



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 339

APPLICANT NP

RESPONDENT KM

The Tribunal orders:

1. NP shall at her own cost courier the saddle to KM as soon as possible.
2. KM shall, by no later than 7 April 2023 either:
 - a. Refund to NP the purchase price of the saddle; or
 - b. Inform the Registrar by email (redacted) that the dispute is not resolved, and a second hearing is required.
3. If the latter occurs, the parties will be notified of the time and date of the second hearing. Parties may submit any further evidence by email to the Registrar at the email address given above.

Reasons

1. The dispute relates to a T saddle that NP purchased from KM via Facebook marketplace.
2. NP directed the saddle to Q Saddle Fit for a “soundness and safety check” before she used it.
3. NP received a report from BQ (Q Saddle Fit) stating that the saddle showed “obvious asymmetry” and that it “does not pass the initial stationary checks to ensure it is safe to be ridden”. BQ “strongly suggested” sending the saddle to a [Saddler] for further investigation.
4. NP passed on the findings to KM.
5. KM disputed the report and asked for the saddle to be returned to her so that she may obtain her own assessment.
6. NP asked for details of who KM intended to have inspect the saddle. NP was concerned that investigation should be done by a suitably qualified person, preferably a [saddler] as recommended by BQ, especially if the investigation would involve removing panels from the saddle.
7. KM declined to disclose the details of who would do the investigation. NP declined to return the saddle. The parties reached an impasse.

8. KM provided written submissions from BN and from an unnamed person, responding to and (in some respects) criticising the BQ report.
9. In my view it would be unjust to make any findings without allowing KM the opportunity to have the saddle inspected by persons of her choosing.
10. KM stated that she had previously offered to refund the purchase price to NP. KM re-stated that offer, on the condition that NP return the saddle to her and allow her the opportunity to inspect it.
11. NP accepted this.
12. The dispute may be resolve by KM giving a refund to NP. If, after receiving the saddle back, KM does not agree to a refund then:
 - a. There will be a second hearing.
 - b. NP's claim will be amended to include the cost of returning the saddle to KM.
 - c. KM will be required to provide a copy of any inspection report that she obtains from a third party.
13. KM is to either provide the refund or indicate that a second hearing is required, by no later than 7 April 2023. If there are any difficulties or delays that necessitate an extension of this date then KM or NP may request this by email to the Registrar.

Referee: Nicholas Blake

Date: 8 March 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>.