



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 349

APPLICANT GC

RESPONDENT Q Ltd

The Tribunal orders:

1. The claim is dismissed.

Reasons:

1. GC purchased [brand] ear buds from Q Ltd on 7 May 2022. GC alleges the buds were faulty from when she opened the package and Q Ltd refuses to refund her money. She claims \$950.00.
2. Q Ltd denies the claim and states it has met its obligations under the Consumer Guarantees Act.
3. The issues I must decide are:
 - a. Has Q Ltd met its obligations under the Consumer Guarantees Act?
 - b. If not, is GC entitled to a refund and if yes, is the amount claimed reasonable?

Has Q Ltd met its obligations under the Consumer Guarantees Act?

4. The Act requires a supplier of goods to repair or replace goods that are not of acceptable quality. A refund is only available to consumers, if the supplier has refused to repair or replace the goods or the failure is one of a substantial character.
5. GC states she told Q Ltd the day after purchase that her buds were very screechy and skipped music and or stopped. She states she was told to bring the buds back to the store and they would have to send them away to be checked. She states she took them back and the assistant told her there was definitely a problem and they would have to be sent to [City] to diagnose the problem and fix them. She states she kept following up the store and they said they hadn't heard anything. GC states she told Q Ltd she would rather have her money back and they refused.
6. Q Ltd states the buds were not returned until 20 January 2023 which was more than eight months after purchase. They state the buds were sent to [City] for diagnosis, but the diagnosis showed no problems with the buds. Q Ltd states that they replaced the inner ear of the buds to ensure any possible concerns were addressed and the buds were thoroughly tested. Q Ltd states the buds were available on 9 February 2023 for delivery to GC but GC told Q Ltd she had moved from her address and refused to give Q Ltd her new address. Q Ltd states it is not required to refund GC.
7. Q Ltd has not refused to repair the buds and the buds were repaired within a reasonable time and I find this obligation under s18 of the Act is met. Therefore, GC must prove the buds meet

the requirements for a failure of a substantial character as provided for in s21 of the Act. The buds are fit for the purpose they are commonly supplied, they are safe, they match the description of the purchase and a reasonable consumer would acquire these buds if they were acquainted with this one failure that was remediated within three weeks. For these reasons I must dismiss the claim.

Referee: C Murphy
Date: 11 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>.