



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

District Court

[2021] NZDT 1347

**APPLICANT** MD

**RESPONDENT** O Limited

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

1. MD sent a computer to her daughter using a courier service through her employer. MD's employer has a book of postal credits associated with the return of magazine 'headers' for audit purposes. MD sent the computer using a ticket from the book (**Courier Ticket**).
2. O Limited says that this postal service is under a contract it has with P Limited. MD's employer purchases the tickets on an account covered by that contract. The terms of the contract between O Limited and P Limited is that the service is return only and to a specific location.
3. Following collection and before the item arrived at its intended destination, a redirection request was entered into the system by MD (or her daughter). The computer never arrived at the first destination, or the redirected address. It was, however, located at a depot. At that point, under ordinary circumstances, MD's (or her daughter) would have been able to collect the computer from the depot. Unfortunately, due to Covid 19 restrictions, this was not possible as the depot was not allowing any public access at the time. Instead, the O Limited service person handling the matter agreed to send the package on to the redirected address.
4. The computer never arrived at the redirected address. O Limited says it has no ability to track or locate the computer, due to the 'return only' nature of the contract with P Limited. Items sent using those tickets are not traced beyond collection and there is therefore no mechanism for tracing the item.
5. MD says she was never given an option to pay for posting once the parcel was located at the depot or told there was anything irregular with the tracking of the package.
6. MD is claiming \$635.00 being the cost of the computer plus her filing fee.
7. The issues to be determined are:
  - a) Is there a contract between MD and O Limited?
  - b) Is O Limited liable for the sum claimed?

### **Is there a contract between MD and O Limited?**

8. Every contract of carriage, which includes a courier service, is covered by the law under the Contract and Commercial Law Act 2017 (ss 242, 243 and 244, **CCLA**).
9. The carrier in a contract of carriage is liable *to the contracting party* (s 256, CCLA). The contracting party is (relevantly) the consignor (sender of the goods) *who enters a contract* with the carrier (s 246, CCLA).
10. The general law of contract applies. A legally binding contract is formed when both parties intend to contract on agreed terms and intend for those terms to be legally binding. The terms of a contract are formed at the beginning, not at the end. What was agreed is looked at objectively, i.e. by looking at what was said and done. The law of contract requires parties to a contract to adhere to the terms of that contract unless there is a legal reason not to do so.
11. MD says that she used the Courier Ticket to send the package as she had had negative previous experiences with using O Limited's 'track and trace' service and parcels going missing. She said that her daughter had been paying her in instalments for the cost of the computer and she had been cautious in her method of post due to its value.
12. MD says she wrote specific instructions on the package indicating that it should not be left unattended and should be signed for. She says the weight and value of the package was in keeping with those usually sent under the Courier Ticket and that the intended destination was within reasonably close proximity of the returns location. She also says that other packages have been sent using the Courier Tickets and have arrived at the destination.
13. Nonetheless, because the parcel was sent under the Courier Ticket, the contract is between O Limited and P Limited. Therefore, P Limited is the contracting party to whom O Limited owes an obligation, as governed by the contract terms and the CCLA.
14. When the parcel was collected by O Limited, it must be assumed that it did so under its contract with P Limited, notwithstanding that there was a different delivery address on the parcel. There was no opportunity for O Limited to enter a contract with MD on its standard terms. There was therefore no meeting of minds, or intention to create legal relations between MD and O Limited at the start of the collection service.
15. It is worth considering whether a contract was entered between MD and O Limited when the parcel was identified at the depot and an O Limited employee agreed to send the parcel on (presumably without realising that it had no 'send function'). However, MD was not asked to pay for the service, and so it appears to have been a continuation of the original contract between O Limited and P Limited. In addition, because MD was not asked to pay for the redirection service, there was no consideration or 'value' from MD that may have supported entry into a new contract.
16. I am therefore satisfied that there is no contract between MD and O Limited.

### **Is O Limited liable for the sum claimed?**

17. The CCLA says that a carrier (i.e. O Limited) is only liable, whether personally or vicariously, for the loss of or damage to any goods carried by the carrier, in accordance with the terms of the contract and the provisions of the Act (or if the carrier intentionally causes the loss or damage) (s 244).
18. O Limited therefore cannot be held liable for the actions of its employee in redirecting the parcel without a tracking function. This is because its liability for the actions of its employees is limited to the liability under the Act, and such liability is only to the contracting party. As I have found

that MD was not the contracting party, the loss is not covered by the Act and so too O Limited cannot be held liable for the actions of its employees related to such loss.

19. O Limited provided the relevant clause of its contract with P Limited, which states "These tickets may **only** be used for returning copies/portions of unsold P Limited Products."
20. It follows that O Limited cannot be held liable for the loss of MD's computer. This is primarily because liability is owed to the contracting party and MD is not the contracting party, the CCLA specifically excludes all other liability, and the terms of the contract did not extend to the type of service that MD required.
21. I am satisfied that there was no contract entered between MD and O Limited. The contract with P Limited was also on very confined terms. MD took a risk in sending the parcel using the Courier Ticket, even if she intended it to be more secure.
22. However, I also have some sympathy for MD and her position. Had Covid 19 not been affecting public access at the time at which the parcel was located at the depot, then there is a good chance that the parcel would have been collected. Had MD been informed at that stage, as she should have been, that there was no way of tracing the package when it left the depot, then there may have been an opportunity to make another arrangement and contract.
23. Given those circumstances, in my view it would be appropriate for O Limited to offer some compensation to MD for her loss. Had the parcel been lost when sent under cover of its standard service, then it is very likely that O Limited would have accepted liability for the loss without recourse to the Disputes Tribunal.
24. Having made those observations, I nevertheless find that there was no contract between the parties and no liability at law from O Limited to MD for the loss of the computer.
25. Under section 43 of the Disputes Tribunal Act 1988 costs are not awarded against a party to any proceedings before the Tribunal, except in situations that do not apply in this case. The claim for the filing fee is therefore not awarded.
26. For these reasons, the claim is dismissed.

**Referee: T Baker**  
**Date: 27 January 2021**



## 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 28 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 28 days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside 28 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>.