



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 642

APPLICANT DC

RESPONDENT T Ltd

The Tribunal orders:

T Ltd is to pay DC \$500.00 by 29 November 2023.

Background

1. In February 2020 DC purchased a T Ltd [e-bike] from [bicycle shop] in [town 1]. The price was \$8,403.00.
2. In April 2023 the battery for the ebike failed when DC was travelling in the South Island.
3. DC took the battery to CJ LTD, a T Ltd agent based in [town 2].
4. T Ltd supplied a replacement battery, for which DC paid \$1,070.00, on 20 April 2023.
5. On 4 May 2023, T Ltd sent an email to CJ LTD about the failed battery stating:

It looks like there has been a small cell imbalance within the cells of the battery, there haven't been any major signs or episodes from the battery. So I would say the reason it has failed is due to the age of the battery and the cells decreasing over time with the age of the battery

6. DC's claim seeks refund of the \$1,070.00 that he paid for the replacement battery.
7. The hearing took place by phone on 2 November 2023. Both parties participated in the hearing. Mr O represented T Ltd.

Findings

8. The claim is brought under the Consumer Guarantees Act 1993 ("CGA").
9. The CGA allows consumers to bring a claim directly against a 'manufacturer'.
10. The definition of manufacturer in the CGA includes, where a manufacturer is based overseas, the New Zealand importer / distributor.

11. The CGA states that where goods are supplied to a consumer, there is a guarantee that the goods must be of “acceptable quality”. This means that the goods must be as fit for purpose, free from defects, safe, and durable as a reasonable consumer would expect.
12. If goods fail to meet the guarantee of acceptable quality, the consumer may require the manufacture to remedy the failure within a reasonable time. If the manufacturer refuses or fails to remedy the failure, the consumer may seek to obtain damages for:
 - a. Any reduction in the value of the goods resulting from the failure; and
 - b. Any loss or damage to the consumer resulting from the failure which was reasonably foreseeable as liable to result from it.
13. T Ltd is the manufacturer of DC’s bike per the definitions in the CGA. DC is entitled to bring his claim directly against T Ltd.
14. Mr O accepted that a ‘normal’ battery life is at least 5 years, but he submitted that there is a wide variety of “user” factors that can affect battery life.
15. DC denied doing the types of things that can shorten the life of the battery, such as overcharging it, not using it for prolonged periods, charging it in a hot environment or in direct sunlight.
16. DC’s main argument was that T Ltd tested the battery and admitted (in the 4 May email) that it failed due to a manufacturing defect, specifically a “cell imbalance”.
17. On behalf of T Ltd Mr O submitted that:
 - a. T Ltd did not test the battery. CJ LTD tested the battery and provided data to T Ltd. T Ltd does not have (and has never had) physical possession of the battery.
 - b. The data is inconclusive in terms of the reason for the failure. The results show no sign of reduction in performance over time, which is the common symptom of cell balance. This aligns with DC’s evidence that he did not experience any loss of performance before the sudden failure of the battery.
 - c. A cell failure could have a range of causes including (as stated in the 4 May email) aging of the battery. Even if the failure was due to a cell imbalance that does inherently mean that it is a manufacturing defect.
 - d. When they were first approached by CJ LTD they were not told that this was a warranty or CGA claim. They were simply asked to supply a replacement battery.
18. The first question to address is whether the failure of the battery after three years of use amounts to a breach of the guarantee of acceptable quality.
19. I accept Mr O’s argument that a wide range of use factors could impact on the lifespan of the battery, and that T Ltd is not liable if misuse causes the reduction of lifespan.
20. However, I also accept DC’s oral submissions about his care of the battery. The pattern of failure is not consistent with accelerated degradation of the battery, which causes loss of performance over time leading up to failure.
21. My finding is that this, together with T Ltd’s initial conclusion of “cell failure” is sufficient to establish (in the absence of any positive evidence of misuse by DC) that the failure after three years was due to a manufacturing defect.
22. Therefore I find that the battery did not meet the guarantee of acceptable quality.
23. DC is entitled to recover damages for the “loss of value” of the goods.

24. The loss to DC is that he was required to pay for a replacement battery prematurely. If it is accepted that five years represents an acceptable minimum lifespan, then DC has lost 40% of the use of the battery.
25. However, in assessing DC's loss it is also relevant that T Ltd supplied a replacement battery to CJ LTD at a 35% discount to the usual wholesale price. I understand that CJ LTD passed this discount on to DC (in that CJ LTD only applied its usual mark up).
26. DC has not incurred any other 'out of pocket' costs and losses as a consequence of the battery failure, but I acknowledge that he has suffered significant inconvenience, beginning when the battery failed - he was on a ride and a long way from where he was staying, requiring him to walk the bike home over several kilometres.
27. Therefore I find that:
- a. DC is entitled to compensation for loss of value, but the loss of value is not the full cost of replacing the battery. It is compensation the loss of use (approximately 40%) of the original battery, mitigated by the discount that T Ltd provided on the replacement battery.
 - b. DC is entitled to some general compensation for loss of use / inconvenience.
28. Having regard to those factors I will award total compensation of \$500.00.

Referee: Nicholas Blake
Date: 13 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>.