



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

**District Court**

**[2023] NZDT 237**

**APPLICANT L**

**APPLICANT SD**

**RESPONDENT O**

**The Tribunal orders:**

1. The claim is dismissed.

**Reasons:**

2. Sometime in August or September 2022 SD said he was towing a tandem trailer behind his small truck, driving between [Town 1] and [Town 2] when he claims a tyre on his trailer was damaged as a result of running into a pot hole. Due to the nature of the wheels on the tandem trailer, he said the damage was not immediately obvious and therefore he did not have a specific location for the pothole or the date the damage occurred.
3. SD is seeking \$410.22 as compensation for the repair costs to his wheel.
4. SD's claim is based on negligence. Negligence concerns the duties that O owes another to take care. Negligence requires four elements to be proven; (i) that a duty of care exists between the parties; (ii) that there was a breach of the duty; (iii) that the damage suffered was caused by the breach and (iv) that the damage suffered was not too remote.
5. The issues I need to determine are:
  - (a) Did O breach its duty of care?
  - (b) If so, did that breach cause the damage to SD's vehicle?
  - (c) If so, are the damages claimed reasonable and foreseeable?
  - (d) What, if any, damages are SD entitled to?

**Did O breach its duty of care?**

6. O did not dispute that a duty of care was owed to road users to take reasonable steps to prevent foreseeable incidents on the state highway network.

7. I have carefully considered the evidence from the parties, and I am satisfied on the balance of probabilities that O did not breach its duty of care for the following reasons.
8. Roading maintenance is carried out by contractors in accordance with planned and co-ordinated preventative and remedial work. Roving contracted patrols regularly monitor all roads for signs of damage on a regular rotating basis, depending on the nature of the road. Any evidence of impacted or compromised roads is entered into the Road Maintenance Database ('RAM'). Consideration is given to the nature of the road, seasonal impacts, drainage, usage and combined with other data to produce system modelling which assist in maintenance management.
9. In his claim to O, SD said the date the damage occurred was 13 September 2022. However, he also qualified that and as mentioned above, he was not aware of the actual date the incident occurred or the exact location. Q, representing O, said that on 13 September 2022 the patrols had not recorded any potholes in that area.
10. I acknowledge SD's considered submissions regarding the failures within O's systems which led to unacceptable months of 'back and forth' communications between the parties without a resolution to the matter. He said he was concerned for the safety for all having to use the roads in the current circumstances.
11. However, the circumstances are complex. If O had an unlimited budget, it could be reasonably be expected to maintain the roads in a perfect condition which is clearly not the case. Therefore, the reasonable expectation must be that O maintain the roads in an imperfect condition, and the question becomes to what degree of imperfection is tolerable.
12. The question requires a balance of cost and safety that must be made at a political level.

#### Conclusion

13. My finding is that it is not proven to the evidentiary standard of more likely than not, that O breached its duty of care by failing to ensure the maintenance of the road was carried out in accordance with its required standards.

**Referee: P Goddard**

**Date: 18 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>.