

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/21453604/04/2012

Date First Issued:

22/05/2012

Name of Arbitrator:

Neil Robinson

Date complaint sent to Arbitrator:

13th July 2012

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr, Retailer and Smiths News, Borehamwood. This complaint concerns an alleged failure by Smiths News to award credit for returned Sunday Newspapers.

Mr. Retailer claims that on Monday, 26th March 2012 his returns comprised Tote Boxes with magazines in and bundles of Sunday newspapers. He points out that he has never returned Tote Boxes without newspapers and that the Smiths News driver confirmed that newspapers accompanied the Tote Box.

He was credited with some newspaper returns, but not by an amount that corresponded with his un-solds bundle.

Mr. Retailer claims in his Statement of Case that his unsold returns were made on time.

Smiths News maintain that Mr. Retailer phoned on 27th March 2012 to inform that he had not received credit for his un-sold Sunday newspapers dated 25th March 2012, but that his call was made after the cut off time. It points out that the returned newspapers un-solds were subsequently scanned and returned to Mr. Retailer five days later.

Smiths News goes on to suggest that Mr. Retailer has a history of papers missing from credit due to late return and that Mr. Retailer had admitted to them that the claim for credit on his un-solds was late due to family illness.

Having considered all of the evidence submitted to me I adjudicate as follows:

1. Mr. Retailer returned his Sunday paper un-solds on Monday 26th March 2012.
2. For some unexplained reason Mr. Retailer's Sunday newspaper un-solds failed to get recognised as such and credited accordingly.
3. Mr. Retailer phoned Smiths News on Tuesday 27th March 2012 to inform it that he had not received credit for his Sunday newspaper un-solds.
4. Smiths News Terms and Conditions of Supply at Paragraph 3.3a clearly provides that:

"Newspapers – Any discrepancies between unsold copies of titles returned will be reported by the customer prior to 15:00 hours on the day the daily credit note is received for Newspapers publishers Monday - Friday (inclusive), and by 12:00 hours on the following Tuesday for Saturday and Sunday Newspaper Returns".
5. Having considered the email correspondence between the NFRN Helpline and Borehamwood Customer Service Team, I note that the NFRN Helpline operative states that "He (Mr. Retailer) said he called in at 12.30 pm and is asking if, on this occasion, they can be passed as it is a lot of money and not his fault that they were missed off in the first place."
6. Smiths News maintains that Mr. Retailer's call was made after 2.00 pm on 27th March 2012 and, to some extent, this is corroborated by internal manual records. It is disappointing to note that Smiths News, Borehamwood, does not appear to maintain proper records of customer phone calls reporting discrepancies thereby offering firm evidence of timing so crucial in this case.

7. On the balance of probabilities I believe that Mr. Retailer's phone call on Tuesday 27th March 2012 advising Smiths News of a discrepancy in credit was made after the 12.00 cut off clearly stipulated in Paragraph 3.3a of the Terms and Conditions of Supply and, accordingly, Mr. Retailer is not entitled to credit for his returned un-sold Sunday newspapers of 25th March 2012.

Signature of Arbitrator: Neil Robinson (email)

Date: 20th July 2012

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

24/7/2012

**Date Independent Arbitration Decision
sent to Wholesaler & Retailer:**

25/07/2012