



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 611

APPLICANT **C Ltd**

RESPONDENT **EN**

The Tribunal orders:

EN is to pay C Ltd \$1191.91 on or before the 12th day of December 2023.

The money may be paid into account number [redacted].

Reasons:

Introduction:

1. EN had entered into a contract with C Ltd on a 3G unlimited plan.
2. XX was the network owner and operator.
3. In September of 2022 EN was advised by e-mail that XX was going to discontinue the unlimited plan.
4. C Ltd offered EN alternative options and on the 20th of December 2022 EN requested that his plan be changed to the 300 GB plan.
5. EN queried the rising cost he was paying for data and eventually stopped paying the monthly fee.
6. C Ltd is seeking payment of \$1191.91 owed.

The issues to be resolved are:

- I. Did EN agree to the 300 GB plan?
- II. What were the relevant terms of the plan?
- III. Did EN use the additional data that he has been invoiced for?
- IV. Is EN required to pay C Ltd \$1191.91?

Did EN agree to the 300 GB plan?

7. C Ltd provided evidence to the Tribunal in the form of an e-mail that showed on the 20th of December 2019, EN asked for his plan to be changed from the unlimited 3G to the 300Gb 4G plan.

What were the relevant terms of the plan?

8. The key terms of the plan were, the plan allowed the customer to use 300Gb of data in a month for \$245, any additional data would be charged at \$1.60 per Gb. The terms and conditions were available online.

Did EN use the excess data that he has been invoiced for?

9. I am required to decide whether it is more likely than not that the invoices provided to EN reflected his excess data usage.
10. C Ltd had invoiced EN for each of the relevant months. The invoices showed the data used on the RB-3 plan and the excess data usage per month separately.
11. The cost of the excess data varied from month to month depending on the usage.
12. EN said that he understood they extra data charges, but the bills were becoming huge. He queried whether he had actually used the data and asked C Ltd to provide evidence through a breakdown of his daily data usage.
13. NB appeared for C Ltd.
14. He checked with their [XX staff] and was told XX didn't keep individual daily data use records.
15. NB provided a CSV spreadsheet that gave a breakdown of the monthly data usage for EN. The spreadsheet confirmed the billing in the invoices provided to EN.
16. There was no indication on the spreadsheet about where the information had come from, and EN questioned the authenticity of the spreadsheet.
17. NB Provided a further document to the Tribunal stating the CSV files (the spreadsheet data) was received from ZZ, who had replaced the XX as the provider, and gave the usage details for connection [number redacted] (EN).
18. I am satisfied that the information provided by C Ltd through invoices, including the monthly data usage and the CSV spreadsheet are an accurate record of EN's usage.

Is EN required to pay C Ltd \$1191.91?

19. I find the EN is required to pay C Ltd \$1191.91

Referee: Verdun Tawhara
Date: 22 November 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>.