



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 256

APPLICANT **KI Limited**

RESPONDENT **TS**

The Tribunal orders:

TS is to pay KI Ltd \$1,615.44 by Wednesday 5 July 2023, being \$1555.44 for three orders and \$60.00 for chargeback fees.

Reasons:

1. KI Limited trading as K is a supplier of fish, plants and reptiles based in [City].
2. TS placed three orders with KI. The first order was made on 27 November 2022 for 59 items for \$682.82. The second order was made on 6 December 2022 for 6 items for \$50.96. Originally this order was for \$76.95 but the shipping fee of \$25.99 was refunded to TS as the second and first orders were combined and shipped together. The third order was made on 10 December 2022 for 76 items for \$821.66. The third order originally was for \$1,060.90 but KI provided a discount of \$265.23 on the order at TS's request, as TS said he was a loyal customer.
3. TS said he did not receive any of the above three orders and so requested a chargeback of all money he paid for these orders through his [Card Company], which came through on 14 March 2023. As a result, KI was debited a total of \$1,615.44, which included the total of the three orders above in the amount of \$1,55.64, plus \$60.00 chargeback fees.
4. KI claimed TS fraudulently made the chargeback request and should repay KI for the orders and chargeback fees incurred by him.

Did TS receive the goods?

5. KI said that TS received all three orders, and that TS told him there were 2 dead fish in the first order, for which he refunded TS \$23.73. He maintained that TS must have received the package to discover 2 dead fish and claim a refund. He provided a document confirming he refunded TS's credit card \$23.73, which was processed on 9 December 2022.
6. KI provided documents confirming the delivery of packages to TS's address by courier on 8 December 2022 and on 16 December 2022 by way of photographs of the packages on TS's doorstep, address labels and delivery confirmation from the courier company, and via GPS tracking confirming the delivery vehicle at TS's address and at his neighbour's property. KI clarified that courier companies will often deliver parcels to neighbouring addresses from one GPS located place. KI explained that all packages from his company are shipped with authority to leave the package at the customers' address, as per his company's policy on their policy page, as their goods are mostly perishable, and the courier company is unable to return perishable goods to their depot or store them until a customer claims them. KI said that, because of this authority to leave policy, the courier driver will often initial the delivery docket

themselves. He stated that all their goods are shipping on an overnight shipping basis, with no guarantee as to an exact time of arrival.

7. TS said he did not give any authority for the courier to leave packages on his doorstep as the items were perishable and he considered that would be dangerous and the fish would die.
8. TS said the courier company tried to deliver a package to him on 16 December 2022 but, despite the package bearing his name, he refused to accept delivery of the package as he considered the 6:15pm delivery time to be too late and thought the goods would have perished. He said he did not check the contents of the package first. He stated further that it was not his signature on the delivery dockets.
9. KI said he did not receive any packages returned from TS on any of these three orders, nor was there any communication to him from TS about him not receiving any of the packages/orders. He stated that the only communication from TS that he received was relating to the 2 dead fish in the first order for which he refunded TS \$23.73, as outlined above. KI pointed out that TS not only continued to place the third order on 10 December 2022, after he allegedly did not receive the first two orders shipped together, but that TS continued to attempt to place further orders with his company after these three orders. KI said that, because of TS's chargebacks and other actions, he made it clear he did not wish to deal with TS or any further orders after this.
10. I find, because of the evidence, which included that from the courier company confirming the delivery of two packages addressed to TS from KI's company, the GPS tracking information showing the courier delivery vehicles at TS's address, the lack of evidence about any follow-up from TS with KI about allegedly not receiving these packages after their expected arrival dates, and that TS received a refund from KI for 2 dead fish from the first order, that it is more likely than not that TS received the packages sent to him by KI's company.

Was TS entitled to a refund of the three orders, that was accomplished by him via chargeback?

11. The Consumer Guarantees Act 1993 ("CGA") provides that where a consumer believes a supplier of goods has not complied with guarantees such as delivery within a reasonable time, or acceptable quality of the goods, or the goods being fit for any particular purpose made known to the supplier by the consumer, they may ask that such a failure to comply with a guarantee be remedied by the supplier within a reasonable time. Failing this, the consumer has an option to reject the goods by returning the goods to the supplier, or if the return of the goods is too costly for the consumer because of the size of the goods, asking the supplier to collect the goods at the supplier's expense. There are situations where a consumer loses the right to reject goods, one of which is that that right is not exercised within a reasonable time.
12. Where the failure cannot be remedied or is of a substantial character, the consumer may reject the goods as outlined above, or obtain from the supplier damages in compensation for any reduction in value of the goods below the price paid by the consumer for the goods.
13. It is only when a customer rightfully rejects the goods according to the process set out in the CGA, that they may claim a refund of what they paid.
14. Here, TS claimed he did not receive any of the goods ordered. He specifically said he was not claiming that any of the goods were damaged or defective, as he could not do so if he had not received the goods in question.
15. I have found above that it is more likely than not that TS did receive the goods from KI's company. The goods were not returned to the supplier, KI, at all. Nor was there any communication from TS to KI with any request to remedy delivery of the goods. As such, TS is not entitled to a refund of the three orders which are the subject of the claim, through chargeback or otherwise.

16. As I find it more likely than not that TS received the goods in the three orders, TS is to pay for these orders in the amount of \$1555.64. As I find that TS was not entitled to request a refund via chargeback, I find he is also liable for the \$60.00 in chargeback fees that KI had to pay. Therefore, TS is to pay KI a total of \$1,615.44 by Wednesday 5 July 2023.

Referee: C Price

Date: 14 June 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>.