



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2019] NZDT 1398

APPLICANT **RS**

RESPONDENT **GT LIMITED**

APPLICANT'S **B LIMITED**
INSURER

The Tribunal hereby orders:

GT Limited is to pay the sum of \$1948.10 directly to B Limited on or before 12 June 2019.

Reasons

1. In April 2018 RS was leaving work from [his workplace] when the barrier arm adjacent to the guard hut at the exit lowered onto the roof of his car causing damage along its length.
2. RS claims the cost of repairs, being \$1948.10, on the basis that the guard, an employee of GT Limited was negligent in manually lowering the barrier arm as his vehicle was passing.
3. GT Limited did not attend the hearing – I note that they were served via substituted service to their email address (above [redacted]) on 8 May 2019.
4. The issues to determine are:
 - Did GT Limited's guard breach his duty of care to RS?
 - What are RS's reasonable losses?

Did GT Limited's guard breach his duty of care to RS?

5. I find that GT Limited's guard breached his duty of care to RS when manually lowering the guard arm while his vehicle was still passing. RS says the guard, Mr N, apologised to him immediately after the incident, stating that he had not seen RS's car.
6. RS showed photographs of the view from the guard hut, comparing them with photos of the old guard hut on the site. It is clear that it is more difficult for guards to see in all directions from the new guard hut than from the old one, which had bigger windows covering almost all of the wall area of the hut. The new hut has a blind spot from the position where the guard stands to operate the manual barrier arm with respect to the position of the barrier arm itself.
7. However this does not absolve the guards of their duty of care and I note that the barrier arm is operated manually so is under the direct control of the guard at all times – what it means is that

to exercise that duty in these circumstances, a guard must take note of vehicles approaching, which can be clearly seen through a large back window, and not lower the barrier until the last of those vehicles has passed the side window.

8. If there is an expectation that the barrier arm is lifted and lowered for each vehicle, that must be clearly sign-posted (which it is not currently) as RS has shown from video and other evidence that that is not the current practice. RS points out that when the barrier arm was lowered onto the roof of his car, two vehicles had just passed under the barrier arm immediately ahead of him, so even on that day there was no practice of lowering the barrier arm after each vehicle.
9. As Mr N's employer, GT Limited is vicariously liable for the negligent actions of their employee and must pay the reasonable losses suffered by RS as a result of the negligent actions.

What are RS's reasonable losses?

10. RS has provided evidence in the form of a detailed panelbeater estimate to show that repairing the several areas of scratching along the roof of his car will cost \$1948.10. These costs are accepted as reasonable in the absence of any other cost evidence and I note that the costs involve repairs to multiple panels because the scratching extended beyond the roof panel onto the rear panel.
11. RS has not yet had the repairs carried out because he did not wish to pay the insurance excess that his insurance company would have required (because GT Limited disputed liability). However as he has said that the claim is still 'live' with his insurance company pending determination of liability by the Tribunal, I order that the amount GT Limited is liable to pay be paid directly to RS's insurer, in anticipation of his insurer now covering the full repair (and incurring this loss) which is what RS wishes to happen.

Referee: J Perfect
Date: 22 May 2019



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 or a mistake was made.

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 28 days of the decision having been made. If you are outside of time, 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.

Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 28 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, and 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>.