



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 621

APPLICANT XU

RESPONDENT I Ltd

The Tribunal orders:

I Ltd is to pay XU \$400.00 on or before 23 November 2023.

Reasons

1. On 29 April 2023, MO, Manager of XU, parked his car at the back of the [building] to unload music equipment for a [Region] Youth competition being held that day. He took a load out of his car and locked it, while he took the equipment upstairs. When he returned to his car for the next load, it had been towed away. He eventually found that I Ltd had his car at their yard in [Suburb]. He had to pay \$400.00 to get his car released.
2. XU claims a refund of the \$400.00 towing fee.
3. The issues to be decided are:
 - a) Did XU have consent to park outside the [building] because of the yellow letters 'LZ' painted on the ground? Did this indicate a 'loading zone' and was XU using the space to unload goods?
 - b) If not, did I Ltd have a right to tow the XU car away? Did I Ltd have authority from ES to tow the XU car away on 29 April 2023?
 - c) If so, is \$400.00 a reasonable fee for the loss suffered by ES in respect of the unauthorised use of his land?

Did XU have consent to park outside the [building] because of the yellow letters 'LZ' painted on the ground? Did this indicate a 'loading zone' and was XU using the space to unload goods?

4. If a landowner or occupier finds the goods of another unlawfully on the land and doing damage, the landowner is entitled to seize the goods and withhold them from the owner until such time as the owner has paid compensation for the damage that has been done. This right, known as distress damage feasant, is only available when some actual damage has been caused by the goods. In essence an owner or occupier of land has the right to protect its land against trespassers who park on its property without permission.

5. On the other hand, a vehicle owner has a comparable right not to have its property (in this case its car) interfered with without its permission. That would also constitute a trespass.
6. MO says that he saw the diagonal yellow lines and the letters 'LZ' and assumed that the space by the rear door of the [building] was a loading zone where he could park temporarily while he unloaded the car. There were no signs saying that parking was not permitted to contradict this assumption.
7. The land at the back of the [building] is owned by ES, however, he does not own the [building]. ES gave evidence that he does not know who painted the yellow lines and the letters 'LZ' and 'NP' on the ground. However, he says that it is private property, and he does not want people parking there because it blocks emergency services from accessing the building. ES says he has authorised I Ltd to tow cars that park in that space.
8. MC, director of I Ltd, says that the owner of the [building] will not permit ES to put a sign on the side of its building. In any event, MC says that signage on private property is a courtesy, not a requirement. He believes that it used to be a loading zone, but that the yellow lines got painted over, and now that top layer of paint has worn off and the yellow lines and letters are visible again. MC admits that the letters 'LZ' and 'NP' are a bit unclear, however he suggests that it does not clearly say it is a loading zone where parking is permitted for loading.
9. I find that XU did have consent to park outside the [building] because of the yellow letters 'LZ' painted on the ground. These letters were prominent on the ground and clearer than the letters 'NP'. I find that a reasonable driver would interpret the letters 'LZ' in combination with diagonal yellow lines to mean that it was a loading zone, where a car could be parked temporarily while it was being loaded or unloaded. There was no signage on the side of the building or on the ground (such as a sign attached to a post in front of the building) to say that parking was not permitted or that it was not a loading zone. ES was aware of the yellow lines and letters and did not take any steps to put up signage to make the parking status clear for drivers.
10. I am satisfied that MO did park his car in the loading zone for a short time, while he took music equipment up the stairs.
11. In conclusion, I find that MO had consent to park in the loading zone and I Ltd committed a trespass when it removed the XU without permission. Therefore, MO is entitled to a full refund of the \$400.00 he was required to pay to get his car released.

Referee: Sara Grayson
Date: 2 November 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>.