



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 104

APPLICANT X Ltd

RESPONDENT L Ltd

The Tribunal orders:

1. L Ltd is to pay X Ltd \$1,380.00 on or before 30 March 2023.

Reasons:

1. X Ltd purchased a second-hand tractor from L Ltd for \$28,000.00. The tractor was advertised as having 1,216 engine hours.
2. When X Ltd received the tractor, it was disappointed with its condition, which it considered was representative of a substantially higher number of hours than it had been advertised as.
3. X Ltd contacted L Ltd, who agreed that X Ltd could return the tractor in return for a full refund. L Ltd also agreed to refund the original freight cost of sending the tractor to X Ltd, however did not agree to pay the freight for the tractor to be returned. The parties reached an agreement that X Ltd would pay the return freight cost.
4. X Ltd now claims \$1,380.00, being the freight cost to return the tractor to L Ltd.
5. The issues I have to consider are:
 - a. Was there misleading or deceptive conduct by L Ltd?
 - b. If so, what remedy is appropriate?
 - c. Was there a misrepresentation by L Ltd that induced X Ltd into the contract?
 - d. If so, what remedy is appropriate?

Was there misleading or deceptive conduct by L Ltd?

6. Section 9 of the Fair Trading Act 1986 ("FTA") says that a person in trade may not engage in conduct that is misleading or deceptive or that is likely to mislead or deceive. As L Ltd is in the business of selling tractors, the FTA applies to it.
7. In this case, X Ltd said it was misleading to advertise the tractor as having 1,216 engine hours, and in being in good condition with no faults. It said that it was clear the tractor had done substantially more than 1,216 engine hours and had a number of faults such as the hand brake not working, a hole in the roof and the bucket and other issues.

8. I find that there was misleading conduct by L Ltd in advertising the tractor as having done 1,216 engine hours. I say that because L Ltd accepted that it did not know how many hours the tractor had done and was simply going with what the clock on the tractor said. However, L Ltd said that the hour clocks on this type of tractor are known to give trouble and not accurately reflect the number of hours.
9. If L Ltd did not know how many hours the tractor had done, it should not have advertised it as having done 1,216 engine hours. I accept L Ltd's evidence that it has no way of knowing whether that figure is an accurate representation of the hours in a situation where it receives a tractor as a trade-in and then sells it on. But, if that is the case, and it cannot guarantee the accuracy of the hour clock, it has an obligation to make that known to potential purchasers so that they can be on notice to make further enquiries if they wish to.
10. I also accept it is more likely than not that the tractor had done more than 1,216 engine hours, perhaps substantially more. X Ltd provided a letter from EM, the branch manager of E Ltd, who viewed the tractor when it arrived at X Ltd's property. That letter said the tractor was clearly showing sign of wear and that it had "clearly not" done 1200 hours "more like 12000".
11. The parties both agreed that when these tractor counters reach 10,000 hours, they click back to zero. Therefore, it is possible that the 1,216 engine hours recorded is actually 11,216 hours (with the 10,000 hours not showing). X Ltd said that when EM viewed the tractor he was of the opinion it had gone "round the clock".
12. I also accept that it was misleading to state that the tractor was in a good condition. The letter from EM set out a number of other issues with the tractor including the hand brake not working, rev counter not working, hole in the bucket and rusty rims. Some of those issues, including the hand brake not working were accepted by L Ltd. Photographs provided by X Ltd show that there was significant rust on the bucket, to the extent that it had split on the seam.

If so, what remedy is appropriate?

13. If a breach of s 9 of the FTA causes a person to suffer loss, the Tribunal may grant a remedy under s 43, including an order that one party pay the other the amount of the loss or damage.
14. I accept that X Ltd has suffered loss in the form of the freight charge for sending the tractor back to L Ltd. I accept the evidence from X Ltd that if it had known that 1,216 hours was not an accurate representation of the number of hours the tractor had done, it would not have purchased it.
15. I am satisfied that X Ltd is entitled to the freight charge despite the fact that the parties had come to an agreement that they would share the freight cost equally (ie each would pay the freight for the tractor to travel one way). I say that because originally X Ltd requested L Ltd to pay the full freight cost, which L Ltd refused. I am satisfied that X Ltd reluctantly agreed to pay half as a pragmatic response in order to facilitate the return of the tractor, rather than a full and final settlement of the issue.
16. I note that while s 5D of the Fair Trading Act 1986 allows two trading parties to contract out of the Fair Trading Act 1986, the agreement in this case occurred after the misleading statements were made and therefore does not apply in this situation.
17. While parties are, in general, entitled to reach their own resolution of matters, where a claim is brought to the Tribunal, the Tribunal must look at what the law provides. For these reasons, I find that X Ltd is entitled to \$1,380.00 (being the cost of freighting the tractor back) from L Ltd.

Was there a misrepresentation by L Ltd that induced X Ltd into the contract?

18. Section 35 of the Contract and Commercial Law Act 2017 states that where a party is induced to enter into a contract by a misrepresentation, they are entitled to damages as if the representation

was a term of the contract that had been breached. A misrepresentation is a false statement of fact.

19. For the reasons set out above, I am also satisfied that it was also a misrepresentation that the tractor had done 1,216 hours. However, given I have found that X Ltd is entitled to a remedy under the Fair Trading Act 1986, it is not necessary to consider whether a remedy is also available for a misrepresentation.

Referee: Souness - DTR

Date: 9 March 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>.