

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC238069/26012017

Date First Issued:

26/01/2017

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

22/02/2017

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Miss Retailer, and Smiths News (SN), Chester Road, Hertsmere Industrial Park, Borehamwood, WD6 1WS. This complaint concerns alleged failure by Smiths News to deliver titles no later than Miss Retailer, Retailer Delivery Time (RDT) or Scheduled Delivery Time (SDT), alteration of Miss Retailer's RDT/SDT without consultation or notification, failure to supply back orders for part works and delayed credit for returned magazines.

Miss Retailer. claims that she has been trading for 15 years and believes her SDT to be 05.00. Since October 2016 she has been experiencing deliveries between 05.20 and 05.55. She made informal complaints regarding late delivery and was advised that her SDT had been changed to 05.10 in order to accommodate a delivery to Luton Airport. However, her Distribution Manager at Borehamwood advised her that there has been no change to her SDT and that it had always been 05.10. She has subsequently been advised that her SDT is now 05.00. Miss S. further maintains that her credits for magazines are sometimes late and that Issues 4, 6 and 7 of 'Real Life Bugs' have not been received as a back order.

For its part SN maintain that Miss Retailer's SDT has always been 05.10 and that it has never been changed. Miss Retailer had been served by Dawsons in Luton until that companies demise when her supply depot became SN Stevenage. SN is adamant that Miss Retailer receives supply before Luton Airport. The NMA cut off time for Stevenage is 04.00 and once unloading, sorting, loading vans and delivery time is taken into account the ADT at Miss Retailer shop is 05.07 hence an SDT of 05.10. SN has reviewed Miss Retailer's. SDT and looked at moving her drop to another round, but found that the current round was the best one for her. SN has also notified that the only customer before Miss Retailer. on the round has closed and therefore Miss Retailer is now first drop. A back order for 'Real Life Bugs' had been placed, but the title had been discontinued. SN is investigating the delayed credits.

Having considered the evidence before me, I adjudicate as follows:

1. The PDC defines the Retail Delivery Time as the time agreed by the wholesaler and retailer as the last time by which it is operationally feasible for the retailer to receive his newspaper delivery.
2. The SDT is given to a retailer where an RDT could not be agreed. The SDT is the time by which the wholesaler is able to deliver to the retailer, based on current arrival times to the wholesale house.
3. Neither party to this case has supplied me with conclusive evidence as to what Miss Retailer's. RDT/SDT is although there does appear to be a degree of census for it being an SDT. I make particular reference to a note dated 19/11/2012 Miss S. sent to SN asking for her RDT of 05.30 to be changed to an SDT of 05.00. SN refer to it as an RDT on its 'RDT by Customer' form, however within its submissions to me it refers to it as an SDT. On the balance of probabilities I believe Miss Retailer's delivery time to be an SDT.

4. There is conflicting evidence as to whether Miss Retailer's SDT has been changed. Miss Retailer says it has and SN say not. In view of Miss Retailer's request dated 19/11/2012 previously referred to and the fact that SN has now changed her SDT to 05.00 I am prepared to accept that her SDT was changed without notice by SN.

5. The SDT is not a contractual term; however it is binding until such time as either party experiences special circumstances which cause a need for a review. However, should a wholesaler change a customer's SDT, it must notify the retailer at least 14 days in advance under PDC standard 2.3. This was obviously not done.

6. The actual time of Miss Retailer's STD is somewhat immaterial to the case as, from the evidence submitted; SN has failed on a considerable number of occasions to meet an STD of 05.10. It has offered no defence of its failures to deliver all titles no later than the RDT or SDT and therefore I find that it is in breach of PDC standard 2.1.

7. Miss Retailer does not seek restitution for the failures and accordingly I cannot award any. I can only instruct SN to deliver to Miss Retailer by her 05.00 SDT. If SN still persistently fails to meet the SDT, I recommend Miss Retailer make a fresh complaint and claim restitution.

8. Turning to the complaint concerning back copies of 'Real Life Bugs', PDC standard 4.17 provides that if a retailer requests back copies of a part-work the wholesaler will, where copies are available, be supplied within 14 days. In the event that the customer no longer requires a back copy after this period then the copy will be credited.

9. From the evidence submitted it would appear that the copies Miss Retailer requested were not available within the system and issues 4, 6 and 7 remain outstanding in her Due Book. SN has chased the publisher and it is to be hoped that the issues required will be available in due course. Unfortunately, wholesalers cannot supply what is not available to them.

10. With regard to credits, the PDC provides that wholesalers will process all returns collected from retailers for credit on the next possible invoice, normally for the same week as collection. This standard is not conclusive and does provide for credit to be passed on the week following collection. SN is instructed to make every effort to ensure that Miss Retailer's credit is passed in the same week as collection.

11. PDC standard 7.3 provides that all valid vouchers returned will be credited within 14 days of return.

12. Finally, I feel that I must make comment on SN's customer service and communications. Maintaining a high level of customer service is important to the industry and SN must deliver such levels to its retail customers. I do not think they have in the handling of this case.

Neil Robinson

Signature of Arbitrator: _____

Date: 6th March 2017

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

06/03/2017

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

06/03/2017