



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1568

APPLICANT **BE**

RESPONDENT **TU Ltd**

The Tribunal orders:

The claim is dismissed.

Reason

1. On 14 May 2021 BE's car was towed from a private parking area. He paid \$320.00 to recover the car. Today he is claiming the \$320.00 saying the signage was unclear, he was not aware he could not park his car where he did, the cost of towing was out of all proportion and there was no damage to the owners land entitling the car to be towed.
2. The issues to decide are:
 - I. Was TU Ltd allowed to tow the car?
 - II. If so, is the cost justified?

Was TU Ltd allowed to tow the car?

3. BE says the signage was unclear and he had not caused damage so the owner could not claim a right to tow the car pursuant to the tort remedy of distress damage feasant. The area BE parked in is adjacent a [Supermarket] parking area and can be accessed by the same entrance and exit. The [Supermarket] carparks are painted white, the area BE parked in is painted yellow. There are numerous signs in the yellow painted carparks variously saying, '*permit parking only*', '*all unpermitted vehicles parked within yellow lines will be towed*' and '*tow away zone*'. BE says there was nothing to say what a permitted vehicle was and the reason he parked in the yellow painted area was because he was not aware he could not park there.
4. TU Ltd says there was sufficient signage the yellow painted area was for permitted vehicles only and that unpermitted vehicles would be towed. It says the warnings a car could be towed was sufficient notice to BE that the private landowner could exercise their rights either in contract or tort, to remove his car. TU Ltd says the towing fee reflects its costs to provide the service to the landowner.
5. The burden is on BE to prove TU Ltd had no right to tow his car. Having carefully considered both positions I find BE has not discharged that burden. Mr BE parked at night but there were sufficient warning signs the yellow painted parking area was private property separate to the [Supermarket] parking area. The signage was numerous and consistent. I do not agree with BE's position this was

a tort claim. When parking his car BE was agreeing to the terms on the signs and those terms included that his car was subject to towing if he had no permit to park.

6. BE has referred to a decision of the Tribunal in support of his claim. I have considered the decision, but it is not binding, and it deals with the dispute in tort, not contract.
7. I am not satisfied BE has proven TU Ltd was not allowed to tow the car.

Was the cost justified?

8. BE says the cost was out of proportion for the time and distance taken to tow the car. TU Ltd says the costs reflects the cost to provide the service to the landowner. I am aware from previous claims that the cost to tow a car from point to point is significantly less than the cost to provide a service to the landowner which includes signage and monitoring the carparks.
9. I am not satisfied BE has discharged the burden to show the cost was not reasonable.
10. For these reasons the claim is dismissed.

Referee: P McKinstry
Date: 29 July 2021



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>.