



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 774

APPLICANT **TM**

RESPONDENT **BC Limited**

The Tribunal orders:

The claim is dismissed.

Reasons:

1. TM and GH, representing BC Limited (“BC”) both attended the hearing by teleconference.
2. TM took his vehicle to BC for repair as there were issues with its engine. He said BC agreed to provide a full engine replacement and quoted him for this. TM said he took the vehicle to CD, WU and another mechanic after collecting his vehicle from BC and all three said the engine number in his vehicle was the same as at the time his vehicle was registered. He said he did not receive a full engine replacement and claimed \$2,656.75, which included \$1997.50 he paid for the engine, \$195.00 for freight, \$117.73 for a credit card surcharge he was charged and GST on these amounts.

Did BC use reasonable care and skill?

3. TM said his vehicle began making noises, so he arranged for it to go on a tow truck from [Town] to BC for repair, to mitigate any potential damage. He maintained he asked BC for a quote and was told a full engine swap was needed and would cost \$2,350.00 plus GST. After collecting his vehicle and having it checked by CD, WU and another mechanic, he said he was told the engine number in the vehicle was the same as at its registration time and so he believed he had not received a full engine replacement, as agreed between he and BC. There were other services provided in relation to his vehicle, apart from the engine issue, which were not in dispute. Aside from an incident with the vehicle with an air lock in the air conditioning as he was driving home from BC, for which BC provided mechanical assistance, TM said the vehicle has been running well. TM said that, whilst he had told GH he would have to sell some belongings to pay for the repairs, he had the money set aside for the repairs as quoted.
4. GH agreed the original quote had been for a full engine replacement and said that after the quote was provided and a deposit requested from TM to begin work, TM came into the

workshop, was emotional and asked him to do what he could on costs, showing him a bank statement indicating \$100.00 in his account. GH said he felt empathy for TM's situation and told him he would do what he could to help him. GH ended up replacing only the top half of the engine, along with all the internal components required for this, rather than the full engine, to try to save costs for TM. He said he tested the vehicle after doing so and it ran well so he thought this would be an appropriate solution for TM. He acknowledged he did not check first with TM whether this was agreeable with him. GH said TM was charged \$1,997.50 plus GST for the partial engine replacement. GH said that the engine number is on the bottom part of the engine, so only replacing the top part of the engine would not result in a new engine number for the vehicle. He explained they provided a number of discounts for TM, on the engine replacement, labour and other costs, to try to help him out. When TM came to collect the vehicle, GH told him he had only replaced the top half of the engine, not the full engine, to try to save him money, and pointed out the discounts provided. The parties disputed whether GH told TM this before or after TM had paid for the repairs. In any event, TM confirmed he was aware that only the top half of the engine had been replaced when he left BC with his vehicle. TM said he would have told BC to put in the full engine replacement if he had been told this before paying, whereas he said he was told this after paying and then was too afraid to bring it up, preferring to deal with BC in writing about the issue afterwards.

5. I find it likely that BC did not consult with TM before replacing only the top part of the engine rather than the full engine. However, given GH's evidence that this process of partial engine replacement is frequently used for other customers, depending on the damage to their vehicles, and that he tested the vehicle after doing so and it ran well, that TM had asked him to do what he could to reduce costs, and TM's evidence that the vehicle is generally running well, I find there is insufficient evidence to prove that BC did not use reasonable care and skill.

Was an opportunity provided to remedy any failure?

6. In case I am wrong about the use of any reasonable care and skill, I consider next whether TM provided an opportunity for BC to remedy any failure.
7. After collecting his vehicle and getting feedback that his engine number was the same as at its registration time, TM emailed GH asking him to provide him with a copy of BC's invoice for the second-hand engine and cited the engine number still being the same as at the time of registration. TM confirmed that he did not email GH or BC to tell them that, whilst he had been told they replaced the top half of the engine, he had requested a full engine replacement and that he wanted them to remedy this. In other words, TM did not ask BC to remedy any failure. During the hearing, TM said he would not trust BC to repair his vehicle now so would not ask them to remedy anything.
8. GH said he responded to TM's emails asking him to supply any reports about the issue, which were not provided, or for him to bring the vehicle back into their workshop to be checked. He said he further offered for TM to come in and discuss any issues and offered to rectify any issues with work done. He confirmed TM did not at any time ask BC to replace the top half of the engine that was put in by them with a full engine replacement, as TM said he had originally requested.
9. I note there was no mention by TM in any of his emails to BC, or in the claim, of him being aware that only the top half of the engine had been replaced. However, TM confirmed he had been told this before he left BC with his vehicle.
10. Section 32 Consumer Guarantees Act 1993 ("CGA") provides that, where any failure can be remedied, the consumer must request the supplier to remedy any such failure within a

reasonable time. If a consumer fails to provide this opportunity to remedy, their rights are extinguished. See *Telfer v Harley DC Hamilton CIV-2009-019-1594*.

11. As TM did not offer BC any opportunity to remedy any failure, his claim must be dismissed.

Referee: C Price

Date: 7 December 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>.