



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

[2023] NZDT 713

**APPLICANT** KO

**RESPONDENT** TC

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. KO purchased goods through [online] marketplace from TC. KO arranged a courier pick-up of the goods but says only some of the purchased goods were in the package TC provided to the courier.
2. KO says he is entitled to a refund of \$160.00 for missing items. These include a [video game] console, controller, and games.
3. KO denies the claim saying he agreed to sell a mixed group of items, all of which he included in the package addressed to KO. In addition, TC says he added in some other games & equipment he no longer needed, offering further value to KO.
4. The issues to be resolved are:
  - a. Has TC breached the contract by not supplying goods sold to KO?
  - b. Has TC converted goods belonging to KO?
  - c. Is KO entitled to \$160.00 as claimed, or to any other sum?

**Has TC breached the contract by not supplying goods sold to KO?**

5. When individuals agree to buy and sell goods, they make a contract. Contract law generally requires parties to perform the promises they make to each other unless there is a valid legal reason not to do so.
6. I find there is insufficient evidence to prove a breach of contract.
7. KO has clearly stated that certain key items were not delivered to him. The view given by TC however is the exact opposite, saying that after he agreed to sell the advertised items, he simply packed them all together, and (as earlier noted), added a few additional items. TC is therefore adamant all goods were supplied.
8. It is clear KO' statement about missing items raises a real doubt that all items were provided to him. However, civil law requires me to make decisions on the balance of probabilities. That

means, is it more likely than not, that one version of events can be shown to be more likely to have occurred, than the other. On the evidence before me I am unable to distinguish between these two versions as there is no compelling evidence to persuade me either way.

9. I acknowledge KO says the original advertisement has now been removed and he therefore cannot provide direct evidence of what he agreed to buy. If, however comparative screen shot had been supplied in evidence for example, of what was advertised and what was received, then that type of evidence may have been helpful in determining this claim. In the absence of clear evidence however, and where the parties offer different views, I am unable to make a finding or be satisfied that KO' claim is proven to be the most likely version.
10. For the record, the additional items TC says he provided make no difference to my finding of breach or otherwise. These items were essentially provided by TC as unsolicited goods or a gift, and KO is fully entitled to say they were of no value to him. Even if they had been provided in substitution for some other goods that were agreed to be sold, that act would not cure any breach, because a contract was made to supply particular goods. A breach would therefore be proven, unless of course KO was willing to accept substitute goods on that basis.

#### **Has TC converted goods belonging to KO?**

11. Conversion occurs when a person interferes with the use and possession of goods belonging to another, intentionally and without lawful justification. In these circumstances they may be liable in conversion to pay for any losses incurred, with loss generally calculated as the value of the converted goods.
12. I find there is insufficient evidence of conversion.
13. This part of the claim arises because KO says he made an error in setting up delivery of some other goods he purchased, and mistakenly set up his address for delivery as the pickup address he had previously used with TC, because both courier arrangements were made through KO's [online market] account. KO says his purchase of 5 other games was therefore sent to the address provided by TC.
14. I have reached my finding because again there is an absence of evidence to show TC received these goods. TC denies ever seeing the goods and said at the hearing he was homeless and had not returned to the address he used for the pick-up of the initial package. While I acknowledge KO is dubious about the truth of this denial, particularly because he says TC tried to barter for some cigarettes when he made contact to recover the goods, I cannot be satisfied on the evidence that this wasn't just, as TC says, a ruse to get some cigarettes because he was financially unable to buy any at that time. While that may not be an honourable thing to do, it does not necessarily prove TC was in possession of these games, and/or converted them.

#### **Is KO entitled to \$160.00 as claimed, or to any other sum?**

15. While I acknowledge KO' appeared genuine in bringing his claim, the lack of clear and compelling evidence means I am unable to make a finding in his favour.
16. For all these reasons, the claim must therefore be dismissed.

**Referee: Malthus**  
**Date: 17 December 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>.