



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 580

APPLICANT **ER
&
GR
&
MR**

RESPONDENT **T Ltd**

The Tribunal orders:

1. T Ltd is to pay ER, GR and MR (R family) the sum of \$969.74 each by 1 December 2023.

Reasons

2. The R family is seeking compensation from T Ltd because it wrongfully cancelled their return flights from [Country 1] to [City 1] in January 2023. As a result, the family were forced to purchase new tickets with [Airline 1] to return to [City 1]. The new tickets cost over \$25,000. The airline disputes liability for the claim.
3. The issue for the Tribunal to decide is whether the R family are entitled to compensation for the new airline tickets they bought.

Is the family entitled to compensation?

4. The family submitted a detailed written statement along with copies of their boarding passes, itinerary and invoices for the all the flights including the additional invoice relating to the new tickets home on [Airline 1] .
5. In summary, the family purchased return tickets with T Ltd from [City 1] to [City 2]. On 10 December 2022 their flight was late leaving [City 1] and as a result they missed their connection from [Country 2] to [City 2]. This leg of the journey was with [Airline 2] . The family was rebooked on another flight later that day and landed in [City 2] on 11 December 2022.
6. ER explained that in January, they became concerned that they had not received any information from the airline about check-in and when they contacted the airline they were told that their tickets had been cancelled. The family had been marked as “no shows” after they missed their original connection in [Country 2] in December. After hours of conversations with [travel agent] in [City 1] and with T Ltd, they were eventually booked on a flight from [City 2] to [Country 1] but were told that they had to make their own arrangements from [Country 1] to [City 1].

7. GR and ER both say that their travel agent told them that the only way they could get back to [City 1] within their required timeframe was to travel business class on [Airline 1] via [City 2] to [City 1]. The family accepted this option and took out a loan to purchase these tickets which cost \$25,737.00. They are now seeking repayment of this amount from T Ltd.
8. HS, the General Manager at T Ltd, and QN, the Administration and HR Manager gave evidence at the hearing. The airline also provided written submissions. The airline confirmed that the family's return tickets had been cancelled and they had been registered as "no shows" after they missed their original connection to [City 2] from [Country 2]. HS explained how this most likely came about. When a passenger misses a T Ltd flight they are considered a "no show" and any future flights on the same ticket are cancelled. In order to stop this happening a flight cancellation inhibitor should be entered into the system. In this case, HS said that either the agent in [Country 2], or the system, failed to do this which resulted in the cancelled flights. HS said that it was usually the job of the airline who caused the delay (in this case [Airline 2]) to action this flight inhibitor. However, it is important to note that HS specifically said he was not passing the blame or the responsibility to [Airline 2].
9. T Ltd said that regardless of who or what caused the cancellation of the flights, it has met its obligations because it refunded the family the cost of the unused portion of their tickets from [Country 2] to [City 1]. T Ltd submitted extracts from its General Terms and Conditions which formed part of its contract with the R's family. Article 10 states that where carrier cancels or causes to miss a flight on which he holds a reservation, the carrier can elect to make a refund. Refunds are calculated in accordance with Article 11 of the Terms and Conditions which states that the refund shall be calculated in respect of the unused portion of the ticket.
10. As an alternative, HS submitted that it should only be liable for the extra cost of an economy fee from [Country 1] to [City 1] which would be \$969.74 per person. According to HS, the communication from the travel agent indicates that economy flights were available at the time and not just business class flights.
11. The law that applies to this claim is the law of contract. A contract is a legally binding agreement or a promise between two or more parties that the law will enforce. The relevant contract in this case is the booking between the members of the R family and T Ltd. This booking is governed by the airline's General Conditions of Carriage and the Civil Aviation Act 1990.
12. Under the law of contract, if a party suffers loss as a result of another party's breach of contract, they may be entitled to claim compensation for any reasonably foreseeable losses resulting from the breach. In determining compensation, the concept of mitigation of damages must also be considered. Despite doing nothing wrong, a non-breaching party may have an obligation to not only avoid further loss because of a breach of contract, but also actively minimize the results of the breach. This may seem very unfair but the concept is aimed at preventing a person taking advantage of the breach and protects the breaching party from unfair or excessive liability.
13. The Civil Aviation Act 1990 which deals with international carriage also applies in this case. It states that the Montreal Convention has force of law in New Zealand. New Zealand and [Country 1] are both signatories of the Montreal Convention and it therefore applies to R family's booking.
14. Under the Montreal Convention, T Ltd is deemed to be the contracting carrier in this case and is therefore liable for any mistakes made and which resulted in the January flights being cancelled. While [Airline 2] was the actual carrier on the first leg of the journey and may have had the responsibility to enter the flight cancellation inhibitor, T Ltd remains liable for the acts and omissions of [Airline 2] and its actions are deemed to be those of T Ltd's.
15. [Travel agent] is not a party to these proceedings and its agreement with the R family was only to make travel bookings and to arrange contracts between individuals and travel service providers. They do not themselves provide the travel services. However, in the agreement, which is attached to the itinerary provided by [travel agent], it says that all bookings are subject to the terms and conditions, including conditions of carriage and limitations of liability, imposed by the service providers.

16. I have reviewed the evidence and I find that T Ltd breached the contract with the R family. I say this because the airline acknowledged that a mistake was made which meant that the family could not fly home as planned. The family are therefore entitled to compensation for any loss which arose out of this breach.

17. However, I find that the family are not entitled to the full cost of the business class tickets because I consider, that it is more likely than not that they could have avoided the high cost of business class because economy tickets were available. They are therefore only entitled to compensation of \$969.74 per family member which is the extra cost of economy tickets. I say this because:

- a. As a direct result of the cancellation of their flights by T Ltd, the family were forced to buy alternative tickets home. Were it not for the breach, the extra expense would not have been incurred.
- b. It is more likely than not that economy flights were available to purchase not just business class. The travel agent did not appear at the hearing so the only objective evidence to support the R family claim that only business class was available are the emails which were sent after the family got home. In the email of 20 January 2023, the travel agent tells GR that economy class seats were available on [Airline 1] at the time. This contradicts the recollection by the family that they had no option but to buy business class seats. The email from the travel agent was written less than a week after the tickets were purchased and before T Ltd spoke to the agent directly, so there is no reason why this email should be disregarded.

18. For these reasons, I find that T Ltd must pay the R family the total sum of \$2,909.22.

Referee: LK Whineray
Date: 15 November 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>.