



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 442

APPLICANT GE

RESPONDENT T Ltd

The Tribunal orders:

The claim is dismissed.

Reasons

1. GE bought a T Ltd TV in December 2022 and in May 2023 it stopped working (it would not turn on). T Ltd's representatives diagnosed it over the phone as requiring a replacement part and advised GE that they could repair it in about 7 working days (once the part had arrived with their service agent).
2. In the meantime, GE requested a replacement TV as he had been advised that he was entitled to that under the Consumer Guarantees Act (this is only correct if any failure of CGA guarantee could not be remedied or was of 'substantial character').
3. The part was delivered to the service agent later than expected because, apparently, the courier company delivered it to the wrong address in error. When T Ltd became aware of the delay, they agreed to GE previously lodged request for a replacement television.
4. Unfortunately, the timing of these different remedial solutions converged because by the time T Ltd advised GE that they would give him a replacement TV, the part for repair of the TV had arrived with the service agent and the technician had arrived at GE's house to carry out the repair. It seems both GE and the technician found out more or less together that T Ltd had agreed to replace the TV instead and the technician was then told by his company to leave without carrying out the repair. This all occurred on 30 May 2023 and caused a further delay in GE receiving a remedy. GE was understandably frustrated because at that point, with the technician right there with the part, he would have preferred the repair to go ahead because he just wanted a working television.
5. GE was expecting guests that weekend and their plans were to watch a significant one-off sports event on his television. GE says he spent a large part of Friday trying to track down the courier company that had his replacement TV so that he could drive to their depot in person and collect it (otherwise he had been told he was not going to receive it until after the weekend).
6. GE claims compensation for the stress and time spent locating and collecting the replacement television.
7. The issues to be determined are:
 - T Ltd remedy the failure of guarantee of acceptable quality in a reasonable time?

- Were GE's claimed costs losses that were reasonably liable to result from the failure?

Was there a failure of guarantee by T Ltd?

8. There is no dispute that the defective part constituted a failure of guarantee of acceptable quality under the Consumer Guarantees Act 1993. The CGA provides for various options where there has been a failure of guarantee, the particular options/s available in each case depending on whether the failure can be remedied or not. I do not consider the failure to be one of substantial character, because although it meant the television didn't work, the problem was also easily identified and easily fixed.
9. When a problem arises the consumer must first give the supplier the opportunity to remedy the failure. The supplier must do so in a reasonable time. As per section 19 of the CGA, it is the supplier (not the consumer) that has the option of repairing or replacing the goods in the first instance. Even though T Ltd told GE that the part would arrive in around 7 days, I find that the two weeks it did/would have taken to get the repair underway is still within a reasonable timeframe.
10. I therefore find that T Ltd was meeting its CGA obligations to remedy the problem within a reasonable time and were not legally obliged to provide a replacement television. They are of course able to choose to do so if they wish and it seems they did so in part to recognise the delay caused by the courier's mistake and in part because GE had requested that remedy already.

Were GE's claimed costs losses that were reasonably liable to result from the failure?

11. Section 18(4) of the CGA states that, in addition to other remedies, the consumer may obtain from the supplier damages for any loss or damage resulting from the failure which was reasonably foreseeable as liable to result from the failure.
12. It is undoubtedly a hassle when appliances fail, and particularly frustrating when the appliance is quite new. However the Consumer Guarantees Act is not intended to protect against all hassle or to compensate for all inconveniences. Generally damages awarded under section 18(4) are actual losses where a consumer has had to pay some other charge or cost as a direct result of the failure. In extraordinary circumstances, a consumer's time and/or stress may be compensated but I do not consider that GE's situation amounted to extraordinary circumstances. I also do not consider that the losses he claimed were reasonably foreseeable as liable to result from the failure.
13. This is because on another weekend it probably would not have been such a bother to wait a few more days for his new TV. The fact that GE had guests arriving that particular weekend and something in particular he wanted to watch with them on television, was not reasonably foreseeable and the lengths that GE went to to pick up the television himself were also not reasonably foreseeable and are therefore not the type of loss that would be compensated under section 18(4). The claim is therefore dismissed.

Referee Perfect

Date: 23 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>.