



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

**District Court**

**[2023] NZDT 188**

**APPLICANT QT**

**RESPONDENT T Ltd**

**The Tribunal orders:**

1. QT is not liable to pay \$65.00 or any other amount to T Ltd in relation to parking breach notice reference [number].
2. The claim for costs is dismissed.

**Reasons:**

1. On 23 February 2023 a car registered to QT was parked in the car park at the [supermarket] for longer than the maximum parking period of 90 minutes. QT received a parking breach notice from T Ltd seeking payment of \$65.00. QT has refused to pay the breach notice because he says he was not driving or in the car at the time of the breach and so does not have any liability to T Ltd in contract.
2. QT seeks an order that he is not liable to pay the breach notice and also seeks an order that T Ltd is liable to pay him costs including the filing fee and compensation for 2 hours he has taken off work to prepare for and attend the hearing.
3. The issues to be resolved are:
  - a. Is QT liable to pay the breach notice?
  - b. Is T Ltd liable to pay QT's costs?

**Is QT liable to pay the breach notice?**

4. I find that QT is not liable to pay the breach notice because there was no contractual relationship between QT and T Ltd.
5. On 23 February 2023 a car that is registered to QT was parked in the [supermarket] car park for around 124 minutes. The parking time limit in the car park is 90 minutes. The car was in the car park for 124 minutes. This has been verified by number plate recognition technology used at the entrances and exits of the car park. QT, as the registered owner of the car, received a parking breach notice from T Ltd for \$65.00 (breach notice [number]).
6. QT contested the breach notice. He accepts that his car was parked at the car park but says he was not the driver of or in the car, because he was at work at the time. He has provided a statement from his work supervisor confirming this. At the hearing T Ltd said it did not dispute that QT was not the driver of or in the car at the relevant time.

7. QT says this means that he is not liable to pay the breach notice, because he was not a party to a contract with T Ltd.
8. The car park has clearly posted signs which set out the terms and conditions that apply to anyone parking there. The time limit for parking is clearly posted. When a person parks in a private car park, they enter into a contract with the owner of the car park and can incur fees if they breach any terms and conditions that the owner of the carpark has made clear.
9. The contract in such a case is between the driver of the car and the owner of the carpark. Usually the owner of the car will also have been the driver of the car or will have been in the car at the time of the breach, and so the owner of the car will be a party to the contract.
10. In this case, however, because QT can prove that he was elsewhere when the car was parked in the car park, he is not a party to the contract that was formed when the car entered the car park. The parties to the contract are the owner of the car park and the driver of the car.
11. T Ltd says that QT as the owner of the car is bound by the terms and conditions of the car park, even though he was not present when the car was parked there.
12. The terms and conditions of parking at the car park include the following statement "*If you do not accept these Terms and Conditions you must leave the car park immediately. By entering this car park you also bind the owner of the vehicle and warrant your authority to do so*".
13. The terms and conditions also contain a definition of the word "you" which is "*you means both the driver and the owner of a vehicle entering this car park*".
14. It is a fundamental principle of contract law that a contract cannot impose obligations on a person who is not a party to the contract. This is called privity of contract. T Ltd cannot by its terms and conditions impose liability for parking breaches on someone who is not already a party to the contract.
15. Under the terms and conditions the person parking the car warrants that they will bind the owner of the car to the terms and conditions. If this does not happen the driver will have breached the contract. This does not however create any liability for the owner of the car if they were not present when the contract was formed.
16. T Ltd says that the registered owner of a car must be taken to have authorised the driver of a car to act as their agent and so must be bound by the terms of the contract.
17. QT has declined to say who the driver of his car was on the day in question, but says that the driver was not his agent and he is not liable as their principal.
18. An agency can arise in various ways. Generally, an agent will need the actual authority of the principal in order to bind the principal.
19. Sometimes a principal can be liable for the actions of an agent even if there was not *actual* authority, if the agent had *apparent* authority. A person who holds themselves out as being able to create a legally binding obligation without the knowledge or consent of the party for whom they are purporting to represent (the principal) may bind the principal if the principal has acted in such a way that they gave an incorrect impression that the purported agent had that right.
20. I do not consider that an apparent agency can arise simply by virtue of the owner of a car allowing another person to drive their car.
21. T Ltd said that when rental cars breach parking conditions, the rental company will always send T Ltd the details of the person who was renting the car at the time, and that person is then liable to pay any fees. T Ltd said the situation is the same here and so QT should tell them who the driver of the car was, and if he refuses to do so, QT is liable to pay the breach notice.

22. The rental car situation relies on the compliance of the rental car company, in informing T Ltd who the driver of the car was. The rental car company is in the same position as QT – in that it is not a party to the contract with T Ltd.
23. There is no legal obligation on QT to tell T Ltd who the driver of the car was at the time of the breach. QT's refusal to give this information to T Ltd does not make him liable for the breach that was committed by the driver of the car. This liability rests with the driver of the car. T Ltd may pursue the driver of the car if they can be identified. But QT has no liability to T Ltd to pay the breach notice.
24. In *ADI v ZWR Limited*<sup>1</sup> the Tribunal held that a father was liable to pay a breach notice issued after his children had parked their car in a private car park. The decision turned on the issue of whether the signage at the car park was misleading. The issue of whether the father was liable for the children's breach of contract was not addressed in the decision. I do not consider that this decision is persuasive in this case.
25. It is important to note that in this case QT was able to establish that he was not driving or in the car at the time of the breach.
26. It is worth noting that this may be an unusual situation. It is always for a car park owner to prove that the person they seek payment from is a party to the parking contract. However often this onus can be discharged if the carpark owner establishes that the person receiving the breach notice is the registered owner of the car.
27. If this is proved, it will create a presumption that the owner of the car was a party to the contract. It will then be for the owner of the car to establish they were not present when the car was parked and so were not a party to the contract. It may be an unusual case in which the owner of the car can establish this
28. QT has been able to do that in this case, and so I find that QT has no liability to T Ltd in relation to the breach notice.

### **Is T Ltd liable to pay QT's costs?**

29. QT also seeks an order that T Ltd is liable to pay the filing fee for this claim (\$45.00) and to reimburse QT for two hours he had to take off work in order to prepare for and attend the hearing.
30. The provisions of section 43 of the Disputes Tribunals Act 1988 prevent the Tribunal from awarding costs except in certain circumstances. As this claim does not fall within the circumstances stated the filing fee cannot be awarded.

**Referee: L Trevelyan**  
**Date: 22 June 2023**

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<sup>1</sup> *ADI v ZWR Ltd* 2011 NZDT 168



## 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>.