



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

[2023] NZDT 750

**APPLICANT**      **UI**

**APPLICANT**      **I Ltd**

**RESPONDENT**    **S Ltd**

**SECOND**          **C Ltd**  
**RESPONDENT**

**The Tribunal orders:**

1. The claim by UI in his personal capacity is struck out.
2. The claim against S Ltd is dismissed.
3. The claim against C Ltd is dismissed.

**Reasons:**

1. UI filed this claim to seek recovery of two engines he says have been lost within the care of S Ltd and/C Ltd. By the Tribunal's order of 21 June 2023, I Ltd, a company of which UI is a director, was added to the claim as UI acknowledged the engines were owned by I Ltd and not by him personally. UI also appears as a representative for I Ltd.
2. I Ltd says in 2018 a curtain-sided truck ("the Truck") was in the possession of S Ltd at its [City 1] premises. I Ltd says it instructed the Truck, together with 2 engines in the back of the Truck, to be delivered to [City 4, City 2]. I Ltd says the Truck was delivered to the nominated address without the engines, and I Ltd has therefore suffered a substantial loss. I Ltd claims AUD\$27,000.00 for the lost engines and asks the Tribunal to make an order for the New Zealand dollar equivalent.
3. S Ltd and C Ltd both deny they are responsible for I Ltd's loss.
4. The Issues to be resolved are:  
*Claim against S Ltd:*

- a. Did I Ltd (or its nominee) have a contract with S Ltd, and if so, what was agreed about transportation?
- b. Is S Ltd liable to compensate I Ltd for the loss of Engine 1, and if so, what is Engine 1's value?

*Claim against C Ltd:*

- c. Did C Ltd breach a duty of care to look after Engine 2?
  - d. Is C Ltd liable to compensate I Ltd for the loss of Engine 2, and if so, what is Engine 2's value?
5. It is relevant to note that arrangements regarding the Truck and the engines took place over some years, as detailed below.

**Did I Ltd (or its nominee) have a contract with S Ltd, and if so, what was agreed about transportation?**

6. Under contract law, a legally binding contract is formed when both parties intend to contract on agreed terms and intend for those terms to be legally binding. The terms of a contract are formed at the beginning, not at the end, and what was agreed is looked at objectively, i.e., by looking at what was said and done.
7. I find:
- a. a bailment relationship arose between I Ltd and S Ltd for storage of the Truck and its contents, but otherwise no formal contract was agreed;
  - b. I Ltd had a contract with S Ltd for transportation of the Truck from [City 1] to [City 4]. This contract was however made between S Ltd (through its [Region 1] division) and UI's son, who was acting on behalf of I Ltd;
  - c. there was a sub-contracting relationship between S Ltd and C Ltd, because the [Region 1]-based division of S Ltd instructed C Ltd to uplift the Truck and arrange transport from [City 1] to [City 3].
8. Having considered the parties' evidence, I reach these conclusions because I accept:
- a. since 2015, the Truck was held at S Ltd's [City 1] premises for a third-party customer ("Customer A") as S Ltd had notified Customer A the Truck's engine was not worth fixing. While waiting for further instructions, S Ltd says it left the disassembled engine ("Engine 1") in the rear of the Truck.
  - b. the Truck sat in S Ltd's yard for Customer A for approximately 3 years. During this time, in late 2017, Customer A arranged delivery of a 2<sup>nd</sup> engine ("Engine 2"). Engine 2 could not however be used, so it too was placed in the rear;
  - c. around this time Customer A resolved legal proceedings it was involved in, and as a result, ownership of the Truck passed to I Ltd during 2018. Sometime after change of ownership was notified, UI and Customer A visited S Ltd's premises, and UI says both Engines 1 and 2 were in the rear of the Truck. UI asked S Ltd to transport the Truck to [City 4], however S Ltd did not have a towing division in [Region 2];
  - d. S Ltd did not have a contract for storage with I Ltd but a bailment relationship did arise on these facts. This was a bailment without profit, as there is no evidence S Ltd made any commercial charge for storage;
  - e. Later in 2019, UI's son acting on behalf of I Ltd, contacted S Ltd's [Region 1] division. S Ltd (Region 1) was instructed to transfer the Truck to [City 4];
  - f. S Ltd [Region 1] engaged C Ltd to pick up the Truck from S Ltd [City 1], which it did in approximately August 2019. Some 3-4 weeks later, the Truck was handed over to S Ltd [Region 1], in [City 3]. S Ltd operates in various locations throughout the [Island]. While storage and transport arrangements were handled by different 'divisions', both were done by "S Ltd".

**Is S Ltd liable to compensate I Ltd for the loss of Engine 1, and if so, what is Engine 1's value?**

9. Two areas of the law are relevant. Contract law generally requires parties to an agreement to perform the promises they make unless there is a valid legal reason not to do so. If a party

suffers loss from a breach of contract, a party is entitled to be put back in the position they would have been in, had the contract not been breached. The law of bailment also applies. A bailee is a person who takes care of goods for another person. The bailee has a duty of care to look after those goods. In this case, that means S Ltd must show they took reasonable care.

10. I find S Ltd is not obliged to compensate I Ltd regarding the loss of Engine 1.
11. The dispute arises about Engine 1 because I Ltd says when the Truck was delivered to [City 4], there was no sign of Engine 1. S Ltd agrees in 2015 its staff placed Engine 1 (i.e., in its disassembled form) in the rear of the Truck. From that point on however, other than putting Engine 2 in the rear of the Truck as earlier discussed, S Ltd says it had no reason to deal with Engine 1 or its components. It also says it did not review the interior of the Truck before when it was uplifted by C Ltd in 2019. C Ltd says when it received the Truck, Engine 2 was in the rear, but Engine 1 was not. Representative for C Ltd, OI, says some loose parts were in the back of the Truck, but not what would be described as anything like an “engine”. There is no compelling evidence available to persuade me C Ltd’s statement is not true.
12. There is no evidence available to me to establish what happened to Engine 1 or where it now is. Despite Engine 1 not being able to be located, when I look at all the circumstances, I am satisfied S Ltd has satisfied its obligation to take “reasonable” care of Engine 1 under the bailment relationship.
13. I say that taking the following factors into account:
  - a. the Truck was stored by S Ltd much longer than anticipated, even after ownership transferred to I Ltd, and storage appeared not to be on a commercial basis;
  - b. there is no evidence terms around storage were ever specifically sought or agreed, nor that UI or I Ltd ever enquired about storage conditions, security, risk, or asked for any security or risk-avoidance measures to be taken. S Ltd says Engine 1 was classed as uneconomic to repair and was from an aged vehicle model, leaving only minimal value. UI however asserts Engine 1 was valued at AUD\$7,000, and Engine 2 at AUD\$20,000, on top of the value of the Truck itself;
  - c. given the time that passed before this claim was lodged, I accept S Ltd’s view it has no way to now verify whether Engine 1 was or was not in the Truck when it left its [City 1] premises;
  - d. I accept S Ltd’s evidence that during the time it held the Truck for I Ltd, S Ltd was not aware of any disturbance at its premises, any forcible (or otherwise) entry of its premises or of the Truck, nor other property damage or loss at its premises.
14. Given these factors and highlighting the absence of specific instructions/enquiry from I Ltd, and the absence of evidence suggesting S Ltd was careless or negligent in its handling of the Truck or Engine 1, I am persuaded in all these circumstances S Ltd has done what was reasonable in terms of care.
15. For the avoidance of doubt, I am also satisfied any claim under carriage of goods provisions of the Contract and Commercial Law Act 2017 would not be upheld in these circumstances because:
  - a. any such claim would on these facts be limited to the Truck itself as the transportation contract was only ever discussed in this context;
  - b. no record of the price charged, or terms provided, by S Ltd [Region 1] has been offered. There is therefore no evidence available to persuade me that any such carriage was on any basis other than at owners’ risk, nor that I Ltd ever advised S Ltd [Region 1] that specific or valuable goods were contained within the Truck.

**Did C Ltd breach a duty of care to look after Engine 2?**

16. The law of contract and bailment are also relevant here.
17. I find:
  - a. C Ltd met its contractual obligations to I Ltd, via its subcontractor status to S Ltd, when it

provided delivery of the Truck to [City 3] which was all it was contracted to do. C Ltd, also for its own reasons, made no commercial charge for this transport;

- b. a bailment for Engine 2 later arose based on instructions given to C Ltd by UI in October 2019; and
- c. C Ltd did not breach its duty as a bailee to take reasonable care of Engine 2.

18. The dispute arises about Engine 2 because as earlier noted, Engine 2 was in the rear of the Truck when uplifted by C Ltd in August 2019. Shortly after the Truck arrived at C Ltd's yard, C Ltd says it received a phone instruction to remove Engine 2 from the Truck, which it did. The circumstances around this call, and the identity of the caller, remain unresolved. I Ltd and UI deny they gave this instruction. OI was equally clear the call came from the Truck's owner, because the caller clearly and specifically knew the Truck was in his yard, and the caller clearly and specifically described the Engine. Sometime after delivery of the Truck, UI was upset to discover Engine 2 was not in the Truck, and tracked Engine 2 to C Ltd's premises. UI visited C Ltd's premises sometime later, and after sighting Engine 2 asked C Ltd to store it "for a slab of beer", until he could get someone to pick it up. OI agreed, believing this was a very short term arrangement. OI was therefore unconcerned when UI left without providing a name, or any type of contact details. Approximately 3 years later, a man arrived to collect Engine 2. OI says he was so relieved to finally see Engine 2 leave his premises, he didn't even ask after the beer payment. UI made contact with C Ltd some 4-5 months later wanting to pick up the Engine.

19. Despite C Ltd not being able to supply Engine 2 to UI, I am satisfied C Ltd met the required standard of taking reasonable care. "Reasonableness" does not mean doing absolutely everything that could be done, but rather whether, looked at objectively, C Ltd's conduct was reasonable in the circumstances.

20. I am satisfied it was, because:

- a. it was completely within UI's control to leave contact instructions and/or maintain regular contact with C Ltd about Engine 2;
- b. such a significant period passed since UI visited, without any contact;
- c. I accept C Ltd's evidence its premises are both relatively isolated and hard to locate; that it was unaware anyone else other than the owner knew Engine 2 was there; that the man who collected Engine 2 described it clearly before C Ltd provided access; and that C Ltd had absolutely no information available to it to enable it to verify any pick-up request in any case.

**Is C Ltd liable to compensate I Ltd for the loss of Engine 2, and if so, what is Engine 2's value?**

21. Where a party suffers loss under the terms of a bailment, the bailor may be able to claim damages in compensation for their loss.

22. I find C Ltd is not liable to compensate I Ltd for the loss of Engine 2.

23. It is acknowledged a bailment arose when UI gave instructions to C Ltd, however as earlier explained I have found no breach of the obligation on C Ltd to take reasonable care. Without a breach, there is no basis for me to award compensation.

24. There has been a combination of most unusual circumstances involved in this claim. The parties have speculated on what may have occurred at various times, including possible intervention by Customer A, however the Tribunal cannot place weight on speculation without any evidential basis. The Tribunal recognises I Ltd does not have Engine 1 and Engine 2 and has therefore suffered loss. Ultimately however, there is insufficient evidence to prove I Ltd's claim that legally this loss is a result of failures by either, or both of, S Ltd and C Ltd.

25. For these reasons the claim must therefore be dismissed.

**Referee: Malthus**  
**Date: 16 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>.