



# Civil Resolution Tribunal

Date Issued: April 18, 2019

File: SC-2018-004991

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Krief v. Volkswagen Group Canada Inc*, 2019 BCCRT 478

**B E T W E E N :**

Jean Michel Krief

**APPLICANT**

**A N D :**

Volkswagen Group Canada Inc

**RESPONDENT**

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## **REASONS FOR DECISION**

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Tribunal Member:

Sarah Orr

### **INTRODUCTION**

1. The applicant, Jean Michel Krief, owns a 2010 Volkswagen Tiguan (car). On May 26, 2018 his car broke down while he was in Los Angeles and he paid a non-Volkswagen repair shop USD \$1,880.95 to repair the car. He then claimed reimbursement for this amount from the respondent, Volkswagen Group Canada Inc, as the parts repaired were under warranty. The respondent denied the

applicant's claim for reimbursement, so the applicant now seeks reimbursement of \$2,500 from the respondent in this dispute. He also asks for punitive damages and double costs, though he has not specified an amount for these claims.

2. The respondent says it is not required to reimburse the applicant because he did not follow the procedure set out in the warranty and owner's manual. The respondent says there is no basis on which the applicant is entitled to punitive damages or double costs.
3. The applicant is self-represented and the respondent is represented by an employee or principal.

## **JURISDICTION AND PROCEDURE**

4. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act*. The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
5. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
6. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

7. Under tribunal rule 126, in resolving this dispute the tribunal may order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

8. The issues in this dispute are:
  - a. Is the respondent required to reimburse the applicant \$2,500?
  - b. Is the respondent required to pay the applicant punitive damages or double costs?

## **EVIDENCE AND ANALYSIS**

9. In a civil claim like this one, the applicant must prove their claims on a balance of probabilities. This means I must find it is more likely than not that the applicant's position is correct.
10. I have only addressed the parties' evidence and submissions to the extent necessary to explain and give context to my decision. For the following reasons, I dismiss the applicant's claims.
11. On May 26, 2018 the applicant's car broke down while he was in Los Angeles, California. The applicant had the car towed to Hi Quality Motors (Hi Quality), a nearby repair shop specializing in European cars. On May 28, 2018 Hi Quality determined the car's fuel injectors had failed, and that the intake manifold may have also failed. Hi Quality advised the applicant to contact the respondent.
12. It is undisputed that at the time the car broke down it was under a valid Limited Warranty Extension for both the fuel injectors and the intake manifold (warranty extension). The warranty extension was issued under the car's Emissions Control Systems Warranty. The respondent notified the applicant of the warranty extension by letter in August 2013.

13. On May 30 or 31, 2018 the applicant phoned the respondent and one of its representatives confirmed that the fuel injectors and intake manifold were under the warranty extension. The audio recording and transcript of that phone call are in evidence. Three times during that phone call the respondent's representative clearly advised or recommended that the applicant use a Volkswagen (VW) dealer for the repairs. The representative said that just because there was a problem with the car's fuel injectors did not necessarily mean the repair would be covered under the warranty extension, because it depended on exactly which parts were repaired. The respondent told the applicant that since he was in the United States at the time, he would have to pay for the repairs himself and then seek reimbursement from the respondent once he returned to Canada.
14. During the call the applicant asked for confirmation that the repair would be covered under the warranty extension because he said it would be a lot more expensive for a VW dealer to complete the repairs and he did not want to take on that expense without guaranteed reimbursement. The representative said they were unable to guarantee that the applicant would be reimbursed without knowing exactly which parts would be repaired. The applicant asked what would happen if he had the repairs completed at Hi Quality and the representative said they would still assess his claim for possible reimbursement but that "results may vary," and "we may have difficulty with that." The applicant said Hi Quality would use all original VW parts for the repair, and the representative said the respondent would still review his claim but that there was no guarantee he would be reimbursed.
15. In a June 1, 2018 email from the respondent's customer relations office, the respondent told the applicant, "Volkswagen Canada recommends performing all repairs at an authorized Volkswagen dealership. Reimbursement for a repair performed under a warranty extension at an independent dealership is not guaranteed." The respondent says this letter reiterates the instructions its representative gave the applicant over the phone, and I agree.

16. On June 1, 2018 the applicant sent the respondent his handwritten invoice from Hi Quality for US\$1,880.95. The respondent rejected the invoice because it did not show the VW part number and it was handwritten. On June 13, 2018 the applicant sent the respondent a typed version of the Hi Quality invoice with the VW part numbers.
17. On June 22, 2018 the respondent informed the applicant by phone of its final decision to reject his claim because he did not use a VW dealer for the repair as required by the VW owner's manual. The owner requested that the respondent send him its decision in writing which it did by email on June 28, 2018. That email confirms that the applicant's repair was not covered under the warranty extension because it was not completed at an authorized VW dealership.
18. On July 16, 2018 the respondent notified the applicant that his claim was also rejected because the VW parts listed on the Hi Quality invoice were not manufactured for a 2010 Tiguan. The applicant submitted a September 20, 2018 email from a representative of a North Vancouver VW dealership which states that the VW part numbers on the Hi Quality invoice are the correct VW parts for the applicant's car.

***Is the respondent required to reimburse the applicant \$2,500?***

19. The applicant wants the respondent to reimburse them \$2,500 which I take to be the equivalent in Canadian dollars to its USD \$1,880.95 Hi Quality invoice.
20. The respondent says its letter of August 2013 informing customers of the warranty extension (notice letter) notifies customers that the warranty extension is subject to limitations, and states that the warranty and maintenance information that came with their vehicle contains information about the limits of the warranty extension. That information is contained in the Owner's Manual and Warranty booklet (manual). The respondent says the relevant excerpt from the manual under the Federal Emissions Control System Defect Warranty states, "The obligation of Volkswagen under this warranty is limited, however, to the following: If within this

period a defect in material or workmanship causes the vehicle to fail to conform with applicable emissions regulations and the vehicle is brought to the workshop of any authorized Volkswagen dealer in Canada, the dealer will make repairs as may be required by these regulations free of charge.” Based on the evidence before me I find this is the relevant portion of the manual pertaining to the limit on the warranty extension.

21. The respondent says the notice letter also makes it clear that any repairs under the warranty extension must be completed at a VW dealership. They say the relevant excerpt from the notice letter states, “...your dealer will diagnose and replace a faulty intake manifold and/or a faulty fuel injector, if necessary, at no cost to you...” However, I find this paragraph does not specifically state that the dealer conducting the repairs must be a VW dealer.
22. The applicant submitted a form attached to the last page of the notice letter entitled Warranty Extension Reimbursement Request Form. That form states at the very top, “If you have incurred out-of-pocket expenses directly related to a repair that would have been covered under this warranty extension and would like to request reimbursement...” The applicant notes that this form also states, “Reimbursement may be limited to the amount the repair would cost if it had been completed by an authorized Volkswagen dealer.” The applicant says this sentence means that repairs completed at a non-VW dealer may be reimbursed.
23. The respondent says this form is not part of the terms and conditions of the warranty extension, nor does it alter or modify those terms and conditions in any way. The respondent also says the form refers to repairs a customer may have completed before receiving the notice letter in August 2013. The respondent says the wording of the warranty extension does not provide an option for repairs to be completed at a non-VW dealership after the warranty was issued in August 2013 because by that time the terms of the warranty extension were in force, including the requirement for the repairs to be completed at an authorized VW dealer. On the plain wording of the form, I agree with the respondent on this point. The form was

sent to customers in August 2013 and I find its wording indicates it was meant for customers who had already completed repairs on the affected parts before receiving the notice letter.

24. The applicant says that during his phone call with the respondent in May 2018 the respondent's representative never told him that he was required to use a VW dealer for the repairs to be reimbursed under the warranty, and I agree. The applicant says he took the representative's explanation about the reason they recommended using VW dealers for repairs as an approval to proceed with the non-VW dealer as long as that dealer used original parts for the repair. I find this is not what the representative said. While perhaps the respondent could have been more forceful in their language, I find they did not misrepresent the terms of the applicant's warranty extension or misled the applicant. I find the respondent made it clear that they could not guarantee the applicant would be reimbursed for the repairs at all, particularly if he used a non-VW dealer, even if the non-VW dealer used original VW parts for the repairs. The respondent says that nothing its representative said to the applicant during that phone call modified the requirements of the warranty extension coverage outlined in the manual and the notice letter. I agree.
25. The respondent says there is no exception, modification or waiver of the coverage limitation set out in the notice letter and the manual, and that the manual explicitly states this. The relevant excerpt from the manual states, "Neither Volkswagen Group Canada Inc. nor the manufacturer assumes, or authorizes any person to assume, any other obligation or liability on its behalf."
26. The applicant refers to an excerpt in the manual for emergency repairs, which states, "Emergency repairs performed by a non-Volkswagen facility will be reimbursed if the repair work was needed and correctly performed, and it was impossible or unreasonable under the circumstances to tow or drive your Volkswagen to the nearest authorized Volkswagen dealer." The respondent says this section of the manual is in relation to the New Vehicle Limited Warranty, not the warranty extension. The applicant also refers to a section of the manual for

“maintenance and repairs performed by independent service,” but the respondent says this section is related to the Federal Emissions Performance Warranty, not the warranty extension. On a plain reading of the manual, I find that neither of these excerpts from the manual relate to the terms of the warranty extension.

27. The respondent says that even if those excerpts in the manual did relate to the warranty extension, the manual clearly states that a customer will be reimbursed for repairs completed by a non-VW dealer when it is impossible or unreasonable to tow or drive a car to the nearest authorized VW dealer. The respondent submitted evidence showing that Hi Quality Motors is 0.2 miles from Volkswagen of Van Nuys, a VW dealership, and says it was neither impossible nor unreasonable for the applicant to tow the car to the nearest VW dealer while in Los Angeles.
28. The applicant says when Hi Quality diagnosed the problems with the car the engine was in pieces, and that it would have been unreasonable to reassemble the engine and have the car towed to the nearby VW dealer. However, the respondent notes that during the applicant’s phone call with its representative he said the engine was “not too complicated” to put back together and that the car “could be towed again.”
29. For all of these reasons, I find the respondent was within its rights to deny the applicant’s reimbursement claim on the basis that he did not have the repairs completed at a VW dealer.
30. I note that in its July 16, 2018 correspondence with the applicant the respondent provided an additional reason for denying the applicant’s claim, which was that Hi Quality did not use the proper VW parts for the repairs. The applicant submitted a statement from a VW dealer which says Hi Quality did use the proper VW parts. However, I find it is unnecessary for me to determine whether the proper VW parts were used since I have already found the respondent was entitled to deny the applicant’s claim on the basis that he used a non-VW dealer.
31. For all of these reasons, I find the applicant has not established that he is entitled to a refund from the respondent and I dismiss this claim.



***Is the respondent required to pay the applicant punitive damages or double costs?***

32. Punitive damages are an exceptional remedy awarded to deter malicious, reprehensible or high-handed conduct. I have already found the respondent was entitled to deny the applicant's claim for reimbursement under the warranty extension. I find there is no evidence indicating the respondent's actions or communications with the applicant were malicious, reprehensible or high-handed, and therefore I find there is no legal basis to award the applicant punitive damages. I dismiss this claim.

33. The applicant has also asked for double costs, although it is unclear exactly what this means. I presume he refers to doubling the amount of his dispute-related expenses and tribunal fees. Neither section 49 of the Act nor the tribunal rules specifically refer to the awarding of double costs, and even if they did, I find there is no basis on which to make such an order. Since the applicant was unsuccessful he is not entitled to reimbursement of his tribunal fees or dispute-related expenses, and I dismiss this claim. The respondent has not incurred any tribunal fees or claimed any dispute-related expenses.

**ORDER**

34. I dismiss the applicant's claims and this dispute.

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Sarah Orr, Tribunal Member