

Press Distribution Charter

Stage 2 - Independent Arbitration Decision

PDC Reference Number:

PDC/209219/010622

Date First Issued:

01.06.2022

Name of Arbitrator:

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

Date complaint sent to Arbitrator:

01/07/2022 (Further and Better Particulars required)

In the matter of the Arbitration Act 1996 and in the matter of a dispute between Mr. A. and Smiths News (SN), Lingard Lane, Bredbury Park Industrial Estate, Bredbury, Stockport SK6 2QT. 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 3rd Edition 2.1.

By On-line Complaint form dated 30/05/2022 Mr. A. claims that on Saturday 25/05/2022 his supply from SN was late arriving after the newspaper deliverers had left thereby necessitating a separate delivery. Mr. A. claimed restitution for the delayed copy. Mr. A. also submitted ADT/RDT reports that clearly indicate SN was persistently late throughout April and May.

By email dated 26/05/2022 SN rejected the claim for restitution claiming that the PDC provided that lateness had to be of more than two hours in order for restitution to be paid. However, by letter dated 07/06/2022 SN amended its reasoning to indicate that on 25/05/2022 Mr. A.'s delivery was only 18 minutes late and therefore not serious. In the Step 2 Arbitration - Wholesaler Statement of Case SN further maintained that delivery can be delayed because of inbound deliveries and that it allowed a period of time after the RDT in those circumstances.

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

1. There seems to be some confusion relating to the dates of correspondence. Having sought clarification I understand that there was an email exchange on 26th May 2022 when SN refused restitution. A complaint form was then completed on 30th May 2022 and duplicated on 1st June 2022 and this was rejected by SN letter dated 7th June 2022.
2. On 25/05/2022 Mr. A.'s delivery was late by 18 minutes. Mr. A.'s RDT was 05.55 and the SN delivery was 06.13.
3. Mr. A. made a restitution claim for that lateness and by email dated 26/05/2022 SN denied restitution on the grounds that "the delay on the delivery did not exceed 2 hours". SN maintained that such time limit was imposed by the Press Distribution Charter.
4. **There is clearly no provision in the PDC that defines lateness as being more than 2 hours after an RDT.**
5. By letter dated 07/06/2022, SN altered its reasoning for not awarding restitution for lateness on 25/05/2022 and alleged that on the day in question it was only 18 minutes late and that this was not "serious".

6. The PDC does indeed require a problem to be "serious or persistent" before its complaints process can be used, however the word "or" separates those requirements. In this case an isolated instance of 18 minutes late might well have been a relatively small service failure thereby denying the retailer restitution, but persistence has to be considered separately.

7. I have evidence that between 01/04/2022 and 20/06/2022 SN was late on 35 occasions and this must clearly be considered to be persistent.

8. In its Step 2 Arbitration - Wholesaler Statement of Case SN admits to allowing a period of time after the RDT before it considers delivery late in cases where publisher inbound delivery is late.

There is no provision for such flexibility in the PDC.

9. If SN considered that the publisher was responsible for the lateness because of its late delivery, the retail complaint should have been referred to the publisher. Publisher lateness for newspapers is defined as follows:

a) Cut-off minus 15 minutes.

Or

b) Where a publisher has given reasoned formal notification to a wholesaler that cut-off time cannot be met, the average arrival time for a title over a 10 week day specific period.

10. I find in favour of Mr. A. and SN to award restitution as appropriate.

Neil Robinson

Signature of Arbitrator: _____

Date: 06th July 2022

Seat of Arbitration: London, England.

Date form returned to PDC Administrator:

06/07/2022

Date Independent Arbitration Decision sent to Wholesaler & Retailer:

08/07/2022