IN THE DISPUTES TRIBUNAL **[2018] NZDT 1066**

BETWEEN	**FJ Ltd (FJ)** APPLICANT
AND	**TQ Ltd (TQ)** RESPONDENT
Date of Order:	20 April 2018
Referee:	Referee: **Perfect**

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that TQ Ltd is to pay the sum of $769.25 directly to FJ Ltd on or before 11 May 2018.

Facts

[1] In September 2017 FJ Ltd ('FJ') purchased a tyre for one of its light trucks (which was on hire at the time) from TQ Ltd ('TQ'). The tyre, which was also fitted to the truck by TQ, was a second-hand tyre and FJ paid $50.00 for it.

[2] About six weeks later, in November 2017, another of FJ's hirers was driving the truck to XX when the tyre failed. The truck was towed to XX where a new tyre was fitted. Further repairs, to the mudguard, were carried out when the truck returned to YY. FJ claims $769.25 being the towing cost, cost of the tyre repair and cost of the mudguard repair.

Issues

Was the tyre supplied by TQ reasonably fit for the purpose for which it was required?

What remedy, if any, is available to FJ?

Was the tyre supplied by TQ reasonably fit for the purpose for which it was required?

[3] The Sale of Goods provisions of the Contract and Commercial Law Act 2017 (at section 138) provide an implied condition in a contract for the sale of goods that the goods will be reasonably fit for purpose where the buyer, expressly or by implication, makes known to the seller the particular purpose for which it was required, and if the goods are of a description which it is the seller's business to supply.

[4] In this case, FJ let TQ know the size tyre they required and that it was for a light truck. TQ identified an apparently suitable tyre in their stock and fitted the tyre to the truck, so even if FJ had originally not told TQ the required tyre was for a truck (which they say they did), this was made known when the truck came in to their premises to have the tyre fitted.

[5] I find that the tyre supplied and fitted by TQ was not reasonably fit for purpose because it was a passenger car tyre and not a tyre that was rated to go on a truck. Mr AB for TQ has made much of the fact that it was only a cheap second-hand tyre but seemed reluctant to address the issue of suitability.

[6] FJ has supplied evidence in writing from Mr CD of another Tyre Centre that the tyre he inspected was delaminated and badly damaged, that it was 20 years old and that it was the wrong type of tyre to be fitted to a light truck. He spoke by telephone as a witness at the second hearing and stated that the crucial difference in tyres of the same size was the 'ply rating' and that the tyre he inspected had a 4-ply rating and was suitable only for passenger cars, whereas FJ's truck required a tyre with an 8-ply rating. He explained that this affected the load-bearing ability of the tyre.

[7] Mr AB questioned how it could be determined that the damaged tyre inspected was the same tyre he supplied in September. However, he acknowledged that it was a 155-13 size second-hand tyre that TQ supplied to FJ and this matches the description given in Mr CD's written statement (which notes the failed tyre was 20 years old). Further, the tyre failure occurred only six weeks after TQ supplied a tyre to FJ and FJ have provided evidence to show that the truck travelled about 2000km in that time – based on these facts, it is likely that the tyre recently supplied by TQ is the same tyre that failed.

What remedy, if any, is available to FJ?

[7] The Sale of Goods provisions at section 195(4) of the Contract and Commercial Law Act 2017 provide that the measure of damages for a breach of warranty (which can include a breach of condition, as established above) is the estimated loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

Conclusion

[8]I find that the costs claimed by FJ are all losses directly and naturally resulting from the unsuitability of the tyre supplied by TQ, because I accept Mr CD's witness evidence that the delamination evident on the damaged tyre is consistent with the 4 ply-rated being unsuitable for a light truck. Mr CD said that there was no evidence of any

penetration inside the tyre, ruling out other external factors on the road having caused or contributed to the failure. The failure of the tyre led directly to the need for repairs to the mudguard and the towing of the truck to XX. FJ has provided evidence of these costs, and the actual costs exceed the amount claimed, but the amount ordered is necessarily limited to the amount claimed of $769.25.