



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 501

APPLICANT EN

RESPONDENT B

The Tribunal orders:

1. The claim is dismissed.

Reasons

Introduction

1. EN had his bag stolen while in a shop in the departure lounge at [International airport]. On his return to New Zealand, he made a travel insurance claim and that was declined.
2. EN claims \$1,102.20 for the property stolen from him in [City].
3. The issues to be resolved are:
 - a. Did EN breach a term of his insurance policy by leaving his bag where he did?
 - b. If not, can EN claim \$1500.00 for his losses?

Did EN breach a term of his insurance policy by leaving his bag where he did?

4. The general principles of the law of contract apply to this dispute. A contract is an agreement that the parties intend to be legally bound by. It involves an exchange of promises and becomes binding when the parties agree on clear and certain terms.
5. EN was returning to New Zealand. Whilst in the passenger lounge area of the [International airport], he went into a shop to buy [souvenir] as a gift for his family. He placed his bag on the ground, walked around the shelving and spoke with the shop attendant briefly and then returned to where his bag was left, and it was gone.
6. EN says that his bag was not unattended because he was in a restricted area only accessible by passengers and airport workers. He was the only person in the shop with the shop keeper whom was behind a counter. The bag was never more than a couple of metres from him. The bag was out of his sight for a short period of time when obscured by a shelving unit that was lower than chest height and while he made his inquiry with the shopkeeper. The area was opposite airport security and the only other people outside the shop were three airport workers, who all said they did not see the bag get taken, nor did the shopkeeper that was facing towards where the bag was taken.

7. Ms T for B Ltd, restated the position of B Ltd in that EN left his bag unattended and therefore he breached a term of his agreement.
8. The term is the definition of unattended. The definition reads:

***Unattended** means, but is not limited to, not on **your** person at the time of loss, left with a person other than **your travelling** companion, left in a position where it can be taken without **your** knowledge, including on the beach, by the pool while **you** swim, leaving it at a distance where **you** are unable to prevent it from being unlawfully taken.*

9. Ms T reiterated that EN was not covered by the insurance because he put his bag down and walked away.
10. When I apply the terms in the definition, there are three explanations that apply to EN's situation. They are; *not on **your** person at the time of loss;* and, *left in a position where it can be taken;* and, *leaving it at a distance where **you** are unable to prevent it from being unlawfully taken.*
11. So, while I appreciate EN's assessment of the landscape at the time of the incident as being safe, secure and unlikely that anything like this would happen, the fact is that it did happen and the precautions he was required to undertake to ensure he was covered under the policy were breached. Therefore, I find that EN did breach the terms of the policy by leaving his bag where he did.

If not, can EN claim \$1500.00 for his losses?

12. Having found EN breached a term of his agreement, he is not entitled to claim his losses and accordingly the claim is dismissed.

Referee: Nigel Wolland
Date: 3 October 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>.