

Press Distribution Charter

Stage 3 - Independent Arbitration Decision

PDC Reference Number:

PDC/131399/121020

Date First Issued:

12/10/2020

Name of Arbitrator:

Neil Robinson B.A. (Law), M.C.I.Arb.

Date complaint sent to Arbitrator:

19/11/2020 (Further and Better Particulars required)

Independent Arbitration Decision

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr. P. and Menzies Distribution (MD), Unit A110, Redscar Industrial Estate, Preston, PR2 5BN. This complaint concerns alleged failure by Menzies Distribution to deliver all titles and their appropriate sections and supplements no later than the Retail Delivery Time (RDT) or Scheduled Delivery Time (SDT) on the day of sale contrary to 'Pledge on Deliveries' which forms part of MD's 'Customer Service Pledge - Fourth Edition'.

By Customer Complaint Form and attached letter dated 04/08/2020 Mr. P. alleges that his deliveries from MD were persistently late during the period June - July. He maintains that it was only on 22/07/2020 and 24/07/2020 that his delivery occurred before his "cut off time of 05.30". He claims that it was necessary to put on an additional vehicle and hire additional staff in order to meet his customer's requirement at considerable cost, which he estimates as being £3,600, for which he seeks 'compensation'.

Regrettably, MD failed to respond to Mr. P.'s Stage 2 Complaint which necessitated him having to raise the issues as a Press Distribution Charter (PDC) Stage 3 Complaint. By Stage 3 Wholesale Statement of Case MD made no attempt to defend the complaint made by Mr. P. and admitted to "a number of missed RDT's". MD indicated that as from 23/11/2020 Mr. P.'s store was to be the first drop on his run and that should result in a higher level of RDT compliance.

After careful consideration of the evidence submitted to me I adjudicate as follows:

1. It appears that MD has failed to formally acknowledge and respond to Mr. P.'s originating complaint. If this is the case, it shows a disregard to the PDC Complaints Process and indeed to MD's own Customer Service Pledge which must be condemned.
2. MD has offered no apology or explanation for the "missed RDT's on a few occasions" but, by virtue of that statement, accepts that it failed to meet its service standards on delivery.
3. Mr. P. appears to be claiming "compensation" for an extra driver Monday - Friday and mileage at 45p. per mile for an additional vehicle. This amounted to £3,600.00 in extra costs.
4. The PDC does not recognise the legal concept of "compensation" but does endorse 'restitution'.
5. Where restitution is appropriate, I must look to restoring the injured party to what has been lost. It is not about compensating for what might have been lost.
6. Having regard to the fact that MD has accepted that breaches of its 'Customer Service Pledge' did occur and Mr. P. has claimed restitution I am duty bound to consider the matter.
7. I can make a restitution award for the use of a vehicle or additional vehicle in cases where the need for such has been proven to be a 'necessity'. Similarly, for additional staff. Having said this I do not consider that sufficient evidence has been put forward to justify such an award in this case.

8. I am however minded to award restitution for any lost margin as follows:

a) In circumstances where the wholesaler is at fault for the non-delivery of products or under-allocation of product the wholesaler will reimburse the customer for lost margin on the sale of that product.

b) In circumstances where the wholesaler was at fault for late delivery of products and the lateness necessitated the redelivery of HND copy the wholesaler will reimburse the customer 55p per copy redelivered, with a minimum award of £5.50.

9. Mr. P. must now prepare a detailed schedule of his losses caused by the MD service failures following the guidance given on Page 6 of 'Guidance Notes for Retailers' a copy of which is attached. Once completed, he must submit the same to MD for settlement. MD must settle the same unless there is a dispute, in which case the issue should be referred back to me for further adjudication.

10. To a certain extent restitution does not indicate the true purpose of the complaints procedure. All the parties in the industry want differences between retailers and wholesalers to be resolved and therefore, the prime function of the arbitration process is to correct the problem. I am pleased therefore to note that MD has now taken positive steps to address Mr. P.'s issues and trust that they are successful.

Neil Robinson

Signature of Arbitrator: _____

Date 25th November 2020

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

25/11/2020

Date Independent Arbitration Decision
sent to Wholesaler & Retailer:

01/12/2020