



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 500

APPLICANT HE

RESPONDENT G Ltd

The Tribunal orders:

G Ltd is to pay HE \$5,394.08 on or before 11 October 2023.

Reasons

Introduction

1. In September 2022, HE booked a holiday for himself and his wife to travel to [City 1] in May 2023. The purpose of the holiday was to surprise and treat his wife who had recently had some personal medical issues. HE was specific to the hotel and location where he wanted to stay. When they arrived at [City 1], he was informed by the transfer operator that the hotel he had booked, was closed for renovations and that they were staying at a different hotel approximately 4 kilometres from his chosen location.
2. HE claims \$5,394.08 refund for the return airfares and accommodation.
3. The issues to be decided are:
 - a. Did G Ltd complete the service with reasonable care and skill?
 - b. If not, was the failure remedied?
 - c. Was the alternative accommodation fit for purpose?
 - d. If not, is HE entitled to claim \$5,394.08?

Did G Ltd') complete the service with reasonable care and skill?

4. The general principles of the Consumer Guarantees Act apply to this dispute. The Act provides that when someone purchases a service, that there is a guarantee that the service will be carried out with reasonable care and skill, and that it is fit for purpose. If it isn't and is a substantial failure, then firstly if there is an opportunity to remedy it, then it should be and if it can't be remedied then the consumer is entitled to damages.
5. I find that that G Ltd did not complete the service with reasonable care and skill because:

- a. G Ltd accepts that in December 2022 that they received notice that the hotel HE had booked would be unavailable in May 2023 and that HE and his wife had been rebooked into another hotel.
- b. G Ltd acknowledge that they failed to inform HE of this change and that he lost the opportunity to change his travel dates or choose another hotel instead of the one they were booked into.

If not, was the failure remedied?

6. I find that the failure to notify HE was not remedied for the following reasons:

- a. G Ltd say that the rebooking to the [alternative hotel], being a five-star accommodation, was a remedy for the unavailable four-star accommodation booked by HE. However, the service required was for a specific hotel in a specific location and the [alternative hotel] was not the hotel or in the right location.
- b. HE contacted G Ltd and advised of the rebooking. He advised G Ltd that the [alternative hotel] was approximately 5 – 6 km away and that he did not want to stay there, he had previously stayed there, and it did not meet his and his wife's needs. He attempted to book another hotel in [Town] and believed that if he did book a hotel then he would have to pay for it there and then and be re-imbursed on his return. He spoke to NQ from G Ltd and there is no evidence that she informed him that he would not have to pay. Instead, she informed him to keep receipts of any taxis and he could be re-imbursed on his return.
- c. HE had also asked NQ to try and find alternate accommodation in [Town], there is no evidence that NQ found any accommodation in [Town]. HE on belief any change of accommodation would be at his immediate expense he informed G Ltd that they would remain at the [alternative hotel].

Was the alternative accommodation fit for purpose?

7. I find that the alternative accommodation, the [alternative hotel] was not fit for purpose for the following reasons;

- a. HE explained that the [alternative hotel] was down a big hill and it caused mobility issues for him and his wife. They had not budgeted for five-star accommodation and prices, which was all that was available at the [alternative hotel] location. The result was that his wife wanted to forgo the holiday within the first day and return to New Zealand. In the end his wife spent the holiday in their room, and HE would travel daily to [Town] to get food for them.
- b. HE explained to NQ, that he had previously stayed at the [alternative hotel] and did not like it and didn't want to stay there, further explaining that staying in [Town 1] provided easy walking distance to the beach and number of more affordable restaurants and bars. So, whilst the [alternative hotel] was a higher-grade hotel, the result was that HE and his wife were isolated by the location, unable to enjoy the flexibility of [Town] and limited to expensive eating opportunities.

If not, is HE entitled to claim \$5,394.08?

8. I find that HE is entitled to claim \$5,394.08 because G Ltd's failure is of substantial character in the alternative hotel was not fit for purpose.
9. G Ltd failed to inform HE of the change of the hotel, removing his opportunity to decide before departing New Zealand whether he would accept this change, make alternative accommodation arrangements for the same period or change the flights. It is reasonably foreseeable that the cost of the flights is part of the package purchased by HE.

10. G Ltd say that they are not aware of any complaint or problem with the flights that HE and his wife took and therefore his claim should only be for the cost of the hotel, which they are prepared to re-imburse.
11. HE doesn't have a complaint with the flights but says that by not been properly informed by G Ltd about the hotel being unavailable he lost the opportunity to change his flights at cost to himself so that he could stay in the hotel of his choice. He said he would have delayed his holiday, paid an amendment fee or increased airfare so that he and his wife could stay at the preferred hotel.
12. I accept HE's evidence that he would have changed his flights because HE and his wife had previously been to [City 1] and stayed at the hotel in [Town] and the [alternative hotel] and there preferred choice was the [Town] hotel which suited and matched their needs. He particularly wanted to take his wife as a surprise, due to recent medical issues she faced to this hotel and requested the hotel room they previously stayed in. He could not get to the hotel without flying and though this was not a specialised package holiday, they had to take flights to get there. It was part of the overall holiday and service required from G Ltd, therefore he is entitled to claim the full cost of the holiday.

Referee: Nigel Wolland

Date: 19 September 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>.