



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2022] NZDT 222

APPLICANT ET

APPLICANT DT

RESPONDENT CP Ltd

The Tribunal orders:

CP Ltd is to pay ET and DT the sum of \$8,887.00 within 28 days of the date of this order.

Reasons:

1. On 2 August 2022, ET and DT purchased a kitset cabin from CP Ltd for \$8,399.00. The price included the cost of freight from [City 1] to Logistics Depot in [City 2]. The transport to Logistics Depot was arranged by CP Ltd. ET and DT intended to use the cabin as a home office for DT.
2. ET and DT arranged for a work colleague to collect the cabin from Logistics Depot using a forklift and a large trailer. However, when the friend went to collect it, he told ET and DT that the forklift could not be used to transport it because the pallet the cabin was packed on had collapsed. ET and DT therefore arranged [Transport Company] to transport the cabin, using a hiab, to their property in [Suburb] at a cost of \$488.00. [Transport Company] noted that the cabin itself was damaged and took photographs before transporting it to ET and DT's property.
3. ET and DT claim that the damage occurred because the cabin was poorly packed by CP Ltd, in particular: the pallet used to transport the cabin was too small to take the weight of it; and there was no protection or wrap around the cabin components. They claim a refund of the price paid for the cabin plus the cost to transport it from Logistics Depot to their property in [Suburb].
4. A and B represented CP Ltd. They accept liability for the damage to the cabin and agreed to refund the total price paid for it (\$8,399.00) but claim that ET and DT are required to return the cabin to CP Ltd in [City 1] at their cost before being entitled to a refund. They also dispute the claim for the amount paid to [Transport Company].
5. Thus, the issues to be decided can be stated as follows:
 - i. Are ET and DT entitled to the cost incurred to transport the cabin from Logistics Depot to [Suburb]?
 - ii. Who is responsible for the return of the cabin to CP Ltd?

Are ET and DT entitled to the cost incurred to transport the cabin from Logistics Depot to [Suburb]?

6. The law that applies here is found in the Consumer Guarantees Act 1993 (the Act). That Act creates a number of statutory guarantees upon the supplier of goods to a consumer, including the guarantee that the goods will be of acceptable quality. This includes a requirement that the packaging used to transport the goods is of acceptable quality or fit for purpose.
7. I am satisfied that the packaging of the cabin was inadequate and not fit for the purpose of transporting it from [City 1] to [City 2], including the pallet which was inadequate to take the weight of the cabin which led to the pallet collapsing. This is a breach of the guarantee of acceptable quality.
8. Where any of the guarantees are not complied with, the Act provides the right of redress against suppliers. In addition to obtaining a refund of the price paid for goods, the consumer can claim any consequential loss or damage that was reasonably foreseeable as liable to result from the failure to comply with the guarantee s 18(4) of the Act.
9. I consider that ET and DT are entitled to a refund of the amount paid to [Transport Company]. This is an additional amount they were required to pay as a direct result of the pallet collapsing. I consider that this is a cost that is reasonably foreseeable as a loss that ET and DT would suffer as a result of the inadequate packaging.
10. A and B claim that ET and DT should not have had [Transport Company] transport the cabin to their property in a damaged state. However, I accept ET and DT's evidence that they were unaware of the damage to the cabin until it arrived at their property.
11. I therefore find CP Ltd liable to pay to ET and DT the \$488.00 for the additional transport costs (in addition to the refund of the purchase price).

Who is responsible for the return of the cabin to CP Ltd?

12. Where a consumer rejects the goods, the consumer must return the goods to the supplier unless, because of the size or height of the goods, the goods cannot be returned or transported without significant cost to the consumer. In such a case, it is the supplier's responsibility to collect the goods at the supplier's cost: s 22 of the Act.
13. I consider that due to the nature of the cabin, in particular its size, the return of it to CP Ltd in [City 1] (or to any other more local address) would impose an unreasonable or significant cost on ET and DT.
14. I therefore find that the responsibility for the collection of the cabin from ET and DT lies with CP Ltd.

Referee: R Merrett

Date: 29 November 2022



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>.