

DECISION

Background to the dispute

This is a dispute between Ms JH and go via in respect to unpaid tolls and fees relating to 11 demand notices received on 16 October 2014 for tolls dating back to 4 August 2014.

Ms JH lodged a complaint with the Tolling Customer Ombudsman (TCO) on or about 17 October 2014. Ms JH had a toll payment account with go via that required a minimum balance in the account under its terms. Ms JH could top up her account to maintain that balance. She asserted that in this period she topped up her account within 14 days of the overdue toll notices. She says that she believed by topping up her account she would reconcile any tolls that were unpaid.

Ms JH argues that she did not realise that topping up her go via online account did not reconcile the overdue toll notices issued in the mail. She further argues that she should have received the first overdue notice on 19 August 2014. She would have then called go via to enquire how toll fees were charged.

Ms JH says that she was willing to pay the overdue toll charges and the administration fee within the period of the first demand but not the overdue and administration fees dating from 19 August 2014.

The TCO referred the complaint to go via. Go via then responded to Ms JH, detailing the 16 low balance and suspension warnings sent to her between 26 February 2013 and 27 July 2014 (including an Account Suspended notification email alert on 27 July 2014).

Go via also detailed a list of 13 further account suspensions or low balance warnings sent to Ms JH between 6 August 2014 and 15 October 2014. Go via, in addition, provided details of notices sent to Ms JH between 4 August 2014 and 10 October 2014 that included the 11 notices sent on 1 October 2014.

According to information provided by Ms JH, she manually topped up her account by \$30 and \$50 on 6 August 2014 and 11 August 2014 and in September 2014 in this period. These amounts did not cover the outstanding tolls and associated fees as well as provide sufficient funds to reactivate her account by bringing it up to the minimum balance.

Go via provided excerpts from the toll notices sent to Ms JH which read:

“...your go via account has been suspended. If this is the case, you must pay this toll notice in full. You will also need to reactivate your account by returning your account to a positive balance.”

“This is your second and final reminder to pay this outstanding Toll Notice. As stated in your first notice there may be two reasons why you are receiving this notice:

- You have travelled through toll points on our road network without making appropriate arrangements for payment
- Your go via account has been suspended. If this is the case you must pay this toll notice in full. You will also need to reactivate your account by returning your account to a positive balance”

Ms JH responded by saying:

“In all cases that toll notices were issued I have reactivated my account and therefore did not believe I would not need to pay the toll notice – it was of my belief that reactivating my account with **enough funds to pay the toll notice PLUS leave a positive balance would reconcile my account.**”

Go via responded by pointing out the notices sent to Ms JH advised that she was required to make payment of the notice in full, in addition to her bringing the account back to a positive balance. It argued that if go via only required her to top up her account it would not have issued a notice with a specific due date, different payment details to top up an account and a specified amount, for it to be ignored and the account be topped up with an amount Ms JH preferred.

There was further exchange of correspondence and subsequently Ms JH paid the balance owing to go via. She has, however, requested there be a refund to her of the amounts paid.

Decision

The objective of the TCO is to resolve complaints, which fall within its jurisdiction, between toll road operators and their customers efficiently, fairly and without charge to the customer. In attaining this objective the focus is to look at the issues that are relevant to the resolution of the complaint between the toll road operator and its customer. The TCO decisions are binding on toll road operators but not on customers, who retain all their legal rights.

This process is done in the context of the circumstances of the complaint, any terms of the use of toll roads and legal requirements. Relevant terms are contained in the Customer Service Agreement, on a toll road operator’s website or in other material that is available to customers, whilst the applicable legislation can be accessed through Government websites.

The TCO is not a judicial body and does not have punitive powers. The TCO, when making a decision, does so on the basis of what it considers fair in the circumstances, taking into account the effect of a decision on each party and any public interest. The TCO only has jurisdiction over the conduct of toll road operators and cannot determine matters in relation to allegations against other outside bodies.

I am satisfied that the parties have had the opportunity to resolve this matter and it would not benefit from further mediation.

Ms JH had held an account with go via for a considerable period of time before the period of the disputed tolls. She would have understood its requirements and the need to maintain the account in good order so as to avoid additional fees. This is explained in the terms and conditions of the account.

There is evidence that Ms JH had received a number of suspension and low balance warnings leading up to the period in dispute. She would have understood go via's system and the administration fees involved in the collection of outstanding unpaid tolls and that the account be maintained in good order.

She disputes that she received certain final notices despite the fact that they were sent to her registered address but concedes that she received unpaid toll invoices sent to the same address. These invoices were for travel between 16 August 2014 and 4 September 2014 and should have been paid within 14 days of travel.

I have considered Ms JH's contentions in relation to the payment of tolls. Effectively, what she says is that by topping up her account rather than paying the amount required on the toll notice in full as well as reactivating her account, she had met her obligations. This was not correct and her obligations were clearly explained in the notices sent to her by go via.

Her payments did not meet the requirement of the toll notices to cover the tolls and the related administration fees. Her action in topping up her account did not relieve her of these obligations. Go via incurred the costs in recovering tolls not paid in accordance with Ms JH's terms of travel.

Such fees are payable by all motorists who travel on toll roads and fail to make payment of the tolls. I do not have the power to alter the quantum of the fees. The level of the fees is fixed by toll operators, in consultation with the State Government, and is designed to meet only the actual costs involved.

If Ms JH had topped up her account to enable the toll fees to be met or had paid the tolls within three days of travel she would not have incurred the administration fees that she did. Ms JH received toll notice invoices together with numerous warnings about the state of her account, including account suspension warnings, but did not make the appropriate payments despite being on notice to do so.

Despite the fact that 11 Demand Notices were delivered on the one day in October 2014, which I do not believe to be best practice, she had already breached her obligations in respect to the maintaining of her account in good order. She had not met the costs of the invoices she had received between 16 August and 4 September 2014. Ms JH's failure to make payment of the trips on the toll invoices caused all of the trips to then escalate.

Ms JH says that if she had received the first Demand Notice earlier she would have regularised her account and avoided later Demand Notice costs. Leaving aside that Ms JH should not have been in a position of receiving Demand Notices, I cannot be satisfied that this would have happened. Ms JH's transaction history indicates that she would have topped up the account but not paid the amount on the toll invoice notice, as well as provide funds to reactivate the account to a positive balance.

I cannot, in these circumstances, uphold Ms JH's complaint.

Michael Arnold
Tolling Customer Ombudsman

Dated: 13 February 2015