



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2023] NZDT 101

**APPLICANT** ND Ltd

**RESPONDENT** TS Ltd

**SECOND  
RESPONDENT** BG Ltd

**THIRD OR  
SUBSEQUENT  
RESPONDENT** SQ

**The Tribunal orders:**

1. TS Ltd is to pay ND Ltd \$2,040.00 on or before 12 May 2023.
2. The claims against BG Ltd and SQ are dismissed.

**Reasons:**

1. ND Ltd hired a vehicle from TS Ltd. During the hire period ND Ltd was involved in a collision with a vehicle driven by SQ and owned by BG Ltd. BG Ltd and SQ have accepted liability for causing the collision. A claim for damage to the two vehicles has been settled between the insurer of BG Ltd ([Insurance company 1]) and TS Ltd ([Insurance company 2]).
2. ND Ltd paid TS Ltd a bond of \$2,040.00 after the collision to cover the excess payable by TS Ltd to its insurer. ND Ltd seeks an order that TS Ltd is liable to repay the bond to ND Ltd.
3. In the alternative ND Ltd seek an order that BG Ltd as SQ's employer are liable to pay them the \$2,040.00 bond
4. The issues to be resolved are:
  - a. Is TS Ltd entitled to retain the bond of \$2,040.00 paid by ND Ltd?
  - b. If not, is BG Ltd liable to pay ND Ltd the bond ND Ltd has paid TS Ltd?

5. There were three hearings of this claim, all held by teleconference. The first hearing was adjourned because TS Ltd did not attend and when I rang BG Ltd, they had been unaware that the hearing was going ahead.
6. All parties attended the second hearing. TS Ltd said they had not received the claim documents, other than a notice of the second hearing. They also said they needed extra time to file documents in response, which they said would demonstrate that they were entitled to retain the bond under the terms of the hire contract.
7. At the third hearing ND Ltd and BG Ltd attended the hearing. I rang the number provided for TS Ltd three times, but my calls went to voicemail. The hearing went ahead without TS Ltd.

**Is TS Ltd entitled to retain the bond of \$2,040.00 paid by ND Ltd?**

8. I find that TS Ltd is not entitled to retain the bond of \$2,040.00 paid by ND Ltd.
9. ND Ltd entered into a contract with TS Ltd in May 2021. Under the contract TS Ltd agreed to rent a van to ND Ltd in return for payment. The contract provided that the vehicle was damaged during the term of the hire, then ND Ltd would pay a bond of \$2,000.00.
10. Clause 8.11 of the contract provides:

“..If the hirer is not at fault and the third party admits liability then a refund will be processed upon receipt of payment for damages from the third party...”
11. While ND Ltd had the vehicle they were involved in a collision with a vehicle owned by BG Ltd and driven by SQ. After the collision SQ admitted that he was at fault. SQ had been driving in the course of his employment with BG Ltd at the time of the collision, and so BG Ltd made a claim with their insurer, [Insurance company 2], for the damage to both vehicles.
12. After the collision TS Ltd took payment of \$2,040.00 from ND Ltd for the bond payable under the contract. Soon after TS Ltd told ND Ltd in writing and orally that the bond would be returned to them, because BG Ltd and SQ had accepted responsibility for causing the collision.
13. After that however, TS Ltd told ND Ltd that they would not be refunding the bond because even though BG Ltd had accepted liability for the collision, TS Ltd had still had to pay a \$2,000.00 bond to their insurer.
14. At this point ND Ltd filed this claim seeking to recover the \$2,040.00 bond from either TS Ltd or BG Ltd.
15. At the second hearing TS Ltd said that they had organised the repair of their van, and that the cost of repair, which they paid, was \$2,607.65. They said that they had received a payment of \$607.65 from their insurer because the first \$2,000.00 had been deducted as their excess. They said the insurer ([Insurance company 1]) had refused to waive the excess, even though BG Ltd had accepted liability for causing the collision. They said this was because the claim had been settled between insurers on a “knock for knock” basis. TS Ltd said this meant that they were out of pocket by \$2,000.00 as a result of the collision and so they were not liable to pay ND Ltd back the bond.
16. The contract between ND Ltd and TS Ltd provides that the bond will be refunded if two things happen. These are that the third party accepts liability and TS Ltd is paid damages by the third party. I am satisfied that the purpose of clause 8.11 in the contract is to ensure that TS Ltd is not out of pocket by any amount if a collision happens during the term of the rental contract.
17. In this case TS Ltd said that even though BG Ltd had accepted liability, the second requirement was not met because TS Ltd still had to pay their excess of \$2,000.00.

18. The hearing was adjourned to enable TS Ltd to provide proof that they had paid for the repairs themselves and that they had not been refunded the full amount of the repair cost, because their insurer had deducted the \$2,000.00 excess.
19. TS Ltd have not filed any further documents since the last hearing and did not attend the hearing today.
20. I consider that it is most likely that TS Ltd have not paid an excess to their insurer in this case. This is because:
  - a. BG Ltd has provided information which suggests that the repair of TS Ltd's van was managed by BG Ltd's insurer, and cost \$2,381.00. This is not what TS Ltd said happened, and TS Ltd has not provided any evidence of what they said at the second hearing.
  - b. I consider that it is usually the case that where a third party accepts liability for a collision, an insurer will not collect an excess from their insured, even where a claim is settled on a knock for knock basis. This is on the basis of my knowledge of the practice of insurance companies from many hearings in the Tribunal. TS Ltd was asked at the second hearing to provide evidence that this has not happened in this case, and have failed to do so.
21. For these reasons I consider that it is most likely that TS Ltd has not paid an excess to their insurer in this case, and that they are therefore not out of pocket as a result of the collision. For this reason, I find that TS Ltd is not entitled to retain the \$2,040.00 bond paid by ND Ltd in this case, and must pay that back to ND Ltd.
22. Given my finding in relation to the first issue in this case there is no need to consider the second issue and the claim against BG Ltd and SQ is dismissed.

**Referee: L Trevelyan**  
**Date: 3 April 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>.