

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1508

Date of Decision: 26 July 2019

Complaint

In December 2017, the customer received a credit refund of £1,738.33 from the company. Prior to the money being paid, the customer had checked that the refund was genuinely due and he was assured that it was. 15 months later, the company realised that the refund had been paid in error ("the Error") and requested recovery of the money. The Error has caused significant stress and inconvenience to the customer and his business. In view of this, he seeks compensation of £434.58 - which is 25% of the amount of the 2017 refund - or an equivalent gesture of goodwill.

Defence

As the incorrect invoice and the 2017 refund was issued in December 2017, the company points out that it has issued its corrective invoice (and is seeking a recovery) within the 16-month timeframe that its terms and conditions allow. Whilst acknowledging that the Error involved refunding a large sum of money to the customer, the company has offered an 18-month payment plan to allow time to repay the balance.

No offer of settlement has been made.

Findings

The company's recovery actions are specifically catered for by its terms and conditions. This being so, the company's conduct in this regard cannot be viewed as 'unfair' or as falling below the standard that would be expected. The making of the Error was self-evidently a failing on the part of the company. This caused the customer to suffer some significant degree of inconvenience. However, that inconvenience is 'canceled out' or offset by the windfall benefit to the customer in (unexpectedly) having access to the 2017 refund money over the last 18 months or so.

Outcome

The company does not need to take any further action.

The customer must reply by 23 August 2019 to accept or reject this decision.

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Party Details

Customer: []

Customer's representative: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer runs a shipping, transport and storage business.
- He is concerned about being unfairly pursued by the company for a recovery of £1,738.33. The company had previously refunded this sum to him as a discharge of credit showing on his account.
- He received a credit note from the company on 1 December 2017 that showed a credit balance on his account of £1,742.76. Subsequently, on 18 December 2017, he received credit and debit notes showing a credit balance on his account of £1,738.33 ("the Credit Balance").
- He queried with the company whether the Credit Balance was correct. He was told that it was. He was asked if he wanted the Credit Balance to be refunded to his bank account. He replied that he would like the transfer to be dealt with in that way. The sum of £1,738.33 was then paid into his bank account on 21 December 2017 ("the 2017 Refund").
- There was no further communication from the company until, in March 2019, the customer received:
 - two credit notes showing credit balances of £4.43 and £1,742.76 respectively; and
 - a bill for £1,965.19.
- He contacted the company to query this and was told that the company was seeking to recover the 2017 Refund from him.

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- The customer argues that:
 - he had accepted the 2017 Refund on the basis of the company's reassurances, at the time, that the Credit Balance was correct and was due to him;
 - the subsequent invoices (and the way that his account was adjusted in March 2019) were confusing and difficult to understand;
 - he cannot trust the information that the company has provided;
 - the fact that it took the company 15 months to realise its error is unsatisfactory;
 - he acted in good faith by contacting the company originally to check if the Credit Balance was genuine.
- To acknowledge the general stress and inconvenience that this issue has caused to his small business, the customer is seeking compensation, a reduction in the outstanding balance or an equivalent gesture of goodwill. In his application form in this regard, he mentions the figure of £434.58, which is 25% of the amount of the 2017 Refund.

The company's response is that:

- The 2017 Refund was incorrectly made.
- The account for the customer was opened by RST Water ("RST"), in the name of [], with effect from 16 May 2016.
- As the associated retailer of RST, the company received the customer's account on 1 April 2017.
- On 1 December 2017, an invoice was issued revealing a credit of £1,742.76. This showed that:
 - the meter reading for 17 May 2016 had been changed from 64 to 1227; and
 - a read of 81 had been taken on 8 November 2017; and
 - the invoice was therefore crediting the customer back with 1,146m³.
- The company was contacted by the customer, on 15 December 2017, with a photograph of his meter showing a read of 83.
- A new invoice was produced up to the read provided and the 2017 Refund was issued.
- On 8 March 2019, the company's Billing Team reviewed the account as part of a billing backlog (and because no invoice had been produced since 18 December 2017).
- It was identified at this point that the 2017 Refund had been incorrect. This was because the customer had only made payments totalling £56.31 and the credit was to a read in which the customer had not paid up to.
- Credit notes for the invoices in December 2017 were issued and a new invoice was produced charging up to 7 March 2019. This resulted in a balance being generated of £1,965.19.

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- The company refers to section 5.13 of its Scheme of Terms and Conditions, which states that:
“In the event that the amounts invoiced to you are incorrect for any reason that may be determined by us, we may send further invoices to you in order to recover the amounts which should have been due, up to a maximum of sixteen (16) months after the amounts became due.”
- As the incorrect invoice and the 2017 Refund was issued in December 2017, the company points out that it is issuing its corrective invoice (and seeking a recovery) within the 16-month timeframe that its terms and conditions allow.
- The latest invoice to the customer covers charges up to 29 May 2019 and shows the account balance to be £1,985.09.
- Whilst the company understands that an error was made in refunding a large sum of money to the customer, it explains that it has offered an 18-month payment plan to allow time to repay the balance.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer’s claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

How was this decision reached?

1. The documents (or sections of documents) that I have reviewed in particular include:

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- a. the complaint, invoice and credit note materials submitted alongside the customer's WATRS application form; and
 - b. the documents appended to the company's defence (appendices 1 to 14).
2. I consider that the customer has explained his position in a very understandable and measured way in this case. He says:

"...I'm not an unreasonable person and have not once claimed that the funds if incorrectly credited wouldn't be returned, but I simply wanted an explanation and assurance over the way in which they invoice my account ... It took [] over 15 months for them to realise their error, I had not had any correspondence from them or a genuine apology and don't feel my request for a discount from the amount they are looking to recover by means of compensation or a goodwill gesture for the inconvenience caused was an unfair request. [] in my opinion have been unsympathetic and unhelpful in trying to resolve this issue. The error originated at [] and when I contacted them to check on the validity of the credit note, I was assured it was correct and I was entitled to the refund. They instigated a credit note and they transferred the refund. I'm not accepting any of the blame that [] were directing at me to CCW suggesting I should have queried the amount and not accepted it. I did query it and was told it was correct. Anyone in this situation would have accepted a credit they told they were due, this problem was caused by [] and they should be doing more as a large company to rectify it and compensated accordingly ..."

3. As I see it, it would be wrong to level any criticism at the customer for accepting the 2017 Refund in the circumstances that he did. I am quite satisfied that the customer was, at all times, acting entirely in good faith.

4. I have assessed whether:

- a. the erroneous payment of the 2017 Refund in the first instance ("the Error"); and then
- b. the moves by the company, a significant time later, to recover that payment from the customer

amounted to a failure by the company to provide its services to the standard that one would expect.

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5. Looking at the recovery steps first of all, I have concluded that there was no failure by the company in this discrete respect. The main factor that has led me to this conclusion is the presence of section 5.13 in the company's terms and conditions:

"In the event that the amounts invoiced to you are incorrect for any reason that may be determined by us, we may send further invoices to you in order to recover the amounts which should have been due, up to a maximum of sixteen (16) months after the amounts became due."

6. I accept the company's submissions about the effect of this section 5.13. In a situation such as this, the company's actions (with regard to recovery, at least) are specifically catered for by its terms and conditions. This being so, I do not consider that it would be correct to stigmatise the company's conduct in this regard as 'unfair' or as falling below the standard that would be expected.
7. It seems to me that the manner and means by which the company has pressed its recovery against the customer is also important. I note that, in order to allow time to deal with the return of the 2017 Refund in a staged way, the company has offered the customer a repayment plan that runs over an 18-month period. In the circumstances, this seems to me to be a relatively accommodating and supportive approach for the company to take. (Had the company not offered such a period of time to repay, that may well have meant that its conduct fell below the requisite standard - but I am satisfied that the company has acted reasonably on this front).
8. I turn next to the Error made in the first place. Irrespective of what is said in the terms and conditions, I find that the making of the Error was self-evidently a failing on the part of the company. On this aspect, I am satisfied that the Error caused the customer to suffer some significant degree of inconvenience.
9. I have noted how the customer proposes that this stress and inconvenience should be compensated but in the final analysis, I am not persuaded that I should make an award against the company in this case. This is because, as I see it, there must have been an inherent benefit to the customer in (unexpectedly) having access to the 2017 Refund money over the last 18 months or so. This was money to which the customer was not strictly speaking entitled and in that respect, it will have represented something of a windfall. In my assessment, the fair and reasonable way to deal with this is to treat the windfall benefit as offsetting or 'canceling out' any award that I might otherwise be making to reflect the inconvenience caused by the Error originally.

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10. For these reasons, I have concluded that the company does not need to take any further action in this case.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- the customer must reply by 23 August 2019 to accept or reject this decision.
- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.



Nik Carle, LLB (Hons), Solicitor, DipArb, FCIArb

Adjudicator

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