



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 478

APPLICANT FC

APPLICANT KC

RESPONDENT X Ltd

The Tribunal approves partial settlement and orders:

1. Pursuant to the agreement made by the parties at the hearing, X Ltd shall pay the Applicants \$7,991.33 by 15 August 2023.
2. The balance of the Applicants' claim for \$22,000.00 for physical and emotional distress is dismissed.

Reasons:

1. The Applicants had a 31-day cruise booked for 15 March 2020 and had travelled to [city overseas] for the departure. The cruise was cancelled at the last moment on 14 March 2020 due to the CoVid-19 outbreak and resulting travel restrictions.
2. The [Cruise Line] fully refunded the Applicants' cruise and travel expenses. [Cruise Line] also gifted FC and KC's a free equivalent cruise to take in the future.
3. The Applicants booked their free replacement cruise for November 2022 and obtained a travel insurance policy from X Ltd for the trip.
4. The Applicants arrived in [city overseas] on 15 November 2022 and were due to depart on the cruise on 19 November 2022. However, 72 hours prior to boarding the ship, the Applicants were required to take a CoVid-19 test and KC tested positive and they were denied boarding.
5. The Applicants notified X Ltd of the issue on 20 November 2022 and requested X Ltd's consent to travel to [Country 1] to join the cruise on 25 November 2022, which was agreed.
6. However, once in [Country 1], the Applicants were again required to test for Co-Vid-19 and this time FC tested positive. The Applicants had to isolate in a hotel in [Country 1] under tight restrictions. The Applicants contacted their travel agent to liaise with X Ltd as to how to proceed, either travel on to [Country 2] and join the cruise on 6 December 2022 or whether to return to NZ.
7. The Applicants' travel agent advised X Ltd that the Applicants had booked non-refundable tickets for their originally planned return to NZ from [Country 3] at the end of December and that seat availability for last minute travel to NZ from [Country 1] or [Country 2] were extremely limited. The Travel agent also thanked X Ltd for their prompt responses to her queries.

8. X Ltd accepted that the Applicants had both contracted Co-Vid-19 but X Ltd required medical evidence to support that they were medically unfit to join the cruise at the end of their isolation period. FC reported that both of them were asymptomatic when they tested positive and medical intervention was not required for either of them.
9. The Applicants were quite stressed by this point and a 6 December boarding from [Country 2] would mean they had missed half of the cruise. X Ltd did not receive evidence that the Applicants were medically unfit so it was agreed that the Applicants would travel to [Country 2] and board the ship there, which they did.
10. Upon return to NZ, the Applicants filed their travel insurance claim for \$9,708.95 to cover their added travel and accommodation expenses incurred during the missed period of the cruise, which X Ltd accepted. However, X Ltd applied and deducted a “future cruise credit” (herein FCC) of \$7,281.00AUD (\$7,991.23NZ) the Applicants had received from [Cruise Line] for the unused portion of the free cruise.
11. The Applicants disputed the deduction but X Ltd refused to reverse the deduction, citing the policy which states that covered expenses will be “less any refund or reimbursement on any unused prepaid travel and accommodation arrangements”.
12. X Ltd argued that an FCC was a refund or reimbursement and the Applicants argued it was neither. The Applicants filed this claim seeking \$8,000.00NZ for the deducted FCC and \$22,000.00NZ for physical and emotional distress due to X Ltd “forcing them to travel to another non-English-speaking third-world country” rather than allowing them to return home.
13. At the second Tribunal hearing, X Ltd agreed to reverse the FCC deduction and pay \$7,991.33 to the Applicants by 15 August 2023 but refused any payment for emotional distress damages
14. Accordingly, the Tribunal notes the partial settlement agreement between the parties and makes a decision on the \$22,000.00 portion of the claim for emotional and physical distress.
15. The issues are: Did the Applicants suffer significant hardship due to X Ltd’s actions? Is X Ltd liable to the Applicants for general damages for physical and emotional distress?

Did the Applicants suffer significant hardship due to X Ltd’s actions?

16. The Applicants were in a very stressful situation, being overseas, testing positive for Co-Vid-19, having to isolate in foreign countries and missing half of their cruise.
17. The Applicants argue that they should have been allowed to return home after having suffered through 7 uncomfortable days in strict isolation at a hotel in [Country 1] and then being “forced” by X Ltd to travel to “another non-English speaking 3rd world country”.
18. The Applicants also complain that X Ltd was not transparent in their dealings and did not respond to their issues timely.
19. The evidence shows that FC contacted [Cruise Line] and requested permission for them to join the cruise in [Country 1] before contacting X Ltd to seek their approval. X Ltd agreed.
20. After the unpleasant period of isolation in [Country 1], the options were either returning home or traveling on to [Country 2] to join the cruise there. Either way, the Applicants would incur the additional expenses and would claim reimbursement from X Ltd afterwards, pursuant to the policy.
21. X Ltd stated that returning to NZ required proof that the Applicants were medically unfit to continue their trip. No such evidence was provided by the Applicants and there is no evidence that the Applicants were actually medically unfit, proof or not.

22. The argument that X Ltd forced the Applicants to travel to another non-English speaking third-world country is inconsistent with the Applicants introducing the idea with their request to travel to [Country 1]. The option to travel on to [Country 2] was discussed between the Applicants and their travel agent and was not considered an unreasonable option but for the fact of the additional missed days of the cruise.
23. There is no evidence that the Applicants suffered during their stay at the [hotel] in [Country 2] whilst they awaited the cruise ship to arrive, except that X Ltd later refused to cover their claimed expense for cocktails during their stay.
24. The [Country 1] hotel stay was apparently uncomfortable but X Ltd did not “force” the Applicants to go there. It is not understood how traveling to [Country 2] was a significant hardship when the Applicants suggested and were happy to travel to the non-English speaking third world country of [Country 1] under the same circumstances.
25. The Tribunal acknowledges that the entire situation was very stressful for the Applicants but does not find that there is any evidence that this was of X Ltd’s making or the result of a breach of contract by X Ltd.
26. Overseas travel, travel disruptions and making insurance claims are stressful events at any time. Testing positive for Co-Vid-19 and having to isolate whilst overseas would only add to the stress levels. International travel since early 2020 has carried a known and significant risk of contracting Co-Vid-19 and/or having travel disrupted by differing Co-Vid-19 restrictions in other countries.
27. The Tribunal finds that the Applicants’ physical and emotional distress was not the result of a breach of contract by X Ltd or that X Ltd caused the Applicants a significantly greater level of stress than the Applicants circumstances would have caused ordinarily.

Is X Ltd liable to the Applicants for general damages for physical and emotional distress?

28. An award for general damages for emotional distress requires a finding that X Ltd breached the contract with the Applicants and that the breach caused the Applicants significant hardship.
29. The Tribunal finds that the stress/distress the Applicants experienced during their trip was not significantly greater than anyone else might experience in similar circumstances and that stress was not caused by X Ltd.
30. Whilst X Ltd’s decision that the FCC was the same as a cash refund could be seen as a breach of the contract wording, that decision was made after the fact and was not a factor in the decisions as to whether the Applicants continued their trip or returned to NZ or the stress they endured.
31. The Contract expressly stated that if the Applicants wished to curtail their trip then they had to provide proof that they were medically unfit to continue, which they didn’t and weren’t.
32. Accordingly, there is no basis for X Ltd paying general damages for physical and emotional distress.

Referee: L Mueller
Date: 28 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>.