



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 292

APPLICANT OX

RESPONDENT B Ltd

The Tribunal orders:

B Ltd is to pay OX \$334.99 within 30 days of the date of this order.

Reasons:

1. OX purchased a pair of [headphones] from [retail store] on 19 October 2019 for \$334.99.
2. In late 2022-early 2023, OX noticed that the right earbud kept dying after about 20 minutes of use, and that the battery level of the right bud always jumped from 0% to 55% after being charged. The issue did not affect the left earbud, which functions as normal.
3. OX claims that the buds should still be covered under the Consumer Guarantees Act 1993 (CGA) and that she is entitled to a refund of the purchase price. B Ltd content that OX's buds have lasted a reasonable period and are no longer covered by the CGA.

4.

Issues:

Have OX's earbuds lasted a reasonable period?

If not, is OX's entitled to a remedy under the CGA, if so what remedy is she entitled to?

Have OX's earbuds lasted a reasonable period?

5. The CGA provides that products purchased by consumers should be safe, of acceptable quality, and free of defects. Products must also be fit for purpose, meaning that a product should do what it is expected to do. If a product purchased doesn't work, breaks too easily, or doesn't do what it is expected to do, consumers are entitled to a repair, exchange or sometimes a refund, from the seller.
6. The CGA does not specify a time limit that products should last. Instead, it says products must last a 'reasonable' amount of time. What 'reasonable' means varies, and factors that can be considered include the cost of the item and how it was used.
7. OX said at the hearing that she would not have paid the price she did for earbuds that would only last 3 years. There were other cheaper brands of earbuds for sale. She also gave evidence that although over 3 years and eight months had passed since the purchase of the earbuds, that she had first started experiencing the problem about three years after the purchase. She supported this by providing dated screenshots of her internet searches about the specific issues she was experiencing. The searches brought up chat threads, also included in evidence, indicating that other consumers were having the same problem with the right earbud.
8. In terms of usage, OX claimed that she bought the earbuds for outside use, and as she did not venture outside much during the covid lockdown period, that they had not had as much usage as they otherwise might have.
9. I find that OX purchased a relatively expensive brand of earbuds and started experiencing issues with the right earbud approximately three years after purchase. The evidence she provided which she obtained from internet forums with users discussing the exact same problems occurring with the right earbud shows that others also experienced the same issue with the product, with the left earbud continuing to working normally.
10. The product was not a cheap product, and there is no evidence to suggest OX's use contributed in any way to the fault. While B Ltd contended that the product was too old to fall within the scope of the CGA and that two years was a reasonable amount of time for a product such as the earbuds to last, I find under the circumstances and considering the relevant factors that it is reasonable to expect that the product would last longer than three years.

If not, is OX entitled to a remedy under the CGA, if so what remedy is she entitled to?

11. Under the CGA consumers are entitled to a repair, replacement or refund replacement of products that show a major failure of the guarantees. There is a serious issue with a consumer

purchase when the consumer would not have bought the product, had they known of the failure.

12. In this case, OX has stated that had she known about the issues with the right earbud she would not have bought the product. At the hearing, B Ltd offered to repair the right earbud if OX paid half the cost, however I find that given there was a major failure with the product, that OX is entitled to a refund of the purchase price.

Referee: Kaho

Date: 28 July 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>.