



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

[2023] NZDT 627

**APPLICANT**      **KG**

**RESPONDENT**    **M Ltd**

**The Tribunal orders:** M Ltd is to pay \$300.00 to KG by 20 November 2023.

**Reasons**

*Did M Ltd fail to provide a moving service it promised?*

1. KG contracted M Ltd to carry her household goods from [city] to [town]. She was needing to give vacant possession for the property she was leaving and expected to move into the house she purchased in [town]. KG believed that her goods would be collected in [city] and be available for her the next day in the [town] house. That is because the website stated, 'We don't muck around, same day delivery or next day delivery within the North Island'.
2. KG arranged for her goods to be picked up on Friday, 15 September and this was agreed by M Ltd. Originally, she booked for 16 September. She assumed that delivery would remain as 16 September and she was not advised otherwise by M Ltd. When KG contacted M Ltd on 13 September M Ltd advised that it would not be delivering on 16<sup>th</sup>. At first it advised that delivery would be on Monday, 18 September and then changed that to Sunday, 17 September. KG asked for compensation because she had nowhere to go for the night of the 16<sup>th</sup> and would have to stay in a motel with her family of 4 people plus two dogs and a cat. M Ltd's offer of \$97.00 (10% of the deposit she had paid) was not acceptable to her.
3. M Ltd was bound by the representation made on its website that North Island moves would be completed the same day or the next day. The Fair Trading Act 1986 (FTA) section 13(B) provides that:

'No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services make a false or misleading representation that services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by any person of a particular trade, qualification, or skill, or by a person who has other particular characteristics;'

4. Where there is a contravention of s.13 of the FTA section 43(1)(f) of the FTA provides as follows:

‘if, in proceedings under this Part or on the application of any person, a court or the Disputes Tribunal finds that a person (person A) has suffered, or is likely to suffer, loss or damage by conduct of another person (person B);

- make an order directing person B to pay to person A the amount of the loss or damage.’

5. It follows that the Tribunal may order the losses that KG would suffer as a result of the goods not being delivered. In fact, the parties did get to the stage of agreeing that compensation would be reasonable but disputed that amount that should be paid in compensation. I am satisfied that \$300.00 is reasonable compensation for the night where meals and accommodation was necessary because of the delay.

*Did KG have grounds for cancelling the contract?*

6. KG stated that after the dispute about the amount of compensation the office lady told her that she would have to pay the full price before her goods would be collected and delivered. At 2:36pm on Thursday, 14 September KG cancelled the contract. At the hearing she said that was concerned that M Ltd may not treat her goods with respect, and she would suffer further losses. KG has claimed the \$997.00 deposit she paid for the move, \$2,065.87 for alternative moving arrangements, \$300.00 storage for the items that could not be moved until after the first move and \$285.00 fuel for the move.
7. M Ltd stated that it required KG to pay the full amount of the contract before commencing the move because she threatened not to pay the balance. M Ltd was concerned that it would carry out the removal service and not be paid the balance of the quote. KG disputed that she said she would not pay.
8. M Ltd declined to refund the deposit she had paid because it informed her in writing on 16 August when she was advised that to secure the booking, she would need to pay the deposit of \$997.00 and that,

*‘This is non-refundable within 28 days of commencement, unless M Ltd cancels the job.*

*Remaining balance of 50% due on the day of delivery.’*

9. It is an important to determine whether (i) KG threatened not to pay the full price, leading to M Ltd requiring her to pay the full price in advance or (ii) M Ltd, as a result of the disagreement about the delivery date and compensation, decided to demand the full price in advance. If it was the former it is unlikely that KG had grounds for cancelling the contract. She would have grounds for a claim for her losses resulting from the delay.
10. The parties provided the texts sent around the time when the delivery date and compensation was an issue. The most significant text was at 11:52am on Thursday, about 3 hours before KG cancelled. It is from M Ltd to KG and reads as follows:

‘Hi [KG], thanks for the lovely calls, texts and of course threats and yelling at our staff this morning. I have advised [redacted] and [redacted] that due to your threats not to pay us, we wont be loading the truck until the invoice is paid thanks. I hope you understand, Moving is stressful, but abuse and threats of our staff will not be tolerated sorry.’

11. The balance of probability is that M Ltd has correctly recalled the reason why it demanded full payment prior to loading KG’s goods. The company had good reason to believe she would

repudiate the contract. In those circumstances it was entitled to demand full payment before commencing to provide the service. KG then cancelled the contract, but she did not have grounds to do that because M Ltd had not cancelled or threatened to cancel the service.

*Is KG entitled to a refund of the deposit and her losses arising from her cancellation?*

12. Under the terms of the contract, KG cancelled the contract within 28 days of commencement. She did not have sufficient grounds to cancel and therefore is not entitled to the deposit. The cancellation was the day before the service was to be carried out and M Ltd stated that the deposit did not cover its losses. The truck was continuing to the South Island and had to be taken empty from [city 1] to [city 2]. The cost of the driver, truck and fuel was more than the deposit.
13. KG's claim for \$2,065.87 for alternative moving arrangements, \$300.00 storage for the items that could not be moved until after the first move and \$285.00 fuel for the move must be declined. None of these losses would have occurred if she had not threatened not to pay and then cancelled the contract. She was the author of her own misfortune.

#### *Summary*

14. I have considered all the evidence and submissions from the parties. Although KG unreasonably cancelled the contract, M Ltd did misrepresent its service and would always have been ordered to pay KG compensation for the Saturday night accommodation and incidentals. The decision reflects the merits and justice of the case.

**Referee: B M Smallbone**

**Date: Wednesday, 1 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>.