



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 89

APPLICANT OS

RESPONDENT E Ltd

The Tribunal orders:

1. The claim is dismissed.

Reasons

2. OS is seeking compensation from E Ltd for failing to deliver goods within a reasonable time. The claim is disputed by E Ltd.
3. The issue for determination by the Tribunal is whether OS is entitled to compensation for the late delivery.

Is OS entitled to compensation for late delivery?

4. OS explained that on 10 December 2022 she ordered three items from Amazon in the [Country 1]. She paid for priority shipping. Two of the items arrived in time for Christmas on the 15th and 16th of December. The third item (an underwater camera) was picked up by E Ltd on 11 December and at this point it began boomeranging between [City 1] and [City 2]. On 13 December E Ltd advised that the estimated delivery date for the camera was Monday 19 December.
5. On 19 December OS contacted E Ltd and she was told that she was to call back if the parcel hadn't been moved from [City 1]. OS repeatedly contacted E Ltd from this point on and stressed the urgent need for delivery. On 22 December OS realised that the camera would not arrive in time for Christmas so she bought an alternative camera from OM.
6. The camera from Amazon finally arrived in New Zealand on 30 December 2022 but this was too late and OS instructed E Ltd to return it to the supplier.
7. OS was of the view that E Ltd had failed to provide the delivery service with reasonable care and skill. From the time she raised concerns on 19 December, the company should have acted with more urgency to get the parcel and something should have been done to stop it going back and forth between depots. She also pointed out that the parcel had been sent to the incorrect facility twice. OS said she paid for priority shipping and she did not receive it.
8. TU gave evidence for E Ltd. She explained that the items were sourced from three different places in the [Country 1] and then they came separately to the main depot in [City 1]. TU explained that goods went out on passenger planes (not freight planes) from [City 2] or [City 1]. As such they were dependant on the airlines as to where or when the goods left the country.

December was a busy time of year and the reason why the item went to and from the depots was to try and get it on a plane out. Ultimately the item came via [City 3] and through [City 4].

9. TU said that no guarantee was given for delivery times. She also said that E Ltd's contract was with Amazon and not with OS and as such it did not owe her a duty of care.
10. This claim is governed by the law of contract. The Consumer Guarantees Act may also be applicable. A contract is a mutually binding commitment where one party agrees to do something in return for something else – usually money.
11. The Consumer Guarantees Act provides a guarantee that services acquired by a consumer must be carried out with reasonable care and skill. A consumer does not need a contract with a supplier of services for it to get the benefit of the guarantee, but the services still need to be provided to that person.
12. In this case I find that OS is not entitled to compensation from E Ltd. I say this because:
 - a. OS did not have a contract for delivery services with E Ltd. Her contract was with Amazon who had the obligation of getting the goods from Amazon to her.
 - b. OS did not acquire delivery services from E Ltd which is a requirement under the CGA. She paid Amazon to deliver the goods to her but she had no say as to how that service would be provided. E Ltd were providing the delivery service to Amazon. It was not providing the service to OS.
 - c. The services of E Ltd were acquired by Amazon under a contract which was separate from the contract Amazon had with OS.
 - d. No guarantee was ever given by either Amazon or E Ltd that the goods would be delivered in time for Christmas.
 - e. "Priority Shipping" is different from a guaranteed delivery which is also available on some Amazon purchases.
 - f. E Ltd gave an estimated delivery date of 19 December. This was not a guarantee.
 - g. There is no evidence that E Ltd could have done anything differently to get the parcel to OS sooner. E Ltd was dependant on passenger planes and other factors beyond its control. In addition, the three items ordered from Amazon were handled separately and were not consolidated into one order for delivery. Their different paths across the world depended upon when they arrived in OS' letterbox.
 - h. There is no evidence of what else E Ltd ought to have done or could have done when OS contacted them on 19 December. There is nothing to suggest that another courier company could have perform better or faster.
13. For these reasons the claim is dismissed.

Referee: LK Whineray
Date: 23 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>.