



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

[2023] NZDT 649

**APPLICANT**      TN

**RESPONDENT**    K Ltd

**The Tribunal orders:**

The claim is dismissed.

Reasons

1. TN owns a [vehicle].
2. In 2022 the vehicle suffered an engine failure. K Ltd re-built the engine for TN. The job cost \$14,012.97 and was completed in October 2022.
3. TN had re-located to [country] for work. He asked his friend Mr N to store the vehicle in [town 1].
4. Mr N took the vehicle for a WOF and turned the engine over occasionally.
5. In June 2023, Mr N contacted TN and told him that he was going to [town 2] to play golf and perhaps it would be a good idea to take the [vehicle] for a drive. TN agreed.
6. The vehicle broke down in or near [town 2]. Mr N contacted TN, who arranged for K Ltd to collect the vehicle.
7. K Ltd assessed the engine and found that it was seized and badly damaged due to severe overheating.
8. TN's claim seeks a refund of the amount that he paid for the 2022 re-build.
9. The hearing took place by phone on 21 November 2023. Both parties attended the hearing. Mr L represented K Ltd.
10. TN submitted that the car had been in storage since the complete engine rebuild that K Ltd carried out. It had only travelled 128km since that repair when the engine failed again.
11. TN submitted that the chance of some new event occurring within that 128km of travel was extremely low, and therefore on the balance of probabilities the cause of the second engine failure must have been something that K Ltd did or failed to do during the rebuild.

12. Mr L submitted that the cause of the second failure was coolant loss causing overheating, and the vehicle continuing to be driven in that overheated state. Mr L submitted that the cause of the coolant loss was a stone (or something similar) puncturing a hose that sits underneath the radiator.
13. Mr L submitted that the [vehicle] sits low to the ground, and the location of the hose makes it vulnerable to this type of accident.
14. Mr L provided a photograph of the hose. Mr L took the photograph when he was assessing the vehicle after it arrived back in his workshop. The photograph shows a clear and visible hole in the hose.
15. Mr L submitted that the damage could have been mitigated if Mr N had noticed the engine overheating. Unfortunately, it seems that Mr N drove on for quite some time after the coolant loss – possibly because he was driving an unfamiliar vehicle.
16. TN accepted Mr L's explanation of the cause of the engine damage. He accepted that the photograph is genuine.
17. TN argued that perhaps the hole was present at the time of the engine rebuild, and it was not noticed at that time.
18. However, Mr L submitted that if the hole was present, even if it was a 'pin hole' at that time, it would have resulted in loss of all the coolant as soon as the vehicle heated up. Therefore, if this hole was present when the engine rebuild was done the failure would have occurred when the vehicle was driven to [town 1] from K Ltd's workshop in [town 3].
19. I agree with TN's argument that the timing of the new failure so soon after the complete re-build creates an inference that the second failure was due to something that K Ltd did or failed to do during the re-build.
20. However, that inference is rebuttable, and it has in fact been rebutted in this instance. The evidence provided to me establishes (to the standard of more likely than not) that the cause of the second failure was overheating resulting from coolant loss due to the coolant hose being punctured. I am satisfied that it is not plausible that this damage could have been present at the time of the first re-build.
21. Therefore, I must find that it is not proven that K Ltd failed to exercise reasonable care and skill when it carried out the re-build, and TN's claim must be dismissed.

**Referee: Nicholas Blake**  
**Date: 1 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>.