



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 395

APPLICANT **BD**

RESPONDENT **BM Ltd**

The Tribunal orders:

BD's claim against BM Ltd is dismissed.

Reasons:

1. In January 2023 the applicant and his family were on holiday in [city] and had booked flights to return to New Zealand with the respondent. The outbound flight was delayed for 54 hours due to a number of reasons, beginning with bad weather. The applicant and his family were provided with compensation for costs they incurred while delayed. The applicant claims \$4,812.40 from the respondent for the family's time that it was delayed.
2. The issue to be determined by the Tribunal was whether the respondent was liable to pay the applicant and his family for their time costs due to the delays of the return flight.

Is the respondent liable to pay the applicant and his family for their time costs due to the delays in the flight?

3. I do not find that the respondent is liable to pay the applicant and his family for their time costs due to the delays of the return flight. I say this because:
 - a. Part 9A of the Civil Aviation Act 1990 ("CAA") deals with international carriage by air. It states that the Montreal Convention, along with other conventions referred to, have force of law in New Zealand. The Montreal Convention appears at Schedule 6 of the CAA. New Zealand and the respondent are both signatories of the Montreal Convention and I am satisfied it applied to the applicant's booking.
 - b. Article 19 of the Montreal Convention sets out that:

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.
 - c. The applicant told the Tribunal that he did not think that the respondent did everything that it could to minimise the impact on his family. For example, no other flights were

offered. However, I am satisfied on the evidence that the respondent took all measures it could reasonably have been required to make and that the delays were not due to its actions but those that were outside of its control, including those on the ground in [city].

- d. The respondent refunded the applicant and his family for the costs they incurred as a result of the delay. The refund was for costs arising from accommodation and meals.
 - e. Even if I found that the respondent was in breach of its obligations under the CAA and the Montreal Convention, I am not satisfied that the time the applicant and his family spent waiting for the return flight is a claimable event as there is no proven loss to recover that has not already been reimbursed.
4. For these reasons, I must dismiss the applicant's claim.

Referee: K. Armstrong
Date: 23 August 2023



Information for Parties

Rehearings

You can apply for a rehearing if you believe that something prevented the proper decision from being made: for example, the relevant information was not available at the time.

If you wish to apply for a rehearing, you can apply online, download a form from the Disputes Tribunal website or obtain an application form from any Tribunal office. The application must be lodged within 20 working days of the decision having been made. If you are applying outside of the 20 working day timeframe, you must also fill out an Application for Rehearing Out of Time.

PLEASE NOTE: A rehearing will not be granted just because you disagree with the decision.

Grounds for Appeal

There are very limited grounds for appealing a decision of the Tribunal. Specifically, the Referee conducted the proceedings (or a Tribunal investigator carried out an enquiry) in a way that was unfair and prejudiced the result of the proceedings. This means you consider there was a breach of natural justice, as a result of procedural unfairness that affected the result of the proceedings.

PLEASE NOTE: Parties need to be aware they cannot appeal a Referee's finding of fact.

Where a Referee has made a decision on the issues raised as part of the Disputes Tribunal hearing there is no jurisdiction for the District Court to reach a finding different to that of the Referee.

A Notice of Appeal may be obtained from the Ministry of Justice, Disputes Tribunal website. The Notice must be filed at the District Court of which the Tribunal that made the decision is a division, within 20 working days of the decision having been made. There is a \$200 filing fee for an appeal.

You can only appeal outside of 20 working days if you have been granted an extension of time by a District Court Judge. To apply for an extension of time you must file an Interlocutory Application on Notice and a supporting affidavit, then serve it on the other parties. There is a fee for this application. District Court proceedings are more complex than Disputes Tribunal proceedings, and you may wish to seek legal advice.

The District Court may, on determination of the appeal, award such costs to either party as it sees fit.

Enforcement of Tribunal Decisions

If the Order or Agreed Settlement is not complied with, you can apply to the Collections Unit of the District Court to have the order enforced.

Application forms and information about the different civil enforcement options are available on the Ministry of Justice's civil debt page: <http://www.justice.govt.nz/fines/about-civil-debt/collect-civil-debt>

For Civil Enforcement enquiries, please phone 0800 233 222.

Help and Further Information

Further information and contact details are available on our website: <http://disputestribunal.govt.nz>.