



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

**District Court**

**[2023] NZDT 441**

**APPLICANT**     TQ and BC

**RESPONDENT**   B Transport

**The Tribunal orders:**

B Transport is to pay \$843.09 to TQ and BC on or before 27 September 2023.

**Reasons**

1. TQ and BC, in their EV vehicle, approached the [Carpark], operated by B Transport, on the evening of Friday 26 May 2023. There was a barrier at the top of the entrance ramp and a sign to say that the carpark was full. TQ was aware from previous experience that when the carpark is marked as full, there are often empty EV charging carparks still available.
2. TQ asked the nearby parking attendant if it would be possible to park in an EV space, and he says after a short discussion the attendant instructed them to drive up to the barrier arm, push the help button and request entry. To do this, TQ had to drive around the initial barrier, which covered most of the entry lane. As he did this, he heard a loud bang and hiss and realised that something had punctured his tyre. That turned out to be bolts protruding from the ground, that had originally held vertical lane divider sticks in place (but some of the sticks were no longer there). TQ says immediately after the incident, the parking attendant put orange cones in place over the bolts in the ground.
3. TQ and BC did gain entry to the carpark after discussion with another (remote) attendant, and they parked in a vacant EV parking space, paying a \$12.00 fee for parking. When they returned to their vehicle after their show, they were unable to repair the puncture and were unable to book a tow truck to attend before the closing hours of the carpark, so took an Uber home to [Suburb], with TQ returning the following day by train to meet the tow truck and have his car removed for repair.
4. TQ and BC claim \$855.09, being \$784.79 for the tyre repair and replacement kit, \$55.69 for the Uber, \$2.61 for the train fare and \$12.00 for the parking fee, on the basis that B Transport failed to apply reasonable care and skill and/or was negligent in its operation of the carpark, causing their losses.
5. B Transport did not attend the teleconference hearing (four attempts were made to reach their representative on the number provided by them two days prior to the hearing but voicemail was reached each time), so the hearing proceeded in their absence.

6. I find that B Transport owed a duty of care to carpark users and it breached that duty in this instance. B Transport's letters to TQ state that they had contracted out of liability for damage to vehicles via their terms and conditions and that TQ agreed to those when he parked and left his vehicle in the carpark. However this damage occurred before TQ was able to determine whether he would be able to park in the carpark and therefore no contract had been formed at that time and no terms and conditions agreed to.
7. In any event, as TQ points out, it is not possible to contract out of the Consumer Guarantees Act ('CGA') guarantee to provide a service with reasonable care and skill. B Transport is a 'supplier' for the purposes of the CGA with respect to its carpark operations because it is deemed to be 'in trade' in that situation (it is not 'in trade' and therefore the CGA does not apply when it is engaged in its statutory functions such as parking enforcement).
8. B Transport further states in its letter to TQ that they would only be liable if they were aware of a fault or hazard and failed to address it promptly, stating they do not have full time staff on site at the [Carpark] and had not had any notifications of the fault. I accept that and note that the same sort of test would apply to the guarantee of 'reasonable care and skill'.
9. However B Transport do not dispute that they had a parking attendant on the ramp when TQ and BC entered that night. B Transport have provided a written witness statement from that parking attendant. While it is clear from the statement that TQ and the witness have differing versions of events as to what conversation took place, there is no dispute that TQ and the parking attendant spoke when he approached the first barrier. Whether or not the parking attendant invited TQ to drive forwards to speak to the remote attendant (that is the disputed issue), the presence of a carpark attendant and his failure to identify a hazard to vehicles on the ramp is a failure of reasonable care and skill as well as a breach of duty of care to carpark users.
10. TQ says that if he had been told by the attendant to turn around and park elsewhere, he would have done so, and that he asked politely about the availability of EV spaces. He was shocked by the witness statement (in which the witness makes no mention of a conversation about EV parking spaces or a suggestion to ask the remote attendant) and wondered why its contents had never been raised in all his correspondence with B Transport prior to the hearing. I note that the witness statement does not directly contradict anything TQ has said – TQ's version of events just has more to it (the conversation about EV parking spaces) and I accept that TQ did ask about EV parking spaces because his subsequent actions were consistent with that enquiry.
11. TQ also contends that an inference can be drawn from the absence of CCTV footage of the area, both in terms of the movements of the parking attendant after their conversation, but also in terms of identifying how long the hazard had been present with no-one noticing/doing anything about it. On this latter point, he notes that if the divider sticks had been damaged by vehicles at some point, the absence of debris in the vicinity suggests that the debris of the sticks had been removed by the carpark operator without the bolts being attended to, and he contends that that was negligent and a failure of reasonable care and skill. I consider this to be a valid point in addition to the failure of reasonable care and skill on the part of staff in attendance at the time to notice and attend to hazards on the ramp.
12. I further find that TQ's actions in driving up to the second barrier were entirely reasonable given his purpose in doing so, regardless of whether or not the parking attendant explicitly invited him to do so (and, as already stated, I accept TQ's version of the conversation on the evidence available). His actions are further justified by the fact that the remote attendant allowed him entry to the carpark and that there were in fact available EV parking spaces for him to use. I therefore find there to have been no contributory negligence on TQ's part. The bolts protruding from the grounds could not have been seen from a driver's position inside a car on the ramp and the fact they were positioned on the dividing line between lanes does not mean that TQ should not have been driving in that position.

13. I find that the costs claimed are actual and reasonable and are all a reasonably foreseeable consequence of the damaged caused to the car by the bolts, except for the parking fee, which did not arise from the damage and would always have been payable for the parking used. The amount B Transport is liable to pay is therefore reduced from the claim amount by \$12.00, being \$843.09.

**Referee Perfect**  
**Date: 30 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>.