

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1680

Date of Decision: 27 January 2020

Complaint

The customer claims that the company has overcharged by £29,185.00 in respect of a measurement of trade effluent between October 2016 and October 2017. The overcharge is due to the use of spot checking rather than a sample taken over a working day. The customer also says that the company has provided poor customer service. The customer claims waiver of the overcharge, £180.00 by way of debt collection charges, £3, 3780.00 legal fees and £2,500.00 for corporate distress and inconvenience including waste of management time.

Defence

The company argues that the charges, which are historical, are set by the wholesaler, as is the method of sampling. An abatement has been made. Both the customer and the company have asked the wholesaler to make a further abatement but the wholesaler is not prepared to make a change to the level of abatement. The company is not able to change the bill.

Findings

I have no jurisdiction in respect of the actions of the wholesaler. I accept that the company is bound to raise bills for trade effluent charges in accordance with measurements taken and declared by the wholesaler. The wholesaler is not prepared to change its stance and has explained this to the company and the customer. Accordingly, the customer does not succeed in relation to this aspect of the claim. Some aspects of customer service have not met the standards that would reasonably be expected in relation to the speed of responses to the customer, delay in referring part of the customer's complaint to the wholesaler and starting debt collection activity during the period of a known dispute. The company shall be required to waive relevant debt collection charges.

Outcome

The company needs to take the following further action: waive all claims for debt collection activities that have been imposed on the customer during the period of this dispute up to the date when the customer indicates acceptance of this decision.

The customer must reply by 24 February 2020 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 27 January 2020

Party Details

Customer: []

Representative: []

Company: []

Case Outline

The customer's complaint is that:

- A trade effluent allowance granted by RST Water in the sum of £22,784.00 is incorrect. The representative asserts that the allowance should be 29,185.00.
- It is suggested that the reason for the disparity is the method that has been used to calculate the abatement. It is said that the samples were previously taken over a 24-hour period but, more recently, the samples were taken at one particular time over several days and not across the duration of 24 hours.
- The customer, via the representative, also complains about the customer service provided by the company.
- At the request of the Consumer Council for Water (CCWater), the company identified a failing in its customer service provision but declined to award the customer a gesture of goodwill.
- The wholesaler addressed the remaining questions relating to the abatement and supplied a timeline of events, explaining the methods that it uses to determine the amount of trade effluent abatement.
- The customer seeks:
 - Determination and payment of the amount of the abatement at £29,185.00;
 - Reimbursement of debt recovery charges imposed while CCWater considered the dispute £180.00;
 - Legal fees - £3,3780.00
 - Corporate distress and management time wasted - £2,500.00.

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The company's response is that:

- RST Wholesale determines the calculation of the retail charge based on trade effluent which the company then passes on to the customer. The system is that a request for a trade effluent abatement is raised to the wholesaler, which is responsible for collecting the samples and completing the calculation. The resulting charge then gets passed to the retailer (XYZ) which then passes the trade effluent charges onto the customer.
- In this case, the company received a response from the wholesaler explaining how the samples were collected and why certain samples and charges were higher than the customer expected between certain periods. The company challenged the wholesaler on the customer's behalf regarding these responses as the customer disputed the trade effluent charges and the way the samples were collected.
- The company did not alter the charge. As the retailer, the company has fulfilled its obligations on the customer's behalf to raise this to wholesale level, but as no alteration has ensued, the balance on the account of £29,442.25 debit is correct and payable as this balance is from the historic charge that the customer is disputing
 - The company cannot remove the debt collection fee due to the historic charges remaining unpaid.
 - It is also unable to reimburse the legal costs for [], as the decision to employ legal representation is a choice that is made by the customer.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything. 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.

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How was this decision reached?

1. I remind the parties that I am unable to consider a claim that is made directly against the wholesaler. The wholesaler is not a party to this adjudication and is not bound by any decision made in relation to the retailer. I can consider, therefore, only the actions of the retailer (the company).
2. The documentation in this case includes a considerable amount of technical information relating to the charges in question. I find, however, that this issue concerns historical charges included in invoices from the company to the customer (an organisation that manufactures ice cream) for the period from October 2016 to April 2017 (the first invoice period) and a further invoice from April 2017 to October 2017 (the second invoice period) The background is that the customer's factory premises, which give rise to trade effluent of differing types, had historically been tested by an auto-sampler, which carried out testing throughout the day and was used to calculate the discharge over each six-monthly billing period. Due (the customer says) to perceived health and safety reasons, the wholesaler decided that it would remove the auto-sampler and replace this with spot-checking. The customer says that spot-checking was unsuitable because the volume and type of trade effluent differs throughout the day. In consequence, the customer argues, the bills became very high. The wholesaler has explained that its perspective is that, to a large part, the customer was exceeding the volume Consents granted by the wholesaler to the customer in 2009 and increased in 2017 but the customer says that the excess quantities were only indicated because the spot checking method was unsuitable. The customer entered into discussions with the wholesaler in early 2017 as to whether the testing method could be reviewed. The documentation shows that wholesaler was agreeable to the customer introducing a further auto-sampler at its own cost, providing that the health and safety issues were addressed. This was then undertaken by the customer and readings from 1 April 2017 were taken in that fashion. This resulted in significantly lower test results and lower bills after October 2017.
3. The representative has explained in a letter dated 28 May 2019 that no dispute is raised in relation to the nature of the charges raised by the wholesaler, but that the customer's complaint relates to the way in which the data was collected in order to give rise to the charges in the invoices for the disputed periods. In summary, the complaint is described as follows:

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For the avoidance of a doubt, our client disputes that the charges are not reflective of what was being discharged to the sewer at the time of sampling. There was a need for an effluent sampler to be fitted due to the fluctuating amounts within the waste. We understand RST revised the test sampling due to health and safety issues. Previously, a random sample was taken over a 24 hour period. Following the change due to health and safety reasons on RST's part, the sample taken over 24 hour period was changed to an instant sample from a single moment in time. Our client maintains that this is not reflective of the trade effluent waste due to the nature of our clients business.

4. In January 2018, the wholesaler confirmed that, due to a computer error, incorrect figures had been used for the second invoice period and the company was required by the wholesaler to issue a replacement invoice.
5. On 23 April 2018, the customer sent a letter to the company and two cheques were sent in reference to the trade effluent charges for the two invoice periods in question. This included a calculation showing what the customer believed the correct trade effluent charges should have been for the first period, which continued to be in dispute. The customer's contention was that the charges had been re-calculated and that "erroneous" results taken on 17 February and 30 March 2017 were unreliable and should be replaced with averages from the auto-sampler method. The customer stated that the cheques should be accepted in full and final payment for the periods stated. The company cashed the cheques and then sent a reminder for the balance of £29,442.25 which the company continues to argue is outstanding.
6. Although the company intervened and has made enquiries on behalf of the customer, the wholesaler has not agreed to increase the abatement beyond the level of the recalculation applied to the second invoice period. In its response to both the company and the customer dated 22 August 2019, the wholesaler responded in respect of the challenge to the bills:

The original request to remove the analysis in respect of two samples taken on the 17th February 2017 and the 30th March 2017 and substitute these results with average sample analysis using samples obtained from their composite sampling machine between April 17 and March 18. At the time and as previously stated trade effluent charges are based on the results using either spot samples or composite samples but not a mixture of both.

1.1. [RST] will calculate Trade Effluent charges using all charging samples taken of the correct type (i.e. all spots or all composite but not a mixture of both)

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Correspondence was sent to the company on the 1st March 2017 and 24th April 2017 notifying them of their failure to comply with their Consent conditions together with the analytical reports for the samples obtained on the 17th February and 30th March respectively. No details of measures they would be taking to improve the situation or response in mitigation was received from the customer.

Additionally, to the above the sampling programme was amended from April 17 moving from spot to composite samples.

Our Wholesale procedures and protocols do allow for the removal of an atypical sample from the billing averages providing that the following criteria are met:

- 1.3. The sample can be excluded where it was taken under grossly abnormal circumstances and a supplementary one day (or other part-period) charge applied only if the following criteria are satisfied :-
 - 1.3.1. the result is greater than mean of the previous three years results excluding this latest high result plus 3 times the standard deviation (In line with Water UK guidelines developed by the Trade Effluent Practitioners Network (TEPN)).
 - 1.3.2. The same sample type must be used, and the mean/standard deviation data is available from the 'Sample Summary' report on QUIS.
 - 1.3.3. Samples have not been excluded in the previous three years
 - 1.3.4. The reason for the abnormal result must be identified and confirmed in writing by the customer

RST will review the samples if the customer can provide further information on why it was not representative of their normal discharge. Once this information is received we can check if the sample meets the protocol and provide further updates.

7. The position of the wholesaler, therefore, was that it would adhere to the results given by the sampling method in place at the time, especially as there was evidence of usage above the levels of the Consent. It was prepared to review this if the conditions of clause 1.3 above could be met. The wholesaler responded to further enquiries by CCWater in the following terms:

Section 8a of the Consent states 'Apparatus adequate for measuring and automatically recording the volume, rate and composition of trade effluent so discharged shall be provided with every such pipe and such measurement apparatus shall be maintained and tested to the satisfaction of the Sewerage Undertaker.'

Section 8c states 'the foregoing provisions of this condition shall be of no effect so long as there is provided and maintained to the satisfaction of the Sewerage Undertaker some other method approved by the Sewerage Undertaker of sampling the trade effluent or determining, measuring and recording the volume and composition of the trade effluent so discharged.'

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The change from spot sampling to composite sampling was not driven by any health and safety concerns. The site was considered suitable for spot sampling (from consent approval – 31.03.17), however a review of the data showed that the discharge quality was very variable. The subsequent discussion with the customer resulted in the installation of a time proportional sampling machine. Composite sampling is recommended for sites where the discharge is highly variable as this method captures both high and low strength effluent across a 24-hour period.

There is a clause in the subsequent Direction Appendix II (Quality Measurement) requiring the installation of the sampling machine. Composite samples were used for charging purposes (from 01.04.17 – present) once the installation and operation of the sampling machine had been approved.

RST reserves the right to use spot samples for compliance purposes.

In addition to the above we have reviewed and responded to the original customer query providing clarification as to why the average strength would not be amended, further to this we have responded to a customer/retailer raised complaint with clarification on the policy, protocol and procedures utilised to come to our decision.

In our response we also confirmed we would review the samples if the customer could provide further information on why it was not representative of their normal discharge. At current no response has been received and we'd welcome this information to progress this matter for all parties involved.

8. Although I have considerable sympathy, therefore, with the position of the customer who has not been able to bring himself to the wholesaler's satisfaction within clause 1.3 or to persuade the wholesaler to treat the measurements of trade effluent in a different manner or to depart from its policies as expressed above, the consequence of the wholesaler's refusal is that the retailer is bound to charge for the quantity and strength of trade effluent assessed by the wholesaler to have passed into the sewerage. The wholesaler has not been willing to accept as persuasive the evidence of lesser usage following the installation of the auto-sampler. I find that the company cannot do this on behalf of the wholesaler. The company therefore says that it is not free to charge a lesser amount, once the level of usage has been set by the wholesaler. I note that the customer, despite being legally represented, has not been able to set out an argument which shows the company to have acted contrary to reasonable expectations (save in respect of customer service – for which see below) and I find that an average customer with knowledge of the facts in dispute here would also conclude that the company was bound to follow the decision made by the wholesaler.

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9. Moreover, the extracts of information set out above are indicative of efforts made by both the company and by CCWater requesting the wholesaler (which had also engaged directly with the customer) to review its approach. I do not find that there is reason to conclude that the company did not represent the customer's position to the wholesaler and nor did it fail to implement the wholesaler's requirements.
10. It follows that I find that in the circumstances of this case, insofar as the company has continued to seek payment of the disputed sum of £29,185.00, it has not failed to supply its services to the standard that would be reasonably expected of it by an average customer. It further follows that I do not direct that the company should waive its right to receive payment of this sum.
11. As for the customer's complaints about customer services, these relate to the handling of the dispute. They are principally that:
 - a. The company failed to respond appropriately within its published timetable;
 - b. It delayed in raising its challenge to the wholesaler and
 - c. The company continued to try to collect payment even though the dispute between the parties was known to be ongoing.

Delayed communications

12. The customer complained in his email to the company on 21 September 2018 that he had contacted the company by phone on 27 July and 14th August 2018 and by email on 17 September 2018. Each time he was assured that someone would contact him to discuss the issue but this had not occurred. He then complained about receipt of a final reminder despite that he was attempting to make contact with the company and, the customer says, the company was ignoring his requests. On 25 September 2018 the company responded to the customer explaining that it could make representations to the wholesaler about incorrect "ad hoc" readings in certain situations. The company then explained clause 1.3 of the wholesaler's policy on this (referred to above).
13. The representative has also recorded in correspondence with the company that it had failed to honour its published commitment under the complaints procedure. This occurred in respect of the representative's letters of 28 May 2019, 10 June and 10 July 2019. The company apologised on 25 July 2019. Documentation that had been requested by the representative was not provided. On 13 September 2019, the representative complained that she had not received

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information from CCWater to explain the company's response to the company that had been expected within two weeks. In response, CCWater said that no information had been received but it had been discovered that the customer's complaint of 28 May 2019 had only been passed to the wholesaler on 2 September 2019. CCWater commented that no explanation had been given for this delay. The company then sent a substantive response on 18 September 2019.

14. Having regard to the correspondence above, I find that there have been a number of occasions over a period of up to two years when the company has not been swift to reply to correspondence and its published complaints handling processes have been exceeded. This, I find, falls below the standard of service that an average customer would reasonably expect.

Delays in raising the issue to wholesale

15. Following the explanation of the wholesaler's policy on 25 September 2018, the company on 14 January 2019 (following the provision of information from the customer) uploaded to the wholesaler the customer's own effluent readings for the disputed spot readings during the period of the first invoice and, if CCWater's information is correct, the company did not escalate to the wholesaler the complaint from the representative until approximately four months had passed.
16. It is notable that the company has not challenged this and, in its submissions I am mindful that it is difficult to ascertain the full scope of the actions taken by the company. On balance, I am satisfied that there have been delays in the company's dealings with the wholesaler. I find that the customer has established that the company has not provided its customer service in accordance with the standard that an average customer would reasonably expect.

Seeking payment during the period of a dispute

17. As to the third issue, the documentation reveals that from time to time the company has put the collections activity for the disputed debt on hold, but due to the passage of time, the "hold" expired and the company has demands for payment. An example of when this occurred followed the customer's complaint that no-one had responded to him between 27 July and 21 September 2018.

18. The representative also states:

When our [] was instructed to represent in respect of the disputed charges several phone call were made to XYZ and it was confirmed to our [] that the account was placed on hold and no further action would be taken whilst the dispute was being investigated.

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Following our client receipt of the debt collection charges added to the account, XYZ advised that this charge be added within the claim. It appears that once gain, there has been a system failure and the automatic systems of XYZ have added charges to our client's costs despite XYZ being fully aware of the dispute, the involvement of the Water Council and WATRS.

19. The representative complained by email in August 2019 that the customer had, despite this oral assurance, received a final reminder. This occurred notwithstanding that the company was aware that this matter was being investigated by CCWater.
20. A demand dated 23 September 2019 stated that the company would impose further charges to cover the cost of debt collection agencies. This letter referred to two previous reminders, both of which were disputed by the representative who pointed out the protracted correspondence relating to the dispute. Moreover other steps threatened in the letter included legal action and disconnection of the water supply. On 11 October 2019, the company told CCWater that it was only willing to place a hold on the collection process once the company had heard from WATRS, which might take up to 20 working days.
21. I find as to this issue that the company has made claims for payment at a stage when the issue was known to be in dispute, including when the company had not replied to correspondence and when the matter was being handled by CCWater. Taking into account that this is a complex dispute, that solicitors were involved, that the company has at various times indicated that the matter would be placed on hold to enable the dispute to be addressed, and that the company has initiated collections activity while providing, in some respects – and particularly those relevant to the passage of time - standards of service that fall below those that an average customer would reasonably expect, I find that as to this issue, also, the company has not supplied its services to the standards that would reasonably be expected by an average customer.
22. I note that CCWater's comments that although the company has admitted service failings, it has not offered a gesture of goodwill. The customer, on the other hand, submits that the business has been subjected to debt recovery charges of £180.00 and has had to incur legal costs as well as experiencing distress and inconvenience.

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23. Accordingly, in relation to the customer's claim that the company has provided poor customer service, I find that it is fair and reasonable to award redress. I find that a fair and reasonable direction, in all the circumstances, is that the company should not be entitled to impose debt collection charges or late payment charges on the customer in respect of any claim to payment prior to the date when the customer indicates acceptance (if this is what happens) of this decision. For the avoidance of doubt, I make clear that this direction applies whether the charges in question total £180.00 as the customer states, or, by now, some other amount. I take into account that the company's slow responses are likely to have contributed to the delay that has been experienced by the customer, but I find that a separate award would be disproportionate.

24. I do not direct that the company should discharge the customer's legal costs. These have been incurred, I find, largely because the company was not willing to bill the customer for the trade effluent charges on a different basis from that upon which the wholesaler has insisted. Nor, I find, is it fair and reasonable to require the company to pay compensation for distress and inconvenience. While I am prepared to accept that the period for which this dispute has continued has caused the customer (bearing in mind that it acts in a corporate capacity) additional inconvenience and has caused distress to individuals within its organisation, I find that the root cause of that inconvenience and distress is the liability for £29,185.00, which I have not discharged for the reasons given above. Accordingly, I do not make any direction for the payment of compensation for inconvenience or distress.

Outcome

The company needs to take the following further action: waive all claims for debt collection activities that have been imposed on the customer during the period of this dispute up to the date when the customer indicates acceptance of this decision.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 24 February 2020 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my

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decision. If the company does not do what I have directed within this time limit, you should let WATRS know.

- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
 - If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.
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Claire Andrews (Barrister, FCI Arb)

Adjudicator

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