



Reasons for Decision

Consumer: Lamesha Davis

Case Number: 13302094

Business: American Auto Shield

Date: April 25, 2019

Background. On April 25, 2019¹, the Consumer, Lamesha Davis, and the Business, American Auto Shield (AAS), represented by Rocco Dodson, participated in a hearing conducted under the BBB's Pre-Dispute Rules and Procedures.

In her Demand Letters of February 24 and March 22, and her April 22 statement of the nature of the dispute and her request for relief, Ms. Davis described the dispute as follows: On January 3, AAS failed to honor her month-to-month vehicle service contract (VSC) by denying her claim to have the engine repaired or replaced in her 2003 Land Rover. In so denying her claim, AAS failed to reimburse her expenses for a rental car. In addition, AAS failed to provide a certified inspector, thereby, in Ms. Davis' view, committing fraud, breach of contract, and costing Ms. Davis additional damages, including the debt she assumed to buy another car, and causing her the loss of a warranty on the Land Rover's transmission. In relief, Ms. Davis seeks \$41,772.10, a sum that includes the repair of the Land Rover's engine, lost wages, a voided warranty on the Land Rover's transmission, emotional distress, rental reimbursement, towing fees, the replacement vehicle purchased on January 14, before AAS decided to grant the claim on January 21, 2019, her deductible, diagnostic fees, tear down cost of the Land Rover engine, labor to replace that engine, gas compensation when she could not drive the Land Rover, and oil for the replacement engine. The representative for AAS, Mr. Dodson asserted in the Arbitration Counterclaim and on the record at the hearing, that AAS fulfilled the terms of the VSC when it granted Ms. Davis' claim on January 21, and offered to reimburse Ms. Davis for the repairs and other matters within the VSC's coverage in the amount of \$6,911.60.

The following persons testified after affirming the Oath of Participant: Consumer Davis; Business Representative Dodson; AAS's witness on the claim, Doug Baymiller; and AAS's technical expert, Matthew Brimhall. Ms. Davis offered a set of documents including four appendices and 74 pages of various documents (Ex. C-1), and a five-page document dated December 31, 2018 relating to the inspection Jeff Frailey performed on her Land Rover (Ex. C-2). The Business provided a set of documents consisting of 79 pages (Ex. B-1).

Discussion of the Evidence. Ms. Davis purchased a VSC effective on February 1, 2018 for her 2003 Land Rover. On November 23, 2018, as part of her maintenance of the Land Rover, Ms. Davis had Ramos Auto Sales remove and replace springs in her Land Rover, and while her vehicle was there, she requested and received an oil change. This was an unusual oil change. Ordinarily, she used synthetic oil. She would buy it, and her stepfather would change the oil for her every five thousand miles. Also, in the fall of 2018, there was a problem with the Land Rover's cooling system, so Ms. Davis had it repaired by Land Rover Houston North. On December 12, 2018, the Land Rover did not start and the check-engine light came on. Ms. Davis contacted AAS, and she was told to take the vehicle to a certified Land Rover dealership. She had it towed to Land Rover Houston North. There, the mechanics determined that the timing belt was the reason the engine failed, but given the age of the vehicle, parts were no longer being manufactured. AAS told Ms. Davis that the engine had to be taken apart to determine the cause of failure, and AAS arranged to have the vehicle towed to British Unlimited. AAS requested all of Ms. Davis' service records. She provided these, but as noted above, not all of her oil changes were invoiced by an auto shop, because her stepfather changed the oil for her. Mechanics at British Unlimited tore down the engine, and they determined, as had Range Rover Houston North, that metal

¹ All dates are in 2019 unless otherwise noted.



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from the failed timing belt had caused the engine failure. AAS's hired Mr. Frailey to inspect the vehicle. In his January 2 inspection, Mr. Frailey noted that the overall maintenance and condition of the vehicle was "Good," the engine oil was "Fair," and the coolant condition was "Good." He determined that the failure was due to a broken bolt. Ms. Davis learned that Mr. Frailey may have entered his bolt diagnosis after the British Unlimited mechanic had signed off. Ms. Davis considered this to be fraudulent, and all the more so, when she learned that Mr. Frailey was not an ASE-certified mechanic². British Unlimited denied that any bolt was the cause of the engine failure, and opined that Mr. Frailey was working with AAS to deny her claim. On January 3, AAS denied the claim. AAS was willing to refund her December 12, 2018 towing fee in the amount of \$286.69. On January 4, Ms. Davis complained of the alleged fraud to Chase Bank, where she paid her monthly VSC contract by credit card. During its investigation, the bank retracted three months of \$94.00 payments to AAS, and gave Ms. Davis a \$282.00 credit. In the meantime, Ms. Davis had applied for a job and was selected. She was to start that job on January 14. Ms. Davis had to take out a loan through her credit union, and on January 14, she financed a replacement car in the amount of \$11,510.00 on her first day of her new job. Starting a new job is stressful enough, and Ms. Davis could only work half a day due to the purchase of the replacement car. While the payments to AAS were in dispute at Chase, Ms. Davis was not covered by the VSC, and her towing fees were not reimbursed. AAS's Claims Supervisor, Matthew Brimhall, reviewed Mr. Frailey's inspection, and Mr. Brimhall concluded that the bolt was not the cause of the engine failure. AAS then accepted Ms. Davis' claim as valid. On January 21, AAS offered Ms. Davis \$5,120.52 for a replacement engine and labor. On February 26, Chase remitted the three monthly payments to AAS. The BBB was involved in correspondence between AAS and Ms. Davis. She rejected AAS's updated offer of \$6,911.60.

The Business relied on the analysis of Matthew Brimhall, who is an ASE-certified Master Technician as well as AAS's Claims Supervisor. On January 18, he reviewed Mr. Frailey's report and overruled his January 2 diagnosis, because an internal part, not a bolt, had caused the engine failure. The AAS contract with Ms. Davis does not require a mechanic to be ASE certified to inspect a vehicle. AAS requires that a mechanic must be ASE-certified to repair a vehicle. According to Mr. Brimhall, there was nothing wrong in using a mechanic who was not ASE-certified for the inspection at issue. In Mr. Brimhall's experience, a mechanic would always write down the diagnosis before checking off and signing. There was nothing unusual in the signing of Mr. Frailey's report. According to Mr. Brimhall, Ms. Davis' Land Rover is worth \$6,025.00, if running. It currently has no engine, and it is not running. Mr. Brimhall further noted that the oil and the coolant issues did not factor in the initial denial of Ms. Davis' claim. The Business also relied on Doug Baymiller, AAS's Vice President and General Counsel, to present AAS's history of the claim and the dispute. The VSC between Ms. Davis and AAS expressly excludes any right to consequential damages. Therefore, Ms. Davis is not entitled to recover most of what she claims in her Demand Letter. However, AAS does accept responsibility for payment of the following: the diagnostic fee from Land Rover Houston North, her deductible, the cost to tear down the engine, the cost of a new engine, labor to replace the engine, oil for the engine, gas for trips to and from British Unlimited, costs for a rental car, and towing fees. Mr. Baymiller accepted these expenses and the arbitration fee claimed in the Demand Letter, and AAS offered Ms. Davis \$6,911.60.

Consumer's Position. Ms. Davis really likes her Land Rover. She wants it to function. Right now, without an engine, the vehicle lacks a current registration sticker. Ms. Davis has been exasperated by the time, effort, emotion and stress she has suffered to date just to get her December 12, 2018 engine failure addressed. The loss of a working vehicle and the purchase of another while she was transitioning into a new job has added financial hardship and worry about debt. She believes that whether excluded by the terms of her VSC with AAS

² National Institute for Automotive Service Excellence (ASE).



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or not, AAS should pay her consequential damages, including the cost of the replacement vehicle and for her emotional distress, voided warranty on her transmission, and other matters. She believes that these amount to \$41,772.10.

Business's Position. The terms of the VSC are clear. Among the matters expressly excluded from coverage are consequential damages for Ms. Davis's emotional distress, loss of her transmission warranty, and costs to buy a replacement vehicle, etc. AAS is willing to pay Ms. Davis for the engine replacement and related costs that are covered in the express terms of the VSC. For these, AAS is willing to pay Ms. Davis \$6,911.60.

Decision and Remedy. Under the VSC and these facts and circumstances, the Consumer has not established sufficient evidence that AAS's agent, Mr. Frailey, committed fraud. The VSC established that AAS is not responsible for any consequential damages. AAS stands ready to pay Ms. Davis \$6,911.60 for the installation of an engine, labor, and costs related to her engine claim. Ms. Davis can now get her Land Rover in running condition, get it registered, and perhaps sell her replacement car and satisfy the loan from her credit union. Accordingly, AAS will pay Ms. Davis \$6,911.60.

Signature of arbitrator

Rayell Shirley 4/30/19