



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

District Court: Tauranga

Case number: CIV-2018-070-000605

**APPLICANT**      **Todd Stephen Adlam**  
33 Sorrento Key  
Papamoa 3118

**RESPONDENT**    **Kartsport New Zealand Inc.**  
PO Box 28219  
Remuera  
Auckland 1541

**The Tribunal hereby orders:**

1. Todd Stephen Adlam is not liable to pay Kartsport New Zealand Inc. debt collection costs of \$819.00.
2. Todd Stephen Adlam is to pay Kartsport New Zealand Inc. \$2,000.00 by 18 September 2018.

**Reasons:**

1. Mr Adlam has applied to have a debt of \$2,819.00, claimed by Kartsport, removed from Baycorp's debt records. The Tribunal does not have jurisdiction to make an order requiring Baycorp to remove a debt from its records, but it can make a declaration about whether a debt is owed.
2. Where a party applies for a declaration of non-liability, and the Tribunal finds that the applicant is liable in whole or part for the debt, it can make an order to that effect (s 11(2)(b) Disputes Tribunals Act 1988).
3. The debt relates to a fine imposed on the applicant's son on 10 April 2016. Because their son was a minor at the time, Mr Adlam was required to sign a declaration accepting Kartsport's rules. Mr Adlam accepts that, as guardian, he is liable for any fines imposed on his son.
4. Mr Adlam disputes the level of the fine imposed. However, there is an appeal process to deal with that issue, and the Tribunal is not the appropriate body to deal with it. The Tribunal can however consider the contractual aspects of the dispute.

*Is the debt collection fee payable?*

5. At the relevant time, the rules provided:

**C3.6 LIABILITY TO PAY FINES**

The competitor shall be responsible for the payment of any fine imposed on them, their assistants, crew, etc.

**C3.7 TIME LIMIT FOR PAYING FINES**

Fines shall be paid within 48 hours of their notification unless otherwise specified by an Inquiry Panel or an Appeal Board.

Any delay in making payment may entail Licence suspension during the period the fine remains unpaid.

6. Mr Adlam says Kartsport was not entitled to send the debt to Baycorp for collection, as the rule allowing for that to happen was not introduced until December 2016, after the fine was imposed. On 1 December, rule C3.7 was amended to include:

Outstanding fines may be referred to a debt collection agency.

7. The rule change did not materially alter the situation. Kartsport was already entitled to send the debt to a collection agency, just like any other creditor. The relevant issue is whether Mr Adlam is liable for the collection costs claimed by Baycorp. There is nothing in the previous rules (or the amended rules) that requires the debtor to pay for any debt collection costs. In the absence of a contractual requirement to that effect, I find that Mr Adlam is not liable for the collection costs of \$819.00.

*Is Mr Adlam liable to pay the fine?*

8. Mr Adlam argues that the only consequence of non-payment is that the competitor's licence is suspended for the period of non-payment, in accordance with the second sentence in C3.7.
9. That interpretation of C3.7 is not correct. The combined effect of clauses C3.6 and C3.7 is that any fine is to be paid within 48 hours. Clearly, the debt must be paid, and it is open to Kartsport to take any steps available to ensure that it is paid. There would be no point in imposing a fine that is not enforceable. The purpose of the second sentence in C3.7 is to add an extra consequence for non-payment, not to provide that it is the only consequence.
10. Therefore, I find that Mr Adlam as guardian is liable to pay the \$2,000.00 fine imposed on his son. I have made an order to that effect under s 11(2)(b) DTA.



**Referee: J P Smith**

**Date: 4 September 2018**







## 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 or a mistake was made.

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 28 days of the decision having been made. If you are outside of time, 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.

### Ground for Appeal

There is only one ground for appealing a decision of the Tribunal. This is that 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.

A Notice of Appeal may be obtained from the Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 28 days of the decision having been made. There is a \$200 filing fee for an appeal. You can only appeal outside of 28 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, and 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>.