



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 685

APPLICANT DA

RESPONDENT YB

The Tribunal orders:

YB is to pay \$705.00 to DA on or before 31 January 2024; and

Once the payment is made, DA is to make the scooter available for collection by YB within four weeks of payment.

Reasons

1. The applicant purchased a new scooter from the respondent via [online platform] at a cost of \$680.00 plus \$25.00 shipping. The respondent is in trade – when the dispute arose, [online platform] provided the seller's name as YB trading as XX.
2. The scooter did not have the charging range advertised but when the applicant contacted the respondent about the problem, which was identified soon after receipt of the scooter, the respondent did not reply until the applicant left negative feedback on [online platform].
3. At that point, the respondent said they would only assist with the problem once the negative feedback was removed. In taking this stance, the respondent failed to comply with their obligations under the Consumer Guarantees Act 1993 (CGA) to remedy a failure when given the opportunity to do so.
4. As the respondent did not remedy the failure within a reasonable time, the applicant is entitled to reject the goods and obtain a refund as per the CGA provisions. Because the respondent shipped the goods and it is not known whether they have a 'shop' address, the respondent is to collect the scooter from the applicant once they have provided the refund of the purchase price plus shipping costs incurred.
5. I find that DA's claim for consequential losses does not succeed, because the claimed-for losses, the cost of transporting his daughter to and from school are not sufficiently connected to the failure of guarantee – he says she cannot walk because all of her friends ride scooters and she would be walking by herself, but this is not a foreseeable consequence of the problem with the scooter. Hopefully that situation will be relatively temporary and another scooter can be purchased in the near future.

Referee Perfect
Date: 20 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>.