



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 412

APPLICANT ED

RESPONDENT Q Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

1. ED purchased a fishing rod from Q Ltd in late 2022. ED says the rod tip broke during a fishing trip and a replacement rod should be available to him under the 10-year guarantee provided with the rod.
2. ED claims \$115.00 being the \$99.00 paid for the rod, and a contribution of \$16.00 towards his postage and other claim costs.
3. Q Ltd says the fishing line ED used with his rod was above the recommended breaking strain for that rod model. The rod therefore cannot be covered by the warranty, because ED breached the warranty terms.
4. The issues to be resolved are:
 - a. Was the [fishing rod] of acceptable quality and/or used within its warranty guidelines?
 - b. Is ED entitled to \$115.00 as claimed, or to any other sum?

Was the [fishing rod] of acceptable quality and/or used within its warranty guidelines?

5. Under contract law, a legally binding contract is formed when both parties intend to contract on agreed terms and intend for those terms to be legally binding. The terms of a contract are formed at the beginning, not at the end, and what was agreed is looked at objectively, i.e., by looking at what was said and done.
6. The Consumer Guarantees Act 1993 ("CGA") also has terms relevant to this contract. The CGA implies into contracts a set of minimum standards (guarantees) for goods and services supplied in trade to consumers. Section 6 CGA says goods, such as the fishing rod, must be of an acceptable quality, with that phrase being further defined in s7 CGA.
7. I find the fishing rod was of acceptable quality, however I am not satisfied the fishing rod was used within warranty guidelines.
8. I say that because I accept evidence from Q Ltd that:

- a. the fishing rod had a recommended breaking strain for line of 4-6kg; and
 - b. this recommendation is printed on the rod immediately above the rod handle; and
 - c. ED advised Q Ltd he used a 15lb (or equivalent 6.4kg) breaking strain line on the day the rod tip broke.
9. During the hearing ED said he did not recall discussing that grade of line with Q Ltd, however he did concede he had a favourite type of line he used on most fishing trips. During discussions about the line used, ED's evidence appeared unclear at times and therefore ED has not persuaded me he was not using an over-strength line.

10. I am satisfied:

- a. it is lawful for a manufacturer of goods to impose warranty conditions when offering a consumer warranty;
 - b. based on my conclusion the line used by ED was more likely than not to be outside the recommended breaking strain guideline, this action did void the warranty;
 - c. a fishing rod user is entitled to add whatever range of products to their rod as they see fit, however if their product choices are outside any recommended guidelines, the law says the user is seen to have accepted the risk of their action, and they therefore cannot rely on the warranty to recover any loss.
11. It is clear to me on the evidence that rod tip breakage often occurs where the breaking strength of line is not consistent with the rod strength. The evidence here shows the recognised variable is the breaking strength of the line, and there is insufficient evidence to show any other reason the rod was not of acceptable quality. I therefore stand by my findings, that the incompatible line strength is the most likely explanation for the tip breakage.

Is ED entitled to \$115.00 as claimed, or to any other sum?

12. I have found the rod to be of acceptable quality, and that a warranty claim is not able to be made on these facts.
13. There is therefore no breach by Q Ltd of either the CGA, or the warranty, and therefore no basis on which I can award compensation to ED.

Conclusion:

14. For all these reasons, the claim has not been proven and therefore must be dismissed

Referee: Malthus
Date: 24 August 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>.