



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 633

APPLICANT **BN**

RESPONDENT **O Ltd**

The Tribunal orders:

1. O Ltd is to pay BN \$468.90 on or before the 27 November 2023.
2. The remainder of the claim is dismissed.

Reasons

Introduction

1. BN purchased a [sewing machine] and as part of the purchase price paid postage. When the sewing machine arrived, it was damaged. It was returned to O Ltd who admitted liability for the damage.
2. BN claims \$532.30 as replacement cost for the damaged sewing machine and the Tribunal fees for filing the claim.
3. The issue to be resolved are:
4. Is BN entitled to claim \$468.90 as replacement cost for the damaged sewing machine and \$63.40 Tribunal fees for filing the claim?

Is BN entitled to claim \$468.90 as replacement cost for the damaged sewing machine and \$63.40 Tribunal fees for filing the claim?

5. The general principles of the law of contract apply to this dispute. A contract is an agreement that the parties intend to be legally bound by. It involves an exchange of promises and becomes binding when the parties agree on clear and certain terms. The terms of a contract are formed at the beginning, not at the end.
6. Contracts of carriage are covered by law under the Contract and Commercial Law Act 2017('the Act'). The carrier of goods is liable to the contracting party¹. The contracting party is the sender of goods. In this instance BN paid for the postage, and though not the sender of the goods, O Ltd have accepted that in this instance he is the contracting party.

¹ Section 256 of the Act

7. I find BN is entitled to claim \$468.90 as replacement cost for the damaged sewing machine, for the following reasons:
- a. BN received the sewing machine on 18 January 2023 and informed O Ltd at his earliest opportunity that it was damaged. O Ltd collected it on 24 January 2023 and determined on 17 February 2023 that it was deemed a fault of O Ltd and therefore O Ltd were liable for the damage caused.
 - b. Liability for damage is determined by the contract of carriage². In this situation the type of postage purchased determined that liability was limited to the carrier's risk. This means that O Ltd is liable up to \$2,000.00 or to a declared value³.
 - c. FP for O Ltd, submitted that section 2 of the Postal User Guides ('the PUG') applies. And that under the heading Repair, Replacement, Compensation Payment, that bullet point 3 applies. Bullet point 3 then refers to cover dependencies which is further defined under that heading at point 5 that they will only be liable for the amount paid for second hand goods and in this case only \$85.00⁴. I do not agree with this submission because the liability in this situation is not a declared value. Had the value of the product been included on the postage at the time the postage was purchased (and contract entered) then FP would be correct, but it wasn't and therefore that part does not apply to this case.
 - d. The part that does apply under the PUG in this case are points 1 and 2 under the Repair, Replacement, Compensation heading. That is equal to the replacement value of the item or repair. O Ltd asked BN to obtain a replacement value which he duly provided, \$468.90. O Ltd then requested BN to organise a repair quote. O Ltd argue that BN did not obtain the repair quote and it could be cheaper to repair. I do not accept this argument. O Ltd had the sewing machine in their possession for a significant period of time. BN provided them with the name of a repairer and O Ltd did not action it but expected BN to organise it and then O Ltd "may" have authorised the release of the sewing machine to him to get a quote for repair with no undertaking that O Ltd would cover the cost to get the quote for repair. BN did all he could at the earliest time he could. O Ltd were slow to respond and caused long and significant delays. Therefore, the only information that has been provided is the replacement value and I accept that value.
 - e. FP raised the issue of unjust enrichment. I have considered her argument and do not find there is unjust enrichment. The replacement value of the sewing machine is \$468.90. The contract was not one of a declared value, therefore O Ltd are liable for the replacement cost.
8. Section 43 of the Act sets out the grounds of when costs can be awarded. If a claim is brought that is frivolous, vexatious, or unnecessarily prolongs any proceedings by engaging in conduct intended to impede prompt resolution then costs may be awarded.
9. The filing fee, and preparation and attending a hearing fall into the definition of costs. The claim is not frivolous or vexatious and notwithstanding O Ltd very slow and delayed responses, I find by a very narrow margin that O Ltd has not unnecessarily prolonged the proceedings. On this basis the claim for costs is dismissed.

Referee: Nigel Wolland
Date: 2 November 2023

² Section 248 of the Act

³ Section 259 of the Act

⁴ Including purchase price and amount paid.



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>.