



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 273

APPLICANT XN

RESPONDENT C Ltd

The Tribunal orders:

The hearing is dismissed.

Reasons

1. XN asked C Ltd to service his vehicle. Some weeks later he was cleaning the car and found a broken part of the glove box, a hole near the back, on the right-hand side. He also found signs of glue around the hole. XN recalled that the service would have required handling the glove box, to clean the air conditioning filter. He referred the matter to C Ltd and asked for compensation. C Ltd investigated the matter, and after interviewing the staff members involved decided not to offer compensation, because it considered it was not responsible for the damage. After posting a negative review and a discussion with the Regional Manager, XN filed a claim in the Disputes Tribunal.
2. This is a claim for compensation for a hole in the glove box of a car, in the sum of \$1,999.00.
3. The issues to be determined were as follows:
 - a. Did the Respondent cause the damage as alleged?
 - b. If so, then what is an appropriate amount to be paid by way of compensation?

Did the Respondent cause the damage as alleged?

4. A person in trade performing work on a car for a customer owes a duty, whether in contract or the general law of tort, not to damage the car being worked upon. It might also be a breach of the Consumer Guarantees Act 1993. However, in a Tribunal or Court hearing about such claimed compensation, it is necessary for the claimant for damages to satisfy the Judge or Referee that the person working on the vehicle caused the damage, and that the damage caused a loss.
5. The evidence I heard was that no damage to the glove box had been noticed by the C Ltd employees at the time the service was being performed. It was acknowledged that work as part of the service had taken place near the glovebox on one of the car systems. C Ltd noted that it had a system of reporting breakages large or small and indicated that nothing had been reported in this case. After the problem was brought to their attention they inspected the hole and the broken off part and noted that there was glue around the damaged area, which

presumably had been where someone had tried to patch the damage. XN alleged this was evidence that it was caused by C Ltd, during their work on the air conditioning filter.

6. I am unable to agree with XN for reasons which include the following:
 - a. XN had recently purchased the vehicle second hand. The possibility that this damage, and the attempted fix with glue, was something that existed at the time of the sale could not be dismissed out of hand. There was no satisfactory evidence either way. I am inclined to think that it is actually reasonably probable that this damage was pre-existing and not been noticed by XN prior to the purchase.
 - b. I am satisfied after hearing from C Ltd that they have a system that is probably better than average when it comes to acknowledging and taking responsibility for breakages they might cause in a vehicle they work on. I can see no reason, in these circumstances, why any employee would be incentivised to do other than report the damage. Arguably, C Ltd could have simply accepted responsibility whether or not they had caused it, but they were clear in the hearing that they believed they had not. I was satisfied in the hearing that their system and the investigation was robust enough so that I could accept without difficulty that they are probably correct.
 - c. XN had only circumstantial evidence to rely on that C Ltd had caused the damage and that it did not have another cause. He did not have direct evidence. It did not convince me in this case, on the balance of probabilities (which is the required test), that C Ltd caused the damage. Put simply, I have sufficient doubts about it to dismiss the claim.

If so, then what is an appropriate amount to be paid by way of compensation?

7. I am not really required to make a finding about this issue because I have found that there is insufficient evidence that C Ltd caused the damage. However I will note that if I had found that C Ltd were liable, the company would only have been liable for the cost of repairing the damage. I was unable to see how the damages amount could have been what was claimed, or that a small hole in the back of the glove box could have contributed to a significant reduction in value for the car.
8. The claim is dismissed.

Referee: M Wilson
Date: 20 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>.