



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 119

APPLICANT **ZG**

RESPONDENT **DD Limited**

SECOND **GT**
RESPONDENT

The Tribunal orders:

1. GT is to pay ZG a total of \$12,340.00 on or before Friday 21 July 2023.
2. While the claim against DD Limited is dismissed, it undertook to pay ZG \$1000.00. So, I order DD Limited to pay ZG the total sum of \$1000.00 on or before Friday 21 July 2023.

Reasons:

1. On 20 August 2022 around 0100 GT, an employee of DD Limited (the company), drove the company van into ZG's backyard at [Address].
2. ZG claims \$8000.00, increased at the hearing to \$13,340.00, against GT and the company for repairs to his retaining wall, deck, stairs, handrail, and gate.
3. GT initially responded to my call but then disconnected and did not respond again. The hearing proceeded without him pursuant to section 42 of the Disputes Tribunal Act 1988.
4. The issues identified at today's hearing were:
 - a. Was GT responsible for the collision?
 - b. If so, was the conduct within the scope of his employment with the company or was there a sufficiently close connection between the act and what he was authorised to do, so that the company is vicariously liable?
 - c. What, if any, reasonable costs associated with the collision ought to be paid?

Was GT responsible for the collision?

5. The relevant law is the tort of negligence, which applies when someone breaches a duty of care to another person causing foreseeable damage. Drivers have a duty of care towards the owners of vehicles or other property in the vicinity not to cause damage to that property.
6. In the absence of evidence to the contrary, I accept that GT breached his duty of care and caused the damage to ZG's property. I say this as I accept that at about 0100 at night after being parked near the top of the driveway, while he was engaged in a late-night escapade, he let the company van roll down the driveway in an uncontrolled manner where it collided with ZG's property, including his fence, house, and deck, until it finally stopped on the lower deck. Therefore, GT is liable to compensate ZG for the damage caused.

If so, was the conduct within the scope of his employment with the company or was there a sufficiently close connection between the act and what he was authorised to do, so that the company is vicariously liable?

7. An employer is vicariously liable for the actions of its employee where there is a sufficiently close connection between the conduct and the scope of the employment.
8. ZG's position is that the company is liable as the vehicle was a company vehicle, GT the driver was an employee, and also that the company failed to ensure that he held a driver's license.
9. However, while there was no dispute that GT was employed by the company as a labourer, or that he was using a company vehicle, on balance I do not accept that the company is vicariously liable, and so I find that it is not liable for the damage. Instead, I accept that at the time of the collision GT was on "a frolic of his own" which was a significant departure from his authorised use of the vehicle. I say this for reasons which include:
 - a. I preferred the company's evidence that GT was only authorised to drive the vehicle directly to and from work;
 - b. There was no dispute that the incident occurred late at night at about 0100, and I accept the company's evidence that this was well outside his working hours of 0630-1700; and
 - c. Even if GT was driving outside the conditions of his license, on balance I do not accept that any failure by the company to check his license conditions directly caused the collision. Instead, as set out in paragraph 6, I find that the incident was caused by GT's late-night escapade while parked up.

What, if any, reasonable costs associated with the collision ought to be paid?

10. ZG presented one quote of \$11,600.00 + GST (\$13,340.00) to support his costs to repair the damage, and the company's assessment was that this seemed fair. So, in the absence of evidence to the contrary, I accept that these repair costs are reasonable.
11. As set out in paragraph 9, the company is not vicariously liable, so it has no legal liability to make any payment. Instead, I find that GT is liable for the total sum of \$13,340.00. Nevertheless, at the hearing, the company undertook voluntarily to reduce his liability by paying \$1000.00 of this sum directly to ZG.
12. So, as DD Limited undertook to pay ZG the sum of \$1000.00, I order it to do so.
13. I also order GT to pay ZG the remaining sum of \$12,340.00.

Referee: G.M. 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 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>.