



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 714

APPLICANT P Ltd

RESPONDENT S Ltd

The Tribunal orders:

S Ltd is to pay the sum of \$741.77 to P Ltd by no later than 19 January 2024.

Reasons:

1. P Ltd purchased potting mix from S Ltd for several years for the purpose of raising organic seedlings. In September 2022, P Ltd purchased 17 cubic metres of the potting mix, the blend to be the same as previous years. However within weeks, P Ltd noticed seedlings either not germinating or they were distorted. They advised S Ltd of the problem on 10 October and sent a sample of the mix for testing to [laboratory]. On 8 November, P Ltd advised S Ltd of the lab results. S Ltd responded and suggested the product may need resting and cooling. S Ltd carried out their own testing, and although they were happy with the results, offered to replace the product on 9 December. The offer was not accepted.
2. P Ltd continued to use the mix until January 2023. It is claimed hundreds of pots had to be dumped due to poor or distorted growth, and that as a result, their business suffered a significant loss. P Ltd therefore claim for compensation for their losses in the Disputes Tribunal.
3. The issues for the Tribunal to determine are as follows:
 - i. Was the mix fit for the purpose and consistent with previous orders?
 - ii. If not, what is the loss suffered by P Ltd? What is the value of that loss? Did P Ltd take reasonable action to mitigate their losses?

Was the mix fit for the purpose and consistent with previous orders?

4. The Contract and Commercial Law Act 2017 provides for an implied condition in contracts for the sale of goods that the goods will be reasonable fit for the purpose if the buyer makes the seller aware of the particular purpose for which the goods are required.
5. It is agreed the contract between the parties was for a specific blend, as had been provided in previous years, and that S Ltd knew the purpose for which the mix was required. In

accordance with the contract, the blend delivered in September 2022 should therefore have been the same as previous years and fit for the purpose.

6. Test results supplied from [laboratory] show the sample reviewed by them had high levels of sodium and potassium. It is agreed this is likely to be a cause of the poor growth results. S Ltd is at a loss to know how this happened. Subsequent tests undertaken by S Ltd showed the compost component of the mix was acceptable, however no tests were carried out on other ingredients added to the mix.
7. In view of the [laboratory] test results, and without evidence to the contrary, I find the mix supplied was not consistent with previous orders, was not fit for the purpose due to the high levels of sodium and potassium, and was therefore in breach of both implied and specific terms of the contract.

If not, what is the loss suffered by P Ltd? What is the value of that loss? Did P Ltd take reasonable action to mitigate their losses?

8. In the event of a breach of contract the buyer may claim damages, the measure being the estimated loss directly and naturally arising from the breach.
9. The difficulty in this case however is assessing the actual loss arising from the breach. DQ and NQ, directors of P Ltd, stated not all seedlings failed. The numbers that did fail is however unclear as estimates have ranged between hundreds and thousands and no independent evidence of the failures has been provided.
10. DQ and NQ estimate they had used approximately 3 cubic metres of the 17 delivered when they realised there was a problem. By 9 December, they had used another 2 – 3 cubic metres. The success rate improved when they diluted the mix. By January 2023, when they sourced another supplier, they had used approximately 90% of the mix.
11. P Ltd are claiming for the loss of stock and profit as a result of using this mix. However P Ltd had a duty to mitigate losses. DQ and NQ state they pursued planting in the S Ltd mix as it was their high season. However it seems possible losses could have been mitigated by either sourcing a mix elsewhere at an earlier date, or by accepting the offer made by Mrs S on 9 December to replace the mix.
12. In view of the lack of evidence to support the scale of the losses, and in view of the failure of P Ltd to mitigate losses, I find the claim for compensation for loss of profit and plants as claimed cannot succeed. However as I am satisfied some plants did fail, I find it appropriate to order a nominal amount in compensation of \$200 due to the failure of the product to be fit for the purpose.
13. It is noted S Ltd waived the account for the mix due to the difficulties incurred. This is a further benefit to the applicants.
14. The claim also includes the cost of obtaining a report from [laboratory] of \$541.77. I find this to be a loss directly resulting from the failure of the product to be fit for the purpose. I accordingly find S Ltd liable to pay this amount.
15. In view of the above, I find S Ltd is liable to pay a total of \$741.77.

Referee: K. Edwards
Date: 14 December 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>.