

**IN THE DISTRICT COURT
AT AUCKLAND**

**CIV-2017-004-001473
[2017] NZDC 21832**

BETWEEN AUCKLAND BUDGET CAMPERVAN
LIMITED
Appellant

AND SONIA STECKLER
Respondent

Hearing: 20 September 2017

Appearances: Mr Aidan Edwards - Director and Mr Surmunsky for the
Appellant
Ms S Steckler - for the Respondent

Judgment: 21 September 2017

RESERVED JUDGMENT OF JUDGE D J CARRUTHERS

[1] This is an appeal from a decision made by The Motor Vehicle Disputes Tribunal pursuant to the Motor Vehicle Sales Act 2003. The principal advocate for the appellant was Mr Aidan Edwards, a director and he was supported by his colleague, who is also a director.

[2] Ms Steckler appeared by AVL from Wellington.

[3] The decision of the Tribunal was given on 6 June 2017 following a hearing at Auckland on 4 May 2017. The decision of the Tribunal was that Ms Steckler's application to reject the motor vehicle involved in the matter was upheld and the trader, as defendant, was directed within 10 working days of the date of the decision to pay Ms Steckler \$3,340, which is a refund of the value of the vehicle paid by her. On receipt of that payment Ms Steckler was directed to make the vehicle available to be uplifted by the trader.

[4] In accordance with s 16 of the First Schedule of the Motor Vehicle Sales Act 2003 which sets out the procedure of Disputes Tribunals, this is a case when appeal may be brought on the sole ground that the proceedings were conducted by the Disputes Tribunal in a manner that was unfair to the appellant and prejudicially affected the result of the proceedings.

[5] There are essentially two grounds for the appeal. Mr Edwards said that the Tribunal had asked for some photographs showing the cooling system and Ms Steckler had promised to send those. He said the Tribunal said that when received they would be sent on to Mr Edwards and that the decision would be held back until he had received those.

[6] The second part of the appeal relates more to what might be described as the merits and in particular, both directors' very strong view that Ms Steckler's driving of the car when the cooling system was not operating and water was not reticulating, would have caused significant damage and that she should have stopped immediately and not drive any more to mitigate that damage. There was another issue relating to the gear box, which is, in my view, more peripheral.

[7] But Mr Edwards made it clear to me that the Tribunal Adjudicator was respectful and courteous to him and that it was a fair hearing, although he strongly disputed the outcome and the decision which he thought was wrong. He thought that although the proceedings were conducted in a fair way, it was clear from the outcome that the Adjudicator had not listened to him properly and the decision was not fair.

[8] Ms Steckler says that she had made available the photographs of the cooling system earlier to the Tribunal, but for some reason they appeared not to be available at the hearing and she promised she would send those later. She said she carried out that promise. She had emailed the photographs to the Tribunal, which is what she had promised to do and could not understand why they had not been sent on, if indeed that was the case.

[9] There is no mention of the photographs in the decision of the Adjudicator.

[10] It is this last point which has given me slight pause. I will return to the point.

[11] As for the fairness of the decision generally, which is Mr Edwards' and his colleague's principle concern, I must say that that is not a matter which I can determine in accordance with the law relating to this appeal. My jurisdiction is limited to whether the Disputes Tribunal conducted these proceedings in a manner which was unfair and prejudicially affected the result. There is absolutely no evidence that that was the case. Even Mr Edwards agrees that the proceedings were conducted with respect to him and clearly he was listened to. The Adjudicator came to a different decision from the one which Mr Edwards thinks is fair, but that is not a ground for appeal. It was open to the Adjudicator on the evidence put before.

[12] As for the photographs, I have come to the firm view that this is now irrelevant.

[13] The clear evidence before the Adjudicator was that the pipes were heavily corroded and it was on that basis and is acceptance of that fact, that the Adjudicator made the decisions now appealed from. The photographs would have been confirmatory only of that, but clearly the Adjudicator accepted the evidence of Ms Steckler, both as to that point supported as it was by the evidence of professionals that she had involved and the Adjudicator also clearly accepted Ms Steckler's evidence that she had been careful to ensure that all water was present so that she could safely drive the short distances to ensure that the vehicle was kept safely and inspected properly.

[14] I have come to the view that the photographs were only intended to give Mr Edwards and his colleagues some satisfaction in seeing that confirmed in photographic terms, but clearly that evidence was accepted in any event by the Adjudicator.

[15] Because that is the case I do not think that that was a matter in itself which establishes that the proceedings were conducted unfairly and I do not find that point persuasive on appeal.

[16] Because it has not been established that the proceedings were conducted unfairly to the appellant which prejudicially affected the result, then the only

conclusion in law is that the decision of the Disputes Tribunal was one which was available to him. The grounds for the appeal do not exist.

[17] The appeal is dismissed. The original orders are confirmed.

[18] Because all parties were self-represented there is no issue of costs.

D J Carruthers
District Court Judge