



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 22

APPLICANT HH

APPLICANT HT

RESPONDENT WT Ltd

The Tribunal orders:

1. WT Ltd is to pay HH and HT \$25.00 each, being a total of \$50.00 on or before 5pm on 28 March 2023.

Reasons

1. HH and HT paid \$65.00 each for a bottomless brunch at WT Ltd. They were told, after they ordered their first round of food, that any more food would incur an additional cost and only drinks were bottomless. At the time, the terms and conditions did not set out whether the bottomless brunch was limited to drinks.
2. HH and HT claim WT Ltd breached the Fair Trading Act 1986. HH and HT also claim WT Ltd breached the Consumer Guarantees Act 1993 because the food portions were too small and the standard drinks did not contain enough alcohol.
3. HH and HT claim \$1,999.00 toward an apology, their costs and time involved in preparing for the hearing, the Disputes Tribunal filing fee, and their costs associated with eating food and drink in another restaurant.
4. OL was originally an applicant party to this claim but withdrew her claim before the hearing.
5. The issues to determine are:
 - a. Did WT Ltd breach the Fair Trading Act 1986 when it did not set out that its bottomless brunch only applied to drinks; and
 - b. Did WT Ltd breach the Consumer Guarantees Act 1993 because the food portions were too small, and the standard drinks did not contain enough alcohol; and
 - c. Can HH and HT claim an apology; and
 - d. Can HH and HT claim their costs associated with eating food and drink in another restaurant; and
 - e. Can HH and HT claim their costs and time involved in preparing for the hearing; and
 - f. Can HH and HT claim a refund of the Disputes Tribunal filing fee?
 - g. Does WT Ltd owe HH and HT \$1,999.00?

Did WT Ltd breach the Fair Trading Act 1986 when it did not set out that its bottomless brunch only applied to drinks?

6. It is a breach of the Fair Trading Act 1986 to make a false or misleading statement about the nature of any goods or services. It must be a statement of fact, not opinion. The party that makes the statement does not have to be a party to the contract.
7. The Fair Trading Act 1986 remedies are intended to put the party back into the position it would have been in but for the breach.
8. HH and HT told me they booked in for a bottomless brunch believing it was unlimited food and drinks. They said they had at least five alcoholic drinks each while at WT Ltd and did not get "high" when normally they would get "high" on two drinks at WT Ltd. They believe that this was deceptive behaviour and a breach of the Fair Trading Act 1986.
9. They were also told they would be charged extra if they ordered any more food.
10. I have seen the terms and conditions for the Bottomless Brunch at the time HH and HT booked their outing. It was not clear whether the "bottomless" refers to food or drinks and could have been misleading.
11. Had HH and HT known the "Bottomless Brunch" only applied to drinks they could have made an informed decision about where they wanted to have brunch. They did not have that opportunity.
12. HH and HT were misled; WT Ltd breached the Fair Trading Act 1986. WT Ltd accepts the information was unclear and advises me it has now amended its advertising to make it clear that bottomless only refers to drinks.
13. The advertising makes no mention about the level of alcohol in the drinks. Furthermore, it also applies to non-alcoholic drinks. There is no evidence WT Ltd made any false or misleading statements about the level of alcohol in the drinks. This part of the claim is dismissed.

Did WT Ltd breach the Consumer Guarantees Act 1993 because the food portions were too small and the standard drinks did not contain enough alcohol?

14. The Consumer Guarantees Act 1993 provides that where services are not provided with reasonable care and skill the purchaser can cancel the contract and recover any money they paid. The consumer can also recover the costs of any reasonably foreseeable damage that was caused by the provider of the services.
15. HH and HT told me the serving size portions were very small and no restaurant serving brunch has serving sizes that small. WT Ltd told me customers tell them the portions are too big and they cannot eat the food.
16. HH and HT also claim that the standard drink servings are smaller than regular. They said the standard size at WT Ltd was 15ml and it should have been 27ml. There is no evidence WT Ltd's drinks had to contain 27ml of alcohol.
17. Neither party provided any proof to substantiate their claims about the amount of food served. I understand there were no complaints about the food quality. I was not shown any photographs of the food servings. This claim is dismissed.

Can HH and HT claim their costs associated with eating food and drink in another restaurant?

18. HH and HT told me, after they left WT Ltd, they went to another venue and purchased drinks and food.
19. I accept that HH and HT may have been disappointed with WT Ltd not providing them with unlimited food. They were, however, still provided with bottomless drinks. Had they had to pay for additional amount for food at WT Ltd I may have considered this. I would not have considered any costs for additional drinks.

20. However, I was not provided with any receipts for food and HH and HT have not proven their claim. This claim is dismissed.

Can HH and HT claim an apology?

21. The Disputes Tribunal has no ability to order an apology. While this claim is dismissed, I note that WT Ltd apologised to HH and HT in an email on 14 December 2022, and again in the hearing.

Can HH and HT claim their costs and time involved in preparing for the hearing?

22. The Tribunal does not usually award costs for preparation or attending the Tribunal. I find there is no reason to award costs in relation to this matter. This claim is dismissed.

Can HH and HT claim a refund of the Disputes Tribunal filing fee?

23. The Tribunal has no ability to refund the filing fee. This claim is dismissed

Does WT Ltd owe HH and HT \$1,999.00?

24. As set out above in para (16), (19), (20), (21) and (22), WT Ltd did not breach the Consumer Guarantees Act 1993, and cannot claim for an apology, their costs and time involved in preparing for the hearing, the Disputes Tribunal filing fee, and their costs associated with eating food and drink in another restaurant.

25. As set out above in para (10) and (11), WT Ltd breached the Fair Trading Act 1986 when it did not make it clear that the "Bottomless Brunch" only applied to drinks. WT Ltd did not breach the Fair Trading Act 1986 regarding the amount of alcohol in the drinks.

26. I accept that HH and HT did not receive the full bargain they thought they had purchased as they expected unlimited food. However, HH and HT received the benefit of some food and unlimited drinks and are not entitled to a full refund of \$65.00 each. HH and HT suffered the loss of being able to order additional food at no extra charge and should get a partial refund.

27. Taking all the evidence into account I find, WT Ltd owes HH and HT \$25.00 each, being a total of \$50.00.

Referee: K O'Shea

Date: 28/02/2023



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>.