



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

District Court

[2023] NZDT 206

**APPLICANT** TU

**RESPONDENT** CE

**SECOND  
RESPONDENT** D Ltd

**The Tribunal orders:**

1. The claim against CE is dismissed.
2. D Limited is to pay \$26,081.92 to TU by 1 July 2023.
3. Immediately following payment of the \$26,081.92, D Ltd will own the solar panels it supplied to TU and by arrangement may collect the solar panels from him.

**Reasons:**

1. CE was phoned twice but calls went to voicemail on each occasion.
2. D Ltd (D) contracted with TU for the supply of solar panels, batteries, an inverter and other components for an off grid power system. D Ltd only supplied solar panels. Sections 5A & 21 of the Consumer Guarantees Act 1993 apply. There has been a substantial failure of the Guarantee of Delivery.

*Should D Ltd pay for grid power paid for by TU?*

3. TU has claimed that D Ltd should pay for his power as a consequence of non-performance of the contract. Section 28(4) of the Consumer Guarantees Act 1993 provides for consumers to:  
“...obtain from the supplier damages for any loss or damage to the consumer resulting from the failure ... which was reasonably foreseeable as liable to result from the failure.”

4. TU's claim for the cost of power is a loss resulting from D Ltd's failure to provide goods to get him off the grid. D Ltd represented that the product the company would supply would be sufficient to take TU off the grid. In addition, TU bought extra batteries costing about \$10,000.00 that would provide him with even more storage. It was reasonably foreseeable that if he could not get the goods from TU, he would pay for grid power. His claim for \$1,931.92 for the cost of power is proved.
5. TU also suffered a loss because the batteries he purchased for extra storage will not be compatible with a different inverter. He has not claimed for that loss because of the monetary jurisdiction limits of the Tribunal.

*Return of the solar panels*

6. D Ltd will be able to collect goods supplied from TU after D Ltd refunds the purchase price for goods supplied. TU has not used the solar panels provided by D Ltd.

*Quantum*

7. The total D Ltd is to pay TU is \$26,081.92, being \$24,150.00 and \$1,931.92.

**Referee: B M Smallbone**  
**Date: Monday, 19 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>.