



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

**District Court**

**[2023] NZDT 306**

**APPLICANT      UH**

**RESPONDENT    N Ltd**

**The Tribunal orders:**

N Ltd is to pay \$625.00 to UH on or before Wednesday 16 August 2023.

**Reasons:**

1. UH engaged the service of N Ltd to engrave the names of his sons onto the back of [two watches]. The watches are family heirlooms that UH estimated to be 100 years old, and he wanted to gift them to each of his sons.
2. When UH collected the watches, the glass covers and crystal was damaged on each watch, with some additional damage on [watch 2]. UH claimed to be compensated for the cost he incurred to have a jeweller fix the watches.
3. The issues to be resolved are:
  - (a) Did N Ltd use reasonable care and skill when it engraved the watches and was the service it provided reasonably fit for UH's intended purpose?
  - (b) If not, was N Ltd given a reasonable opportunity to remediate the defect?
  - (c) If so, what loss can UH show he has incurred that he is entitled to be compensated for?

**Did N Ltd use reasonable care and skill when it engraved the watches and was the service it provided reasonably fit for UH's intended purpose?**

4. The Consumer Guarantees Act 1993 applies in this case as UH purchased a service for his personal needs from an entity that is in trade supplying that service. Section 28 of the Act provides that where a service is supplied to a consumer, the supplier guarantees that the service will be carried out with reasonable care and skill. Section 29 provides that the supplier of the service also guarantees that the service will be reasonably fit for the consumer's expected result.
5. UH said that he was telephoned and advised that [watch 1] was ready and if he came after 5.00pm then [watch 2] would also be ready for collection. When he arrived he found that the glass cover of

both of the watch faces were broken, the face of [watch 1] was cracked, and the [watch 2] case was damaged and the second hand was lost.

6. NK, director of N Ltd, said that when the watches were placed onto the engraving machine, the head applies a slight pressure. The watch has to be placed face down, and, as the back of the watch is slightly curved, it has placed pressure on the 100 year old mineral glass and caused the crystal to shatter. NK, however, said his service was performed on the basis of 'all care and no responsibility'.
7. I find that once N Ltd accepted the engraving on the antique watches, then it was bound to perform its service using reasonable care and skill and so that the result would be fit for the purpose UH requested it for. UH denied that there was any term of the agreement that the engraving was performed on the basis of all care and no responsibility. However, section 43 of the Act provides that suppliers of a service to consumers cannot contract out of the guarantees imposed by the Act. N Ltd therefore cannot contract of the basis that it has no responsibility for any damage.
8. I am satisfied from the damage to both of the watches that N Ltd has failed to use reasonable care and skill. NK was aware before he offered the service that glass on antique watches can deteriorate over time and that the machine he uses places pressure on the watch. Further, after damaging the first watch, UH persisted with engraving the second without informing UH of the damage done to the first. At that point there was a very real risk that the second would also be damaged, however, NK continued to use the same machine. I therefore find that N Ltd breached its guarantee that the service it offered was suitable for UH's purpose of engraving on antique watches.

#### **Was N Ltd given a reasonable opportunity to remediate the defect?**

9. Section 32 of the Act provides that if a supplier of a service fails to comply with a guarantee, and the failure can be remediated, then the consumer may require the supplier remediate that defect within a reasonable time.
10. I find that N Ltd has had a reasonable opportunity to remediate the defect before it arranged for UH to collect the watches. However, in addition, after UH collected the watches, he sent many emails to N Ltd and requested that it fix the issues, but no remediation was offered to UH. The Act therefore entitles UH to have the defect remediated elsewhere.

#### **What loss can UH show he has incurred that he is entitled to be compensated for?**

11. UH claimed to be compensated for the cost of \$165.00 for the replacement of the crystal in [watch 1] and \$575.00 for the repair of [watch 2].
12. NK considered that the crystal of both watches could be obtained for significantly less cost if purchased from the website [online marketplace], as would be the second hand of [watch 2]. He also considered that the casing around [watch 2] was not damaged, and he should not be liable for the cleaning cost.
13. I find that N Ltd is liable for the total cost UH incurred to remediate the damage done to the watches. I have no reason to doubt that the cost is the reasonable cost a jeweller would charge and UH is not bound to have the repair performed for the cheapest price possible. It is reasonably foreseeable that UH would need to take the watches to a jeweller as the repair requires specialist knowledge. The cleaning of [watch 2] was to remove the glass shards and I am satisfied it was only incurred as a result of the damage N Ltd did to the watch. I am also satisfied that the case spring was more likely damaged during the engraving as the case was also dented.
14. UH also claimed to be reimbursed \$45.00 for the travelling costs he incurred to take the ring to [watch repairer]. Although it is a potential loss UH may have incurred, I have decided the cost should not be awarded. I cannot be satisfied that it is more likely that the cost was only incurred to

reimburse UH for the expense of taking the watches to be repaired and therefore no award is made for his travel.

15. UH has not paid the engraving fee of \$115.00. N Ltd is entitled to be paid for its service and so that cost must be deducted from the amount of \$740.00 that UH has proven he is entitled to be compensated for.

### **Conclusion**

16. As UH is entitled to be compensated for the loss of \$625.00 that he incurred to repair the damage done to his two watches, an order is made for that amount.

**Referee: K Cowie DTR**

**Date: 21 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>.