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Decision No. WN 26/89

Reference No. MVD 53/89

IN THE MATTER of the Motor Vehicle
Dealers Act 1975

AND

IN THE MATTER of a disputeBETWEEN [REDACTED]

Purchaser

AND [REDACTED]

Dealer

BEFORE THE WELLINGTON MOTOR VEHICLE DISPUTES TRIBUNAL

R D Burnard - Chairman
 W A G Washbourn
 D J Boyle

HEARING at NAPIER on the 28 day of June 1989APPEARANCES

[REDACTED] in person
 [REDACTED] for Dealer

DECISION

[REDACTED] purchased an Austin Princess vehicle on 1 June 1988 for a price of \$6,995.00. The vehicle had a category C warranty under the provisions of the Motor Vehicle Dealers Act 1975.

At the time appointed for the commencement of the hearing at 9.15 am on Wednesday 28 June 1989 in Napier [REDACTED] were present but there is no appearance from the dealer. After waiting quarter of an hour and telephoning the dealer's premises the Tribunal commenced hearing the matter and dealt first with an application by the purchasers to bring a complaint notwithstanding that the time limits set out in s.98 of the Act had not been complied with. On this point [REDACTED] told us that he was not aware of the time

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limitation. There appeared to be no prejudice to the dealer from the late notification and the Tribunal made a preliminary determination that the purchasers were justified in not making a complaint to the Institute within the relevant period and that having regard to the interests of the other party to the dispute it was just and reasonable that it should be considered.

██████████ explained that at the time of the purchase an AA report had been obtained. This report noted that smoke was evident from the engine. ██████████ said that the report was taken to the dealer and that the dealer had the vehicle for a week and said that this problem had been fixed and ticked the entry relating to the engine smoke under the heading "Essential Repairs" in the AA report. The purchasers went ahead with the transaction. ██████████ said that they didn't notice much smoke after that but his wife started mentioning the smoke to him and this led him to go to ██████████ the Austin franchise holders in Hawkes Bay in October. He also told us he approached the dealer in mid-November 1988 although this was subsequently denied by ██████████ of ██████████ when he arrived at the hearing at 9.55 am and gave evidence himself on the point.

██████████ said that the smoke was excessive in the vehicle and after getting advice from ██████████ they went to their own garage where a preliminary check was carried out and the mechanic said that the rings needed doing. Eventually the work was carried out at a total cost of \$2,119.00 for which the purchasers sought recovery.

██████████ gave evidence of noticing the smoke when her husband backed the car out of the carport at home. She said that there was no smoke noticeable when they were travelling on the highway but bluey white smoke was evident when the car was stationary with the engine running.

As noted earlier, ██████████ arrived during the course of the hearing and had the opportunity of questioning both ██████████ and inspecting the documentation they had produced. In giving evidence he said that this car had been well maintained by a previous owner and he had carried out an appraisal which satisfied him that the engine was not smoking more than such engines normally do at the time he purchased the vehicle. He is a qualified A Grade mechanic having been 25 years in the business. ██████████ said that when ██████████ complained about the smoking from the engine on 16 January 1989 the odometer read 99,480 kilometres (approximately 8,000 kilometres from the time of the purchase) and ██████████ arranged for ██████████ to do an oil consumption test which established that in the following 1,032 kilometres exactly one litre of oil was used. ██████████ said that this was not excessive usage for that particular engine. Nevertheless to keep good customer relations with the purchasers he offered \$300 towards the repair work in replacing the rings and bearings and offered to buy or supply parts at cost. He also mentioned that when ██████████ called on him in January the

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latter had stated that the vehicle only started using oil about a month previously. This remark was put to [REDACTED] when he had the opportunity of replying to [REDACTED] evidence and he said that he could not recall having said that.


As a category C warranty the purchasers were entitled to have any defects which appeared in the vehicle during the warranty period of one month, repaired or made good by the dealer. We are satisfied that no "defect" as that word is defined in s.2 of the Act did appear. The AA have recorded that the engine smoke was evident but we accept [REDACTED] evidence that this could be expected on an Austin Princess vehicle of this vintage as could oil consumption of the proportions given in evidence in this complaint. We also accept [REDACTED] evidence that the vehicle could have travelled for a further 20 or 30,000 kilometres without major engine problems. [REDACTED] wanted to have the vehicle in good working order and chose to have the major work done but in our opinion this was not essential at the time. The most important consideration however is that during the one month warranty period in our opinion no "defect" appeared in the vehicle and for these reasons the complaint must be dismissed.

In addition we should record as [REDACTED] pointed out that the purchasers have not complied with the requirement to give written notice to the dealer before having any repair work carried out so that even if we had found that a defect existed we would have been unable by reason of s.102(1)(b) of the Act to make an order in the purchasers favour.

[REDACTED] mentioned during the course of the hearing that he had offered \$300.00 towards the purchasers costs. He said that he is a dealer who goes to considerable lengths to satisfy his customers and we suggest that the purchasers approach him for this contribution to what has been an expensive repair for them to have carried out. We should make it clear, however, that we are not ordering [REDACTED] or his company to make this contribution and whether he chooses to do so is his decision alone.

Our formal decision is to dismiss the complaint.

DATED at WELLINGTON this 8TH day of AUGUST 1989


R D Burnard


D J Boyle


W A G Washbourn