



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**[2023] NZDT 617**

**APPLICANT**      **KD**

**RESPONDENT**    **Q Ltd**

**The Tribunal orders:**

The application is dismissed.

**Reasons:**

**Introduction:**

1. In May of 2018 KD bought a computer hard drive from Q Ltd.
2. The hard drive had a five-year warranty and the hard drive failed three months after the warranty expired.
3. KD claims that the hard drive should not have failed three months after the warranty expired and is seeking \$225.00.
4. This amount is made-up of \$184 for the hard drive and \$45 for the Disputes Tribunal fee.

**The issue to be resolved is whether Q Ltd is required to remedy the failure of the hard drive after the five-year warranty had expired?**

5. The Consumer Guarantees Act 1993 (CGA) implies into all consumer contracts a set of minimum standards (guarantees) for goods and services when they are supplied in trade to consumers.
6. I find that Q Ltd is not required to remedy the failure of the hard drive because although Section 7 of the CGA (1993) requires that to be of reasonable quality, the drive must be durable, I consider that a reasonable consumer would consider that five years and three months was sufficiently durable, given that it exceeds the warranty for the product.
7. KD mentioned the Consumer Guarantees Act (1993) in his application. His contention was that the CGA 1993 meant that this product ought to have lasted for more than five years. I was unable to find a reference to this in the CGA website that KD had referred to.
8. I consider the submission was likely to be an extrapolation from the information provided to the Tribunal by KD from the [cloud storage website] website and from KD's own experience with hard drives during his 25 years in the IT industry.

9. KD described himself as an IT power user. He said that he had run 18 drives for between 5-8 years. KD offered no other evidence to support this. I accept the KD has many years in the industry, but he cannot provide unsupported expert evidence on his own behalf.
10. KD provided documentary evidence to the Tribunal from [cloud storage website]. He gave evidence that a commercial grade hard drive should last for up to six years. In reviewing the data, I noticed that there was an increasing incidence of failure between years five and six in that study.
11. This is the period during which the hard drive purchased by KD failed.
12. ND appeared for Q Ltd. He said the hard drive was priced at \$184 and came with a five-year warranty and that this was a standard package. It was his view that because the hard drive had exceeded the warranty it was fit for purpose. On this basis Q Ltd had declined to refund or replace the hard drive.
13. I agree with ND. The application is dismissed.

**Referee:** Verdun Tawhara  
**Date:** 3 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>.