



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2020] NZDT 1383

APPLICANT **BD**

RESPONDENT **ED**

The Tribunal orders:

1. The claim is dismissed.

Reasons:

1. BD purchased a power meter from ED on a website titled "CT". He alleges ED misrepresented the condition of the power meter and broke the rules of CT by refusing to refund the money he paid for the power meter. He claims \$800.00.
2. The issues I must decide are:
 - a. Did Mr ED make any misrepresentation(s) and such misrepresentation(s) induced BD to enter the contract of purchase of a power meter?
 - b. If yes, what is the amount to put BD to the position as if the contract did not include the misrepresentation(s) or has BD suffered an unequal exchange of values?
 - c. Is ED in breach of the terms and conditions implied into the contract by way of the CT rules?
 - d. Is BD entitled to return the power meter and have his money returned?

Did ED make any misrepresentation(s) and such misrepresentation(s) induced BD to enter the contract of purchase of a power meter?

3. Section 35 of the Contract and Commercial Law Act 2017 allows BD to claim compensation for a loss suffered as a result of a misrepresentation, provided the misrepresentation induced him to enter into the contract for the purchase of the power meter. It is for the applicant to prove their claim in the Tribunal. This means that BD must prove that it is more likely than not that ED did misrepresent the condition of the power meter and that but for the misrepresentation(s) he would never have purchased the power meter.
4. BD states the advertisement for the power meter states that it is in excellent condition and it was not. He states when he used the power meter, he immediately noticed it was not reading correctly. He states he compared the readings of the power meter with two of his other power meters and it was reading too low. BD told the Tribunal he is a cyclist and must have accurate readings and if he had known it did not read correctly, he would never have purchased the power meter. BD

also told the Tribunal the meter was not adequately packed, and packaging was damaged on receipt. BD provided copies of the advertisement, readings of the power output of this meter and others he was using, and messages between the parties.

5. ED states the he had no issues prior to selling, the meter was calibrated in Australia and he never had readings that were more than a couple of % out. He also states his advertisement was based on this information and the meter was in excellent condition. ED also told the Tribunal there is variability between all meters.
6. There is no independent evidence to strongly support the allegation that the meter was reading well below what it should before the advertisement. For this reason, I find BD has not proved there was a misrepresentation.

Is ED in breach of the terms and conditions implied into the contract by way of the CT rules?

7. CT is a specialist website that both parties belong to. CT has rules that apply to its members. Both parties accept the rules apply to them.
8. BD states that after he finally received the meter by courier, he found the packing was damaged and the meter was not packed securely within the box. He states the chainrings had actually dug through the box. BD states that when he received a new power meter from the USA it was wrapped in paper, and the bubble wrap and was packed tightly in the box. He also states the workings of power meters are sensitive and that being banged around inside the box was a possible cause of the inaccurate readings. He also told the Tribunal that from the day he received the meter he tried it on his bike as soon as he was able to. He states he raised concerns with ED immediately after using the meter for the first time and requested he be able to return the meter, but ED refused.
9. ED states the CT rules allow BD to return the meter within three days and he did not contact him until nine days after it was received. He also states power meters are attached to bikes and on road training/use will bounce the meter around. He states it is also possible the meter needs a software update and that he had updated the meter before he sold it.
10. The CT rules are clear and provide for a three-day return. I find BD has provided sufficient evidence to show there is a large and unacceptable variance in the readings of this power meter. Unfortunately, there are too many variables (for example, packaging and/or software updates) for me to be able to determine when these readings became unacceptable. I accept BD had a practical reason to not try the meter for many days but unfortunately this time frame took him outside the three-day return period.
11. For all of these reasons I find BD has not proved there is a breach of CT rules and I must dismiss this claim.

Referee: C Murphy
Date: 17 December 2020



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 28 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 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, 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>.