



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 3

APPLICANT **ST**
APPLICANT **P Ltd**
RESPONDENT **D Ltd**
SECOND **R Ltd**
RESPONDENT

The Tribunal orders:

1. D Ltd is to pay P Ltd \$906.00 on or before 20 January 2024.
2. Payment is to be made by way of direct credit to account number [redacted].
3. The claim against R Ltd is dismissed.

Reasons:

1. ST, the sole director of P Ltd, purchased a [vehicle] from D Ltd in [City] on 27 February 2023. This vehicle is a Petrol Hybrid vehicle. ST alleges the [vehicle] had problems with the battery and the headlights almost immediately after purchase. D Ltd replaced the [vehicle]'s battery with a second hand battery and subsequently the [vehicle] had problems with the reversing camera and the radio screen. ST says the headlights were never fixed. P Ltd seeks to reject the [vehicle] and claims \$15,500.00.
2. D Ltd denies the claim.
3. R Ltd denies the claim because the policy ST has does not cover the failures. At the hearing, and after considering the policy it is clear it does not cover the matters claimed for. Therefore, the claim against R Ltd must be dismissed.
4. Towards the conclusion of the hearing of the claim ST told the Tribunal he had an accident in the [vehicle] since the filing of this claim and photos provided to the Tribunal show significant damage to the [vehicle].
5. The issues I must decide are:
 - a. Is P Ltd entitled to reject the [vehicle]?
 - b. If not, are there remedies available for the alleged failures and if yes, what is reasonable compensation?

Is P Ltd entitled to reject the [vehicle]?

6. Section 18 of the Consumer Guarantees Act 1993 provides consumers with a number of remedies when there is a failure of goods, as there is alleged in this situation. A consumer may require the supplier to remedy the failure within a reasonable time. However, when the failure cannot be remedied, or it is not remedied in a reasonable time or there is a failure of the goods that is of a substantial character the consumer is entitled to reject the goods and get a refund.
7. Section 20(1)(c) of the Act states that the right to reject the goods shall not apply if the goods were damaged after delivery to the consumer for reasons not related to their state or condition at the time of supply.
8. ST states he crashed the [vehicle] because he was tired because he was having to work around the issue of the headlights not working properly in the [vehicle].
9. It is well known that driving when one is tired is unsafe. Whilst I accept that the issue of the lights may have had some impact on ST's driving habits it was ultimately ST's decision to drive while tired. For these reasons, I find the cause of the accident damage to the [vehicle] is not related to the state or condition at the time the [vehicle] was supplied to ST. Further I find, because the vehicle is damaged, he is not entitled to reject the [vehicle] and receive a refund.
10. At the hearing ST played videos of the [vehicle] being driven at night and the lights cutting out and leaving the driver of the [vehicle] in complete darkness. For the sake of completeness but for the right to reject not applying I would have found the [vehicle]'s lights were a failure of a substantial character and I would have allowed P Ltd to reject the [vehicle].

Is there a remedy for any alleged failures and if yes, what is reasonable compensation?

11. P Ltd argues D Ltd should have put a new battery in the [vehicle] when it failed rather than a second hand battery, should have fixed the headlight issues and should have fixed the radio and reversing screens that failed after the battery was replaced.
12. NP, for D Ltd, states a new battery was not required under the Consumer Guarantees Act and the battery was replaced, at its cost, with a like for like refurbished battery. He states the electrics may need a reset to fix the radio and reversing screens and D Ltd would facilitate this remedy. He states that in August 2023, D Ltd offered to facilitate the repair/replacement of the headlights.
13. I find D Ltd has met its obligations under s19 of the Act in relation to the battery.
14. ST raised his concerns about this vehicle in March 2023. TB provided a quote for the headlights on 17 March 2023 for \$600.00 plus GST. F Ltd provided an estimate for the headlight problem on 9 May 2023 for \$213.05 plus GST. He states he did not get the headlights fixed because he needed his car for work and an offer of a loan vehicle was not made. Because TB is a specialist auto electrician I find it is fair and reasonable to allow compensation of \$600.00 plus GST (\$690.00) for the headlight failure.
15. ST also told the Tribunal he had had to go from his home to TB and F Ltd multiple times and had lost a significant amount of time.
16. These trips were foreseeable, and Section 18(4) of the Consumer Guarantees Act provides for damages in such situations and I find it is appropriate to provide some compensation for this loss of time. ST provided details of approximately six hour's time lost at his pay rate of \$36.00 an hour. Therefore, I find \$216.00 is fair and reasonable compensation.
17. In total I have found P Ltd is entitled to \$906.00 compensation.

Referee: C Murphy
Date: 8 January 2024



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>.