



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 26

APPLICANT HI
RESPONDENT D Ltd
RESPONDENT FB

The Tribunal orders:

1. The name of respondent FS is amended to FB.
2. The claim is dismissed.

Reasons:

1. HI is based in [Town]. In late September 2023 he was advised that a close family member was seriously ill. He was required to travel at short notice and booked flights to [City 1] and then attempted to book a rental car to drive to [City 2].
2. He used the online booking platform, FS, which is operated by FB based in [overseas country]. His first booking was not able to be confirmed so he cancelled that booking and made another booking for a rental car with D Ltd.
3. A confirmation of his booking was received. HI paid a deposit of \$18.02. During the booking process HI was required to enter his age and he entered it as 70 years of age.
4. On 1st October 2023, HI arrived in [City 1] and was picked up from the airport and brought to the office of D Ltd to collect his car and complete the required paperwork for the rental.
5. HI provided his driver's licence to the representative of D Ltd and was advised that as he was over 70 years of age that a surcharge of \$150.00 would apply. HI said that no such surcharge had been advised at the time of booking and he did not wish to pay it. D Ltd indicated that they could not hire the car to HI without payment of the surcharge.
6. HI then contacted another car rental company situated close to D Ltd and arranged to rent a car from it. He told D Ltd that he would not be hiring a car from them and expected a refund of the \$18.02 paid.
7. He did not receive a refund of the \$18.02 deposit and subsequently contacted his credit card company to dispute the charge. He was advised by the credit card company to first contact the entity who had taken the deposit, which was FB.
8. HI communicated through the FS website and requested a refund setting out what had occurred.

9. While initially a refund was refused, the \$18.02 paid by HI was ultimately refunded to him in November 2023, the day after he filed this claim with the Disputes Tribunal.
10. HI is seeking \$2,590.00. He was originally seeking \$2,743.87. However, HI acknowledged that the deposit had been refunded so that was no longer disputed. He had originally sought \$135.85 to cover mileage to travel from [Town] to attend the Disputes Tribunal hearing in [City 3]. As the hearing took place by way of teleconference, that claim was not pursued further. HI was seeking \$90.00 for the Disputes Tribunal filing fee and \$2,500.00 for aggravated / exemplary damages for stress and inconvenience.
11. The issues the Tribunal has to consider are:
 - a. Did FB and / or D Ltd breach the Fair Trading Act 1986 (“FTA”) by giving misleading information about additional surcharges at the time of HI’s booking?
 - b. Did FB and / or D Ltd breach the Consumer Guarantees Act 1993 (“CGA”) by failing to provide its customer service with reasonable care and skill?
 - c. Is HI entitled to the Disputes Tribunal filing fee of \$90.00?
 - d. Is HI entitled to compensation of \$2,500.00?

Did FB and/or D Ltd breach the FTA by giving misleading information about additional surcharges at the time of HI’s booking?

12. Section 9 of the FTA states that no person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.
13. Section 13 of the FTA states that no person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services make a false or misleading representation with respect to the price of any goods or services.
14. The FTA does not require a party to intend to mislead another party. It is sufficient if the conduct misleads or was likely to mislead.
15. HI referred me to the Frequently Asked Questions section of the FS website. It stated that he was required to enter his age when entering the rental search criteria and FS would only show cars available for that age. The website also states *“Note: Some rental companies charge an extra fee to young or senior drivers. Don’t worry, this fee, if any, is always included in our final prices. When comparing with others, make sure you compare FINAL prices and not ones that purposely keep surcharges hidden.”*
16. When HI searched for cars on the FS website he entered his age as 70 years. He was not asked at that stage to provide a date of birth. HI’s birthday is in June so at the time he searched for a rental car he was just over 3 months past his 70th birthday.
17. I find it reasonable, and it was not really disputed by GL of D Ltd or SG of FB, that when people are asked their age, they state the age they turned on their last birthday and do not state how many months past their birthday they are.
18. HI was asked to enter his age. He entered 70 years as his age and that was reasonable and correct at the time of search.
19. HI was provided with a voucher for his booking that clearly stated his age as 70 years *“at rental start.”* It stated that the amount of \$134.96 was payable at the desk.

20. When HI arrived at D Ltd depot in [City 1], he was asked for his driver's licence. He was advised that as he was over 70 years of age, he would be required to pay a surcharge of \$150.00. GL stated that was as a result of the insurance D Ltd has which requires additional payment for customers over 70 years of age.
21. HI was misled as to the price of the rental car. He was told at the time of booking that while some companies charged surcharges due to age, that would be included in any final price given on the FS website.
22. It appears, having discussed the matter at length during the hearing, that had HI put in his age as 71 years, the FS website would not have given D Ltd as an option to book a car as he was over 70 years. However, by simply putting in his age as 70 years, it continued to give D Ltd as an option to book a car and did not advise of any surcharge.
23. The issue seems to have arisen as a result of D Ltd advising FB that the maximum age for a driver was 70 years of age. The FS website accepted bookings from a driver who was 70 years of age and did not indicate or include any surcharge. That was incorrect as as soon as a customer was past their 70th birthday, as HI was, they became liable for the surcharge. The FS website states that any surcharge applicable would be included in the final price. HI was entitled to assume that the price he had been given on his booking was the final price as that is what he was told at the time he made the booking. That proved to be incorrect due to the systems in place on the FS website.
24. The Tribunal was advised at the hearing that since this incident both D Ltd and FB have made changes to the booking system, and it is no longer possible for a customer who enters their age as 70 years to book a car with D Ltd. That should have been the system in place at the time HI made his booking.
25. As the assurance was that all prices given through the FS website were final, I am satisfied that FB was in breach of the FTA. FB said it acted on the information provided by D Ltd. As D Ltd had advised that the maximum age a car could be rented without surcharge was 70 years, FB should have made sure that it did not take bookings once a customer was past their 70th birthday. That is the system that is in place now.
26. FB breached the FTA by giving HI misleading information about the price of the car rental with D Ltd.
27. I am not satisfied that D Ltd breached the FTA in this regard as it was not responsible for the content on the FS website.

Did FB and/or D Ltd breach the CGA by failing to provide its customer service with reasonable care and skill?

28. Section 28 of the CGA means that where services are supplied to a consumer there is a guarantee that the service will be carried out with reasonable care and skill.
29. FB said that when the issue about the booking was raised with it, it immediately contacted D Ltd to see what had occurred. FB said it believed it dealt with HI's issue promptly and correctly. FB did ultimately refund the \$18.02 to HI. While the Disputes Tribunal claim had been filed at that stage, FB was not aware of that as it had not been served with the claim or the Notice of Hearing at that point.
30. I am not satisfied that FB breached the CGA. It dealt with HI's complaint appropriately and made decisions based on information provided to it from other parties.
31. D Ltd was not aware of the issue until it was contacted by FB. D Ltd said it did not receive any money from HI and the \$18.02 was paid to FB using the FS website. GL said had D Ltd been

made aware that there was an issue with the refund, it may have contacted FB to try to resolve the matter or make the refund itself.

32. D Ltd received emails from FB and gave FB information about the dealings D Ltd had had with HI.
33. HI received an email from the customer service team of the FS website on 12 October stating that it had contacted D Ltd and was advised that *“additional insurance was offered not because of your age, but because you did not have available funds for the preauthorisation amount.”*
34. This was an incorrect statement. HI did have sufficient funds for preauthorisation. GL said it is likely that this statement was made because there are only two likely reasons why a car would not have been rented to HI. One was a lack of sufficient funds for preauthorisation, and one would have been due to a surcharge applying due to his age. GL says that D Ltd deals with many people each day who rent cars and it is not always possible to recall what occurred with a specific customer.
35. I am not satisfied that D Ltd provided its service with reasonable care and skill. It appears that D Ltd guessed the reason why HI had not been rented a car and then stated that as a fact to FB. That is not carrying out customer service with reasonable care and skill. As a result of this email sent on 12 October, HI had to further communicate with FB and explain that that statement was simply incorrect.
36. If D Ltd was unable to recall what had occurred with HI's booking or if there were two possible reasons that could explain what had occurred, that could have been explained to FB. Instead, D Ltd made an incorrect statement without qualifying it in any way. That is not taking reasonable care to deal with a customer issue.
37. D Ltd was in breach of the CGA as it failed to provide customer service with reasonable care and skill.

Is HI entitled to the Disputes Tribunal filing fee of \$90.00?

38. Section 43 of the Disputes Tribunal Act 1988 (“DTA”) means that costs cannot be awarded against a party to a Tribunal hearing except in certain circumstances. I am not satisfied that any of the exceptions as set out in s43 of the DTA apply. I cannot, therefore, make any award in respect of those costs.

Is HI entitled to compensation of \$2,500.00?

39. Section 43 FTA contains a broad power for the Tribunal to make monetary orders where someone has suffered a loss as a result of a breach of the FTA.
40. Section 32 of the CGA deals with options for consumers where a service does not comply with a guarantee. Where the breach is not of a substantial character, the consumer must ask the supplier to remedy the problem and only if it does not do so or does not do so in a reasonable time, the consumer can have the problem remedied elsewhere and recover the reasonable costs of that work from the supplier.
41. Section 32 (c) of the CGA means that in addition to the remedies set out above, a consumer may obtain from the supplier damages for any loss or damage to the consumer resulting from the failure which was reasonably foreseeable as liable to result from the failure.
42. HI said he was seeking aggravated / exemplary damages for stress and inconvenience caused by the actions of FB and D Ltd. He referred to the fact that all of this occurred while he was dealing with a seriously ill family member who later sadly passed away. HI referred to a previous

Disputes Tribunal matter he was involved in regarding his daughter and a gym membership. He said in that case she received a payment of \$1,000.00 for distress.

43. The immediate loss suffered by HI was the \$18.02 paid to FB. That has now been refunded and therefore I do not need to consider that matter further.
44. HI clarified at the hearing that the previous Disputes Tribunal matter he had referred to was settled between the parties. There is therefore little weight I place on that.
45. Taking all matters into account, I am not satisfied that any further compensation is payable to HI.
46. I am not satisfied that the Disputes Tribunal is the appropriate forum to deal with a claim for exemplary damages. Exemplary damages are generally reserved for Court proceedings involving exceptional and serious cases of conscious wrongdoing. Unlike other Tribunals such as the Tenancy Tribunal, the Disputes Tribunal does not have specific jurisdiction to grant exemplary damages.
47. The Disputes Tribunal can consider claims for personal stress and inconvenience. They can be appropriate in some cases. However, I am not satisfied they are appropriate in this claim. HI was able to rent a car immediately from another company that was situated in close proximity to D Ltd's premises. As it turned out, HI rented a car from the company he had originally tried to book with. He was therefore able to continue his journey with little delay.
48. There was no evidence of any further financial loss being suffered by HI. The inconvenience was subsequently caused by having to pursue the refund with FB and send follow up emails.
49. While not discussed at the hearing, HI, in his written submissions, made reference to the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990. The Disputes Tribunal does not have jurisdiction to make orders under these Acts.
50. I do appreciate the difficult situation that HI found himself in and I do sympathise with his loss. However, travelling and dealing with travel bookings always involves a certain degree of stress and inconvenience. That was likely to be exacerbated by the emotional situation HI found himself in. It is also unlikely that the issues experienced by HI were reasonably foreseeable to either FB or D Ltd at the time.
51. Taking all matters into account, I am not satisfied that any further compensation is due to HI.
52. The claim is therefore dismissed.

Referee: P Byrne
Date: 20 February 2024



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>.