



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 124

APPLICANT **DM**

RESPONDENT **QB Limited**

The Tribunal orders:

QB Limited is to pay DM the total sum of \$995.00 by Friday 30 June 2023.

Reasons:

1. DM claims that on 13 April 2022 he purchased a [GPS wireless car play stereo unit] (the unit) for his [car] for \$565.00 from QB Limited (the company), and also arranged for the company to install it at a price of \$280.00. He says that when it was installed, it was missing the fascia panel. He also says that the unit stopped working the following day, but the company has failed to repair it. He also claims that he subsequently discovered that the hard drive that was originally in the car had been taken out during installation.
2. DM claims \$995.00 from the company comprising: \$565.00 for the unit. \$280.00 for the installation and \$150.00 for a missing original hard drive part.
3. QB Limited did not attend the hearing today conducted by teleconference and the hearing proceeded without it pursuant to section 42 of the Disputes Tribunal Act 1988.
4. The issues to be determined are:
 - a. Was the unit of acceptable quality and was it installed with reasonable care and skill so that the outcome was fit for purpose?
 - b. If not, what is the remedy?

Was the unit of acceptable quality and was it installed with reasonable care and skill so that the outcome was fit for purpose?

5. Section 6 of the Consumer Guarantees Act 1993 (CGA) provides a guarantee that goods will be of an acceptable quality. Section 8 also provides that goods must be fit for any particular purpose made known by the consumer expressly or by implication and for the purpose for which supplier represents that they are or will be fit. Section 7 of the CGA defines that goods are of an acceptable quality if they are fit for all the purposes for which goods of that type are commonly supplied, acceptable in appearance and finish, free from minor defects, and safe and durable as a reasonable consumer fully acquainted with the state and condition of the goods, would regard as acceptable, having regards to factors which include - the nature of the goods, the price, and any statements made on the packaging or label and any other representation.
6. Section 28 the CGA provides that a supplier must exercise reasonable care and skill when providing services to a consumer and section 29 provides that the product of the services must be reasonably fit for its particular purpose.
7. On balance, in the absence of evidence to the contrary, I accept DM's evidence that there was a failure to exercise reasonable care and skill when installing the unit and that the outcome was not reasonably fit for purpose. I say this for reasons which include his evidence that:

- a. While the unit initially worked on the day of installation on 28 April 2022, by the next day it had come loose and stopped working correctly, with faults including the unit not turning on, resetting itself and not playing video while driving; and
 - b. His Auto Electrician removed the unit as it was unsafe, and poorly installed with loose wires.
 - c. That the surrounding fascia panel unit was never installed, which left an open gap around the unit, as he was told on installation that it had not arrived from [country] and would arrive in a few days, but it was never supplied; and
 - d. His Auto Electrician told him that the original hard drive had been removed when this was not necessary for installation.
8. Because I have determined that there was a failure in the installation service, it is not absolutely necessary to determine if the unit itself was of an acceptable quality or fit for its particular purpose. However, in the absence of evidence to the contrary, I do accept the evidence in paragraph 7 that the new unit did not function as it should, and also that it was missing the fascia panel, which formed an integral part of it, leaving a surrounding gap. So, even if the fault was one of installation rather than with the unit itself, on balance, where the unit was designed specifically for DM's model of car, I find that given the missing panel and surrounding gap, it was not of an acceptable quality in appearance and finish or fit for its particular purpose.

If not, what is the remedy?

9. Where there has been a failure of a guarantee in services or goods, under the CGA, unless the failure is of a substantial character or cannot be remedied, the consumer must first give the supplier the opportunity to remedy the failure. If the supplier then fails to remedy the fault within a reasonable time, a consumer is entitled to remedies which include rejecting the goods (s18(2)) or cancelling the contract (s32(a)(ii)(B)).
10. In the absence of evidence to the contrary, I accept that from about May 2022, DM requested remedial action but by October 2022, the supplier had not repaired the faulty installation or refunded the purchase price of the unit - which was then returned as agreed, owing to a dispute about the missing panel.
11. In these circumstances I find that DM is entitled to a both a refund of the full price of the unit of \$565.00 and the installation cost of \$280.00. In the absence of evidence to the contrary, I also accept that he also lost the value of the hard drive which he gave as worth \$150.00 second hand.
12. So, I order QB Ltd to pay DM the total sum of \$995.00 by Friday 30 June 2023.

Referee: Taylor, Michelle

Date: 9 June 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 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>.