



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 10

APPLICANT BB

RESPONDENT H Ltd

The Tribunal orders:

H Ltd is to pay BB \$629.95 on or before January 2023.

Summary of Reasons:

[1] The hearing was convened by teleconference. Both parties appeared at the hearing.

Background

[2] BB seeks a refund of \$629.95 paid to H Ltd on 27 September 2022 for two Arlo refurbished CCTV cameras purchased via the Trademe website. BB admits he provided the wrong delivery address at the time of purchase as his previous address self-populated in the Trademe order but he corrected this almost immediately sending an email on the same date giving his current delivery address. BB's address was not updated, and H Ltd sent the package to the wrong address. The residents at that address refuse to return the package.

[3] H Ltd admits the facts but claims it is not liable as it was never told that the address provided on Trademe order was not correct and that it found the email dated 27 September 2022 unclear and not proper notice of a change of delivery address. H Ltd admits that it received BB's email correcting his address before posting the goods.

Issues

- i) What is the relevant law
- ii) Who is liable for the misdirected passage.

Issue 1

[4] The relevant law is Consumer Guarantees Act 1993 (CGA). The CGA provides a guarantee as to delivery. Section 19 states;

(1) Where a supplier is responsible for delivering, or for arranging for the delivery of, goods to a consumer there is a guarantee that the goods will be received by the consumer—

- (a) at a time, or within a period, agreed between the supplier and the consumer;
or
- (b) if no time or period has been agreed, within a reasonable time.

(2) Where the delivery of the goods fails to comply with the guarantee under this section, Part 2 gives the consumer a right of redress against the supplier and, in that case, the consumer may,—

- (a) if the failure is of a substantial character, reject the goods under section 18(3); and
- (b) in any case, obtain damages under section 18(4) (other than damages relating to the remedies set out in section 18(2)), whether or not the consumer also rejects the goods.

(3) For the purposes of this section, the reference in section 20(1)(b) to an agent of the supplier must be treated as including any carrier or other person who undertakes to deliver the goods on behalf of the supplier.

(4) A consumer's rights of redress under Part 2 in relation to the guarantee under this section are limited to those specified in subsection (2).

Issue 2

[5] Both parties have made a mistake. BB originally provided the wrong address however he corrected this before the package left the sellers possession. H Ltd has also made a mistake in not taking notice of the change in delivery address.

[6] The email of 27 September 2022 states that:

Can I organise the express \$8.50 post instead to address below?
[Address 1].

[7] H Ltd replied:

No worries, we will ship your order instead today.

[8] H Ltd then posted the package to [Address 2].

[9] BB claims H Ltd is liable because he corrected his address before posting.

[10] H Ltd claims BB is liable because BB did not specifically say his delivery address had changed and that the address supplied by Trademe was incorrect.

[11] I understand H Ltd believes the email of 27 September 2022 is unclear. I can not agree, it is very clear. BB provided his current address and H Ltd agree to post the item to that address. That H Ltd misread the email does not pass liability back onto BB.

[12] This view is supported by the CGA. Liability for undelivered goods explicitly remains with the seller. The only relevant exception in this case would be if the purchaser had not updated his address before posting. The email correspondence confirms that the new delivery address was provided prior to posting therefore the seller remains liable.

[13] Under s 43 of the Disputes Tribunals Act 1988 costs shall not be awarded against a party to any proceedings before a Tribunal except in certain circumstances, including frivolous or vexatious claims, claims knowing lodged outside of jurisdiction or unnecessarily prolonged proceedings. As none of these exceptions apply in this case BB's claim for costs is dismissed. I have ordered a return of the purchase price only.

Referee: Hannan DTR

Date: 5 April 2023



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>.