



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

[2024] NZDT 5

**APPLICANT**      **NS**

**RESPONDENT**    **L Ltd**

**The Tribunal orders:**

The claim is dismissed.

**Reason**

1. NS purchased 2 carrier vests online from the respondent and wished to return them saying they did not fit his requirements, by which he meant they did not properly fit. L Ltd denied the request saying the vests were the size shown in the advertisement and they had no obligation to give a refund if the buyer changed their mind.
2. NS says the advertisement says he had 7 days to decide whether he wanted to keep the vests or return them and he decided to return them within 7 days.

*Change of Mind*

*While we're sure you'll pick something you love, be sure to choose wisely as we don't offer refunds for 'change of mind' online or in-store—unless, of course it's faulty. If an item you have purchased does not fit, we will exchange it for another size. Get in touch with us to discuss.*

3. NS is wanting a refund, not an exchange. He says the vests measurement was on the waist, not the neck, which are causing problems due to the shoulder straps. He says the vests are not fit for purpose.
4. There is no consumer legislation that requires a retailer to refund a purchase where the goods meet the description in the advertisement, unless there is a fault with the goods. There is no evidence the vests are not the size advertised or that they are faulty.
5. Section 8 of the Consumer Guarantees Act 1993 requires the vests be fit for any particular purpose for which the supplier represents that they are or will be fit. The vests are fit for the purpose for which they were advertised, as vests. That they do not fit the wearer does not make them unfit for purpose as a vest.
6. Section 9 of the Act requires the vests comply with their description, which they do because they are vests.
7. The nexus of the claim is that the vests do not properly fit the wearers. L Ltd cannot be liable for this because they would never know the measurement of a wearer that buys goods online, it can only provide the vests measurements and leave it for the purchaser to make a choice what size to buy.

8. Because NS is not seeking an exchange and because the 7 days for him to do so has passed, his claim for a refund must be dismissed because the vests he received matched the description L Ltd provided and were fit for purpose.

**Referee:** P McKinstry  
**Date:** 30 January 2024



## 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>.