



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

**District Court**

**[2023] NZDT 203**

**APPLICANT      T Ltd**

**RESPONDENT    O Ltd**

**The Tribunal orders:**

The claim is dismissed.

**Reasons**

1. T Ltd used O Ltd to deliver goods, mostly polybins of chilled fish, to its customers in 2021 and 2022.
2. T Ltd claims compensation of \$7814.30 (being the cost price of the goods only, no lost profit is claimed) for various consignments which it says were delivered late (past the use by date of the perishable goods), damaged or not delivered at all.
3. Contracts for carriage are governed by the carriage of goods provisions of the Contract and Commercial Law Act 2017 ('CCLA'). Section 248 of the CCLA provides that liability of a carrier for damaged, lost or late goods depends on the kind of contract that is entered into by the parties.
4. O Ltd have shown through their terms and conditions in the signed contract with T Ltd, that the parties in this case have entered into a contract "at owner's risk" (clause 12(e) of the terms and conditions). As per section 248(2)(a), "under a contract for carriage at owner's risk, the carrier is not liable for the loss of or damage to any goods, except where the loss or damage is intentionally caused by the carrier".
5. There is no evidence (or suggestion) that O Ltd caused loss or damage intentionally, therefore they are not liable to pay compensation to T Ltd in whatever other circumstances the loss or damage occurred.
6. N provided a previous decision of the Disputes Tribunal by another seafood supplier against another courier company. The seafood supplier's claim was successful in factual circumstances similar to these (where goods were delayed in transit and perished), and N argues that because that contract would also have been at "owner's risk", compensation should be similarly awarded in this case.
7. While Disputes Tribunal decisions do not set precedents, I address that argument anyway as follows. The previous decision does not specify the kind of contract of carriage that was

entered into by those parties. Where no evidence of 'contracting out' is provided, the carriage is deemed to be at 'limited carrier's risk'. I infer that was the situation in the previous case because the type of contract of carriage was not mentioned.

8. For the reasons above, I find that O Ltd has no liability to pay compensation for T Ltd's claimed losses. I note that O Ltd had previously credited an amount of \$770.00, based on 50% payment for five claims they were aware of, on a goodwill basis, and sought payment of the outstanding balance invoiced for services of \$2397.10. They had not lodged a counter-claim, preferring to pursue the outstanding amount, the quantum of which was not disputed by T Ltd, separately after this claim was determined.

**Referee Perfect**  
**Date: 21 June 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>.