



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1692

APPLICANT AJ

RESPONDENT IO Ltd

**SECOND
RESPONDENT** TF Ltd

The Tribunal orders:

- A. IO Ltd is to pay AJ \$2,019.00 on or before 24 December 2021.
- B. TF Ltd is to pay AJ \$250.00 on or before 24 December 2021.

Reasons

1. In about March 2021 AJ purchased a washing machine from IO Ltd, operated by the IO Ltd (IO Ltd). Within a short period, the washing machine broke down and AJ approached IO Ltd for assistance. IO Ltd put him in contact with the agent for the manufacturer, TF Ltd (TF Ltd), who ultimately took the machine away and offered a refund of some but not all of the purchase price. The refund did not arrive for some time, apparently because of a bank mix up. In the meantime, AJ and his family were without a washing machine and they had to make numerous trips to the laundrette. During the Covid-19 restrictions in place later they were unable to use the laundromat. AJ said that the difficulties he was having became known in his community, to his embarrassment. He made many visits to IO Ltd to try to get a resolution, but it was not until the manager of the [City] site found out about the problem that IO Ltd made any offer of compensation. This was after some months of problems and by that time AJ wanted the matter resolved by the Disputes Tribunal. He filed a claim against both IO Ltd and TF Ltd.
2. This is a claim for a remedies under the Consumer Guarantees Act 1993 for breach of the guarantee of acceptable quality, including a refund, consequential financial losses and consequential emotional harm. AJ claimed \$30,000.00 to be paid equally by the Respondents.
3. The issues to be determined were as follows:
 - a. Has there been a breach of the guarantee of acceptable quality in the Consumer Guarantees Act?
 - b. If yes, is IO Ltd liable for damages, and if so how much, for the following:
 - i. Refund or replacement
 - ii. Consequential financial losses
 - iii. Consequential losses in the form of emotional harm.
 - c. If yes, is TF Ltd liable for damages, and if so how much, for the following:

- i. Refund or replacement
- ii. Consequential financial losses
- iii. Consequential losses in the form of emotional harm.

Has there been a breach of the guarantee of acceptable quality in the Consumer Guarantees Act?

4. Before the remedies in the Consumer Guarantees Act can be considered, a breach of one of the guarantees must be found.
5. All parties agreed that the washing machine had broken down very quickly after purchase for reasons which appeared uncertain. This is clearly a breach of the guarantee of acceptable quality.

If yes, is IO Ltd liable for damages, and if so, how much, for the following:

- Refund or replacement
 - Consequential financial losses
 - Consequential losses in the form of emotional harm.
6. The supplier of the goods to the consumer is primarily liable under the Consumer Guarantees Act for breaches of the guarantee of acceptable quality. The supplier is required to assess the problem, determine their view of an appropriate remedy, and make an offer of that remedy available to the consumer within a reasonable time.
 7. In this case it was common ground that IO Ltd had not acted appropriately. The [City] store referred AJ to the manufacturer. This should not have occurred, because it gave the clear, though mistaken, impression that the retailer was not prepared to take responsibility for the fault. What should have occurred was that within a few days of assessing the issue, even if the manufacturer had been involved, IO Ltd should have made a decision about whether to repair, replace or offer a refund on the washing machine. They did not do this, leaving it up to another party. In the end a delay of five months occurred. IO Ltd is liable to AJ for either a refund or replacement; and financial consequential losses that were incurred and can be foreseen.
 8. AJ also claimed embarrassment in the form of emotional harm damages. These are not damages which can be claimed in this case. The foreseeability of emotional harm of the type that occurred (community embarrassment) arising from a dispute over a washing machine is so low that it is not appropriate to require IO Ltd to pay anything for such harm here. Claims might be allowed in very rare cases, perhaps such as last minute damage to a wedding dress where emotional harm or severe stress was highly predictable, but this is not comparable to that. Even if a claim could be made the amount claimed in this case is far out of proportion to the harm suffered.
 9. Damages for the inconvenience and difficulties of the delay however may be granted. I view these as general consequential losses provided they are reasonably foreseeable from the failure by IO Ltd to provide a remedy promptly. Though the amount is not certain, I am able to make a finding of an appropriate amount.
 10. AJ has already bought a new washing machine, so does not require a replacement. He has finally received \$888.00 from TF Ltd as a refund, which reduces IO Ltd's liability. The actual price paid for the purchase however was \$1,007.00. As a result IO Ltd must pay AJ a further \$119.00.
 11. AJ said that he and his family had had to make at least 30 trips to the laundrette, spending \$30.00 there each time. This is a consequential loss of \$900.00; it is entirely foreseeable as a loss, and in the hearing all parties accepted that this was reasonable and had occurred. AJ is therefore entitled to a payment of \$900.00 from IO Ltd.

12. AJ listed a number of other inconveniences which occurred, some of which would have involved further expenditure, such as repeat and frequent trips to IO Ltd to ask for a remedy. Others may not have involved actual expense, such as being unable to use the laundromat during Covid-19 restrictions. However compensation for this inconvenience should be made because such loss was entirely predictable as arising from IO Ltd's failure to comply with their obligations under the Consumer Guarantees Act.
13. I have decided to set the compensation payable under this heading at \$1,000.00. The lockdown went on for a number of weeks and there would have been more expenditure at the laundromat, if the J family had been able to use it. In fact they had to handwash all their clothes, which is somewhat worse as an outcome. Also, the shops would not have been open for some time to allow AJ to get a new washing machine because of the lockdown, as he ultimately has done now. The inconvenience is considerable, and even though the financial loss is not well defined I consider that \$1,000.00 is adequate compensation.
14. I note that IO Ltd eventually made an offer before the hearing to AJ, but well after the time it should have. It tried to rely on this in the hearing to argue that some of the delay was AJ's own fault, but it was too late to make a difference to its liability and AJ was, as I see it, entitled to refuse their offer pending a hearing. This point raised in the hearing has made no difference either way to my decision.
15. As a result, I find that IO Ltd must pay a total of \$2,019.00 to AJ.

If yes, is TF Ltd liable for damages, and if so how much, for the following:

- **Refund or replacement**
- **Consequential financial losses**
- **Consequential losses in the form of emotional harm.**

16. Manufacturers under the Consumer Guarantees Act have certain obligations in certain circumstances, in particular when it has given a specific warranty. Generally however the primary liability falls on the supplier in trade, and the manufacturer's only obligation is in contract to the supplier.
17. IO Ltd made an error in asking TF Ltd to take the lead in this matter, if that is what occurred, and if not then TF Ltd made in error in taking on that role. It left the consumer with significant delays.
18. In the end TF Ltd appears to have made a rod for its own back by negotiating directly with the customer instead of with IO Ltd, as it could or even should have done. Once it began down that path and offered a remedy, I consider that it had an obligation to ensure there were no delays. It was not AJ's fault that the refund was delayed for a month and it is clear TF Ltd could have done more to make it more prompt. It is also difficult to understand why TF Ltd had its agent take the washing machine away without apparently any consideration of what the J family were to do in the meantime.
19. In all the circumstances I consider that TF Ltd contributed to AJ's consequential losses as a result of the delays, though to a relatively minor extent. I consider that the sum of \$250.00 is adequate compensation for TF Ltd to pay to AJ in the circumstances.
20. NB of TF Ltd made the submission that the debt to AJ should be joint and several as between the two Respondents. I have decided that this is not appropriate. TF Ltd must pay \$250.00 to AJ, and IO Ltd must pay \$2,019.00. I am of the view that this adequately reflects the consequences of the errors each Respondent made. If the Respondents choose to divide up the liability as between each other in a different way that is their choice as long as it does not affect the payments to AJ.

Referee: M Wilson

Date: 10 December 2021



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 at the time.

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 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, 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.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, 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. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working 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, then 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>.