

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC238854/03-08-18

Date First Issued:

03/08/2018

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

21/08/2018 (Further & Better Particulars Requested)

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr Retailer and Smiths News (SN), 580 Kilbuck Lane, Haydock, St. Helens, WA11 9WG. This complaint concerns alleged failure by Smiths News, to deliver all titles and their appropriate sections, no later than the Retailer Delivery Time (RDT), or Scheduled Delivery Time (SDT), for the day of sale contrary to Press Distribution Charter (PDC) Standard 2.1.

By undated PDC Stage 2 Complaint Mr Retailer maintained that he had an RDT of 05.30 yet received late supply (after 06.00) every day from SN. He did not provide any detail or supporting evidence.

Following a request for further and better particulars it transpired that he had acquired the shop in September 2015 and it had an opening time of 06.00 Monday - Saturday and 07.00 on Sundays. He was receiving his titles from SN in time for opening. At the request of customers he changed his opening time to 05.30 and made a request to SN dated 24/08/2016 that his RDT be reviewed to accommodate his new opening time. He requested that the revised RDT be communicated to him in writing but no such document was forthcoming.

SN responded to the Stage 2 Complaint on 08/08/2018 by pointing out that Mr Retailer's RDT was 06.15 and that delivery had only been late once between 03/04/2018 and 04/08/2018. Furthermore that delivery had only been after 06.00 on five occasions during the same period.

After obtaining further and better particulars from SN it became apparent that SN had 'inherited' Mr Retailer's RDT detail from the acquisition of Surridge Dawson and that no RDT Agreement Form had been passed over. Mr Retailer's request for a review of his RDT had been considered and operational changes had been made in an attempt to satisfy his request. No written confirmation had been sent to Mr Retailer SN did subsequently offer to alter Mr Retailer's RDT to 05.45 Monday - Friday and 06.00 Saturday and Sunday.

Having carefully considered all of the submissions before me, I adjudicate as follows:

1. It is quite clear that this dispute can only be determined by reference to Mr Retailer's actual RDT.
2. I am of the opinion that his RDT was 06.15 Monday - Saturday and 07.00 Sundays when he acquired the shop. He changed his opening time to 05.00 and made a corresponding request to SN on 24/08/2016 that his RDT be changed accordingly.
3. Within his request to SN for a review of his RDT he clearly states that he needs his papers by 06.00 Monday - Friday, Saturday and Sunday and states his opening time as 05.30.
4. Mr Retailer mistakenly assumed that his request for a review of his RDT automatically meant that his RDT had been changed by SN, but this is not the case.

5. The application for a review of an RDT is the start of a process which requires the retailer to establish that he has a commercial need for the copies to be delivered at a given time and the wholesaler to consider that time to be operationally feasible. Mr Retailer's commercial need could be based on a number of factors including:

- Shop opening time
- Home News Delivery rounds
- Manual or computerised systems for marking up
- Casual sales patterns e.g. local shift changes
- Rounds preparation
- Weekend versus weekday patterns
- Delivery times

He quite rightly cited a change in his shop opening time and home news delivery. It was then for SN to look at its own commercial needs, logistics and the current arrival times of the publisher at the depot to determine whether it was operationally feasible to match Mr Retailer's commercial need.

6. I do not consider that SN properly completed the review process and communicated notice of a change of RDT to Mr Retailer in 2016 and, accordingly, his RDT remains at 06.15 Monday - Saturday and 07.00 on Sunday.

7. SN has demonstrated that its Actual Delivery Time (ADT) to Mr Retailer during the period 03/04/2018 - 04/08/2018 consistently achieved the RDT in (6.) above and indeed satisfies Mr Retailer's stated desire in his request for an RDT amendment that he needs his papers before 06.00.

8. This complaint fails and Mr Retailer is advised to make a further request to SN for a review of his RDT which I hope will result in him being offered an RDT of 05.45 Monday - Friday and 06.00 Saturday and Sunday.

9. Mr Retailer is reminded that children can only work as paper boys and girls if they are 13 years of age and they cannot start work until 07.00. In his various submissions Mr Retailer seems to be implying that his newspaper boys and girls are starting work earlier than 07.00!

Neil Robinson

Signature of Arbitrator: _____

Date: 30th August 2018

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

30/08/2018

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

31/08/2018