



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2022] NZDT 235

APPLICANT LU

RESPONDENT CE Ltd

The Tribunal orders:

LU is to pay \$391.00 to CE Ltd on or before 30 December 2022; and

CE Ltd is to arrange for LU's [Vehicle] to be towed to her home address at a time arranged with her.

Reasons

1. LU's [Vehicle] broke down in early July 2022 so she arranged for CE Ltd to tow it to their premises for inspection the next day. She requested by text on 8 July that they let her know what's wrong and how much it would be to fix which they agreed to do. On 15 July LU asked if it could be fixed as she needed to know urgently if she needed to buy a new car in order to get to work.
2. CE Ltd says they had a phone conversation after the 15 July text in which they told LU it would cost around \$1000.00 to repair and she told them to go ahead — she denies she was ever given a price and says she did not give instruction to go ahead with a repair, in fact she says she was told it was unlikely to be repairable.
3. LU has texts (from 19 July) that show she asked for it simply to be towed back to her house (because by that time she had arranged finance to buy a new one) — this request seems to have been misunderstood because CE Ltd had almost finished the repairs and they thought she meant towed back to her house once repairs were complete. LU said if she had been told the [Vehicle] could be fixed for \$1000.00 she would have said go ahead but she had already committed to a \$1000 deposit for a new car and a 3-year finance contract by the time she knew her [Vehicle] was repairable.
4. When the dispute arose, CE Ltd removed the parts to reduce the overall bill to \$608.35, which is the amount of their counterclaim. LU claims \$325.00 for lost income as a result of having no transportation, \$286.00 for Uber costs and \$1000.00 spent on the deposit for her new car. She believes she should be paying CE Ltd only for the tow cost and initial diagnostic scan, and now for the tow to get it back to her house in its current unrepaired state.
5. The issues to be determined are:
 - Did LU agree to repairs at a cost of \$1000.00?
 - What is payable on the claim and counterclaim?

Did LU agree to repairs at a cost of \$1000.00?

6. I find that the onus was on CE Ltd, once they were requested to supply a price, to prove that they did so. While OB for CE Ltd says he explained the repair and breakdown of costs by phone, this is strongly disputed and the texts after the alleged phone conversation re price are too ambiguous to point to an agreement having been reached.
7. As CE Ltd cannot prove that they obtained LU's instruction to proceed with repairs at a cost of \$1000.00, I find that no such agreement was reached.

What is payable on the claim and counterclaim?

8. As a result of the above finding, LU is liable to pay only for the costs she initially incurred by asking CE Ltd to inspect her vehicle, the \$140+GST towing fee from her house and the \$60 scan fee – as the car needs to be towed back to her house now that parts have been removed, it is reasonable she pay a further \$140+GST for CE Ltd to return the car to her. That means LU is liable to pay a total of \$391.00 incl GST to CE Ltd and CE Ltd is to tow her car back to her house.
9. LU's lost income and alternative transport costs are not costs CE Ltd is liable for as she would have incurred these costs anyway if she had agreed to have the [Vehicle] repaired — they were a result of the breakdown, not CE Ltd's actions. The deposit for another car is also not payable by CE Ltd as it is not established that they gave faulty advice which caused her to buy another car — in any event it was for an asset which she now owns so is not a loss.

Referee Perfect
Date: 30 November 2022



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>.