



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 111

APPLICANT UH

RESPONDENT KM Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

1. In August 2022, UH bought a 2002 [automatic car] from KM Ltd for \$45,000.00. He uplifted it from [Suburb] a few weeks later and noticed an issue with the gearbox transmission. On 20 September 2022, he raised this and some other issues with KM Ltd, and it agreed he could have them remedied at [auto repair shop]. While the other issues were remedied, the [auto repair shop] was unable to remedy the transmission. So, on 5 October 2022 UH obtained a quote from LU, which he then sent on 19 October to the KM Ltd. KM Ltd responded a week later advising that it was sourcing a replacement gearbox for \$3,000.00. However, LU had then completed the work and invoiced UH \$5,290.87. KM Ltd then offered to, and paid LU \$3,300.00 and UH paid the balance.
2. UH claims the difference of \$1999.00.
3. The issues to be determined are:
 - a. Did KM Ltd neglect or refuse to remedy the failure with the transmission within a reasonable period of time?
 - b. If so, is UH entitled to the recover the balance of the repair costs?

Did KM Ltd neglect or refuse to remedy the failure with the transmission within a reasonable period of time?

4. KM Ltd acknowledged that there was a fault with the transmission which required remedial action, so I accept that the car was not of an acceptable quality under the Consumer Guarantees Act 1993 (CGA), but was capable of being remedied. In these circumstances, under section 18 of the CGA, the consumer must first give the supplier a reasonable time in which to remedy the failure. Under section 19, how the supplier remedies a failure is the supplier's choice. It can be a repair, replacement, or by providing a refund of any money paid to it where the supplier cannot reasonably be expected to repair the goods. It is only if the supplier then refuses or neglects to do so or does not succeed in remedying the failure within a reasonable time, that the consumer can have the failure remedied elsewhere and obtain from the supplier all reasonable costs incurred in having it remedied.
5. UH's position is that the vehicle needed to be fixed, that he was unable to use it and it was gathering dust and it was weeks before he received any feedback from KM Ltd, and had the rebuild not been completed by the time he heard back from KM Ltd he would not have agreed to

a replacement gearbox, as he had bought the car as an investment and wanted to keep the original parts to maintain its value.

6. However, on balance, I find that UH's approval for LU to repair the transmission was premature, and I do not accept that at that point, KM Ltd had neglected to take reasonable steps to affect the repair, but instead were taking reasonable steps within a reasonable time frame towards it as communicated to UH. I say this for reasons which include:
 - a. UH acknowledged and I accept that after he raised the issues on 20 September, KM Ltd promptly initiated repairs and apart from the transmission, these were successful;
 - b. UH acknowledged and I accept that KM Ltd then agreed to the more specialised LU conducting a diagnosis of the transmission which I find was also reasonable, and that he took the car to LU for this limited purpose on 5 October;
 - c. UH acknowledged that he did not send the repair quote to KM Ltd for consideration until Wednesday 19 October. While I understand that he was then seeking a quick turn-around because he was departing overseas on Friday 21 October, I find that KM Ltd was entitled to have a reasonable time, not confined to his travel schedule to assess it and to respond with options;
 - d. I prefer KM Ltd's position that it responded within a reasonable time frame 3 days later on Saturday 22 October assuring him they would get it sorted, which UH acknowledged by text. I also accept that it was not unreasonable for KM Ltd to consider alternatives options, and that they updated him several days later on 26 October, at which point they also discovered LU had done the repair; and
 - e. Also, in the circumstances I do not find a one-month delay between the date the issue was reported and a solution presented is unreasonable.
7. So, in these circumstances, I find that UH's alternative repair by LU on 26 October was premature, and so KM Ltd is not liable for the balance of the repair costs. The claim is dismissed.

Referee: GM Taylor

Date: 30 June 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>.