



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

District Court

[2022] NZDT 85

**APPLICANT** XQ

**RESPONDENT** T Ltd

**The Tribunal orders:**

T Ltd is to pay XQ \$107.61 on or before 25 February 2022.

**Reasons**

1. On about 4 October 2021, XQ bought an automotive [item] from T Ltd through Trademe. He asked a mechanic to install the [item]. When installed, the mechanic found the vehicle did not run correctly. T Ltd was contacted and rather than retrieve the item it supplied to check whether it was faulty, it supplied a refund, though not immediately. XQ considered that he should be compensated for more than just the cost of the part because in his view there was clearly a fault with it. He therefore filed a claim in the Disputes Tribunal for the estimated cost of the mechanic installing and removing the part, and for some of his own time in preparing for the hearing.
2. This is a claim for consequential losses and costs incurred in the amount of \$187.61 as a result of the supply of an alleged faulty item.
3. The issues were as follows:
  - a. Does the Consumer Guarantees Act 1993 (CGA) apply?
  - b. If yes, has there been a breach of the guarantee of acceptable quality in the CGA?
  - c. If so, what remedies are available, including consequential losses?
  - d. If the answer to question 1 is no, then has the contract been breached and if so what damages are payable?
  - e. Can XQ claim his costs?

**Does the Consumer Guarantees Act 1993 (CGA) apply?**

4. Under the CGA, the Act applies to the sale and purchase of goods which are ordinarily acquired for personal, domestic or household use or consumption. The definition of consumer then is not defined by the person actually buying the goods, but by the goods that they are buying.
5. When I asked the parties for their description of what the [item] was that had been purchased, both parties agreed that it was clearly the kind of goods to which the Act applies. It was [an item] that might be required in any vehicle, and in that sense would be no less a “consumer” item than a replacement headlight bulb. As a result, the CGA applies to this case. It is not therefore necessary to discuss question 4 above.

**If yes, has there been a breach of the guarantee of acceptable quality in the CGA?**

6. A breach of the guarantee of acceptable quality occurs, according to the CGA, if the goods are not fit for the purposes for which such goods are normally supplied, and are not free from minor defects, amongst other things, as a reasonable consumer would expect.
7. The Tribunal is often in a position where there can be no absolute certainty whether a breach of a guarantee has occurred. All findings made on any topic by the Tribunal are made on the basis that it is more likely than not to be true, or what is often referred to as “the balance of probabilities”.
8. In this case T Ltd denied liability on the grounds that there was probably nothing wrong with the [item], that it may have been installed incorrectly, and that it had given a refund as the cheapest option to resolve the matter rather than as an admission of anything.
9. However I am unable to agree that that absolves them of liability in this case. T Ltd was offered the opportunity to take the goods back and to determine whether there was anything wrong with them. They refused that opportunity; rather, they provided a refund. I am unable to ignore the fact that they had the opportunity to receive the goods back but refused to take it. This is a failure or refusal to repair the goods under the CGA, which usually then allows the consumer to claim a refund. T Ltd provided a refund but as T Ltd’s staff said at the hearing, only when it was apparent this matter would be proceeding to the Disputes Tribunal.
10. If T Ltd had taken the goods back and denied liability it would have been XQ’s responsibility to prove that the goods were at fault. However in refunding the cost of the goods T Ltd were in effect admitting liability, and so I found on the balance of probabilities that it is more likely than not that there was a fault. This is despite the T Ltd’s assertions at the hearing that they had only made the refund as the cheapest way of resolving it, and not as an admission of liability. This could not be backed up by any evidence that there was no fault in the product.
11. Therefore because of the way the circumstances unfolded I am unable to agree with T Ltd that there was no evidence of fault in the product, because they gave a refund.
12. I also note that in giving the refund, no agreement from XQ was requested, that I am aware of from the evidence and the discussion before me today, that this was in full and final settlement of the dispute. XQ was therefore free to accept the refund but continue to press the rest of his claim.

**If so, what remedies are available, including consequential losses?**

13. When goods breach a guarantee in the CGA and a refund is required, consequential losses are able to be claimed under the CGA. These would include losses of a type which are foreseeable or direct.
14. XQ claims that he had to pay the mechanic for two installations and a removal of [the item]. I find that these are consequential losses claimable under the CGA in this case.
15. XQ was billed a total of \$215.22 plus GST for this work. He acknowledged that one of the [item] installations was successful and could not be claimed from T Ltd. He said he thought it was sufficient for him to claim about half the cost and said he claimed \$107.61. Bearing in mind that this appears to be less than half the cost including GST and considering that, arguably, two thirds of the work charged for was work claimable as consequential losses I consider that XQ’s claim for \$107.61 is reasonable in all the circumstances.

**Can XQ claim his costs?**

16. Under section 43 of the Disputes Tribunal Act 1988, costs (meaning costs of preparing for the hearing) cannot be awarded in the Tribunal except in the rarest of circumstances, as set out in the section. I do not consider any of these exceptions apply in this case, and therefore I am unable to award XQ costs.

**Referee: M Wilson**

**Date: 8 February 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>.