

BETWEEN

DZ
APPLICANT

AND

VA
RESPONDENT

AND

VAV LTD
SECOND RESPONDENT

AND

VAVU LTD
THIRD RESPONDENT

Date of Order:

9 June 2016

Referee:

Referee Blyth

ORDER OF THE DISPUTES TRIBUNAL

The Tribunal hereby orders that VAVU Ltd is to pay DZ the sum of \$1,550.00 on or before 13 July 2016.

Facts

[1] DZ contracted VAV Ltd to arrange flights for her, her child and her infant to travel to Country A. VAV Ltd arranged a ticket through VAVU Ltd on 27 March 2015 (the domestic flight from Town A to Town B on VAVU Ltd and the international flight on Company A). When DZ arrived at the airport, VAVU Ltd staff advised her that she required a return ticket before being allowed to board. DZ requested VAV Ltd to quickly arrange a return ticket, which they did through Company B. However, even after that, VAVU Ltd staff would not allow DZ to fly because they advised her that one adult cannot travel with two children. DZ cancelled her tickets through VAV Ltd. Both VAVU Ltd and Company B provided a full refund to VAV Ltd. VAV Ltd deducted their cancellation fees and paid the balance to DZ.

[2] DZ is claiming a refund of the fees that have been deducted by VAV Ltd from VAV Ltd or VAVU Ltd.

Issues

[3] The issues to determine are as follows:

- a) Did VAVU Ltd supply its services with reasonable skill and care?
- b) If not, is DZ entitled to cancel her contract?
- c) If so, is VAVU Ltd liable to refund to DZ the cancellation fees that VAV Ltd have deducted?

Did VAVU Ltd supply its services with reasonable skill and care?

[4] Section 28 of the Consumer Guarantees Act (CGA) provides that suppliers of services must provide their service with “reasonable skill and care”.

[5] I find that VAVU Ltd did not provide its services to DZ with reasonable skill and care. VAVU Ltd’s representative agrees that the VAVU Ltd staff were “incorrect” when they advised DZ that she could not fly with one adult and two children. I find that this lack of knowledge of the VAVU Ltd staff attending to DZ means that VAVU Ltd has not provided its services to DZ with reasonable skill and care.

[6] DZ had specifically asked VAV Ltd to check whether she could fly with both children when she was arranging flights with VAV Ltd. VAV Ltd had specifically asked Company A this question and had been advised that one adult can fly with two children.

If not, is DZ entitled to cancel her contract?

[7] Under s 32 (b) of the CGA, where services do not comply with guarantees and where the failure cannot be remedied, the consumer can cancel the contract and obtain damages in compensation for any reduction in value of the product of a service.

[8] I find that DZ was entitled to cancel her contract with VAVU Ltd because I accept that the failure could not be remedied (because DZ had been denied the opportunity to fly on the flight she had purchased a ticket for and I find she was under no obligation to accept another ticket for a different date).

[9] I find that VAVU Ltd is liable to pay DZ damages in compensation. If DZ had been charged cancellation fees by the airlines involved then I would have ordered VAVU Ltd to pay those cancellation fees. As it transpires, DZ has received the money back that she paid for the flights and she has not been required to pay for any airline cancellation fees.

If so, is VAVU Ltd liable to refund to DZ the cancellation fees that VAV Ltd have deducted?

[10] Under s 32 (c) of the CGA, a consumer is entitled to “obtain damages for any loss resulting from the failure which was reasonably foreseeable as liable to result from the failure”. This is often referred to as consequential loss

[11] In this case, I find that DZ’s consequential loss resulting from VAVU Ltd’s breach of the CGA was the amount that VAV Ltd has charged her for their own cancellation fees. I am satisfied that VAV Ltd is entitled to charge their cancellation fees, because those fees are set out in the contract that DZ had with VAV Ltd and it is through no fault of VAV Ltd that DZ cancelled her flights.

[12] VAV Ltd’s contract for the VAVU Ltd flight allows them to charge \$150 per person and the price of the infant ticket as their own cancellation fee. This amounts to \$504. However VAV Ltd reduced their fee to \$300 in total.

[13] VAV Ltd’s contract for the Company B flight allows them to charge \$500 per person and the price of the infant ticket as their own cancellation fee, making a total of \$1,250.

[14] DZ also claimed \$120 for taxi charges (\$60 each way to and from her house to the airport). She effectively wasted this money because of the events that transpired. I would have ordered

VAVU Ltd to pay \$120 to DZ as a consequential loss. However, DZ has not been able to produce a receipt for the taxi charge and therefore I am not able to make that order.

Conclusion

[15] Based on the above reasons, I am ordering VAVU Ltd to pay to DZ the sum of \$1,550 (\$300 plus \$1,250).