



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

[2023] NZDT 736

**APPLICANT**     **XN**

**RESPONDENT**   **BP**

**The Tribunal orders:**

BP is to pay XN \$3,192.00 on or before Monday 15 January 2024.

**Reasons**

1. XN said he traded in his [motor vehicle 1] to BP and upgraded to a [motor vehicle 2]. BP agreed to pay him \$2,142 for the 2004 vehicle and sell him the [motor vehicle 2] for \$7,458 so that the net effect was that XN owed BP \$5,316. XN said BP agreed to accept payment of the balance by fortnightly payments of \$150, which XN began paying by automatic bank payments on 6 December 2022.
2. After XN paid seven payments totalling \$1,050, BP sent him what is purported to be a repossession notice. As a result XN voluntarily returned the vehicle to BP and now claims to be refunded the agreed trade in price of the [motor vehicle 1] and the \$1,050 he paid towards the 2010 vehicle.
3. BP did not attend the hearing by providing his telephone number to the Disputes Tribunal as he was requested to do in the notice of hearing. XN confirmed that the address he provided is the residential address for BP and so therefore the hearing continued in BPs absence.
4. The issues to be determined are:
  - (a) Was BP entitled to repossess the [motor vehicle 2]?
  - (b) If not, then did BP breach his agreement with XN and if so, what loss can XN show he has incurred that he is entitled to be compensated for?

**Was BP entitled to repossess the [motor vehicle 2]?**

5. The right to repossess a consumer good is regulated by section 83 of the Credit Contracts and Consumer Finance Act 2003. BP put a handwritten note in XN's letter box that stated "intention to repossess [motor vehicle 2] re money owing \$5,000 on 23-1-23. No other CAAGFS apply. You have 3 weeks to pay this" and he signed it.

6. Schedule 3A of The Act provides a checklist of details that must accompany a repossession warning notice. The note BP sent did not comply with many requirements of the warning notice. In particular, it fails to specify the act of default under the agreement. Further, the informal written note that contained a few of the fundamental terms of the agreement does not allow BP the right to repossess the car.
7. I therefore find that BP was not entitled to issue a notice warning of his intention to repossess the vehicle.

**Did BP breach his agreement with XN and if so, what loss can XN show he has incurred that he is entitled to be compensated for?**

8. From the evidence of XN I find that BP breached the agreement by threatening to repossess the vehicle when the agreement did not allow him that right. Additionally, while XN was paying the balance at the agreed rate of \$150.00 each fortnight, then he was entitled to continue making those payments until the balance was paid in full. XN said he did not know why BP changed his mind and wanted the car back.
9. As BP breached the agreement, XN is entitled to be compensated for the reasonably foreseeable expenses that he incurred as a result of the breach. I find that XN is entitled to be compensated for the value of the [motor vehicle 1] that he agreed to with BP for \$2,142.00, and that amount is therefore added to the total of this order.
10. XN also said he made seven payments of \$150.00 towards the agreed purchase price of the [motor vehicle 2] and therefore the sum of \$1,050 is also added to the total of this order.

**Conclusion**

11. As XN has shown he has incurred the loss of \$3,192.00 as a result of BP's breach of the agreement, an order is made for that amount.

**Referee: Ms Cowie DTR**  
**Date: 13 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>.