally involved in the complaint and cover decision and has authority to act as the respondent's representative at today's hearing. Ms G tells me that she has never been admitted to the bar and therefore has not practised as a lawyer in New Zealand. The Act does not prevent a party being represented by a person with a law degree, but prohibits a person who has or has been, enrolled as a barrister and solicitor, or who, in the opinion of the Tribunal, is, or has been, regularly engaged in advocacy work before other tribunals. (See s38(7) DTA). As Ms G is not enrolled or has not been enrolled as a barrister or solicitor and as she does not engage as an advocate in other tribunals, then she may represent the respondent.
10. I do not consider that there is any unfair disadvantage to Mr L. I say this because JM Ltd appointed Ms G in October 2022 and she has attended the past two hearings. Mr L has had ample opportunity to seek legal advice to assist him and his claim before today's hearing.
11. At today's hearing Mr L advised me that he had taken advice from a lawyer and that is why he knew that lawyers could not attend the hearing. I am therefore satisfied that Mr L has had an opportunity to take legal advice on his claim. Mr L has not until this morning complained about Ms G's involvement with the matter despite having received correspondence from her as far back as October last year which clearly state her law qualifications as part of her signature.
12. This claim is not legally complex, it is factual in nature. There is no advantage in having a legally qualified person representing the respondent.
13. Ms G is in [city]. She requested and the tribunal approved her attending by telephone. I do not consider it necessary for the respondent to be put to the cost of having Ms G to attend in person.
14. Mr U attended as a witness. He confirmed that he did not have any authority by the respondent to attend in the capacity of representative.

Did the damage to the tailgate and the latches occur during the break in on the 28 July 2022?

15. The applicant has the obligation of proving, on the balance of probabilities, that the damage it claims occurred as a result of the break in. This means that I need to be satisfied that it is more likely than not that the damage to the tailgate and the latches occurred during the break in on the 28 July 2022.
16. The Applicant says:
 - that the damage was not pre-existing, that Mr L could shut and lock the vans doors before the break in, and could not after the break in.
 - That the damage that has been accepted by the respondent is consistent with what he observed, being three offenders one with a levering object attempting to open the doors to the van.
 - That the offenders got into the van and caused damage, which shows that they breached the lock.
 - That the respondent is making excuses for not accepting his claim, after it has accepted premiums for 10 years.
17. Having heard all the evidence I am not satisfied that the damage claimed by the applicant occurred as result of the break in on the 28 July 2022. I say this for the following reasons:
 - The date of the quote (10 May 2022) from [auto mechanic] that Mr L provided to the tribunal on the 19 October 2022, predates the date of the break in (28/7/2022) meaning that the

damage was evident at the date of the quote in May 2022. Mr L says that this is a mistaken date but has given no evidence from [auto mechanics] to support this.

- Whilst there is evidence of damage (which was accepted by the respondent) to the door of the vehicle there is no damage to the inside edge of the door which would be expected if the lever had penetrated to the lock causing damage to the lock.
- The damage to the outer door is not consistent with what forces would cause the internal lock to break.
- There is evidence that the lock was malfunctioning before the break in. The respondent says that this is caused by wear and tear and is common in these types of vehicles. There is evidence of previous damage and rust.

18. As the applicant has not proven on the balance of probabilities that the damage he seeks insurance cover for was caused as a result of the break in on the 28 July 2022, then the application is dismissed.

Referee: T Prowse

Date: 5 September 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>.