



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 445

APPLICANT HM

RESPONDENT F

The Tribunal orders:

The claim is dismissed.

Reasons

1. HM is a member of the F [airline loyalty programme] under which a member may earn [loyalty points] (Points) when flying with F. She says on 31 December 2022 F cancelled 187,928 of her Points without any warning to her after two years of repeated extensions with frequent notifications of extensions and expiry dates. In her claim she seeks either reinstatement of those Points by F or payment by F of \$6,207.26 being the sum needed to purchase the same number of Points.
2. NQ, Senior Sales Executive for F, says the correct number of Points that expired on 31 December 2022 is 115,189. She says F denies the claim, but on 24 May 2023 offered to reinstate 115,189 Points for HM with an expiry date of 30 June 2023, then extended that offer to an expiry date of 30 September 2023. HM accepts that the number of Points in question is 115,189, but does not accept an expiry date of 30 September 2023 and seeks to have their expiry date extended to 31 December 2023. This has been denied by F.
3. The issues I need to decide are:
 - a) Has F breached its contract with HM by cancelling her 115,189 Points on 31 December 2022 without giving her any warning?
 - b) If so, what is HM's loss?

Has F breached its contract with HM by cancelling her 115,189 Points on 31 December 2022 without giving her any warning?

4. Parties to a contract must perform their respective obligations. If they do not, they will be in breach and need to account for any loss caused to the other party to the contract.

5. HM refers to F's customary practice of sending out reminder emails, and the acknowledgement on page E/41 of F's submitted documents that:

".. we acknowledge that this member did not receive communication 2 months prior to expiry as we intended. This is true for members from AU/NZ with 31Dec22 expiry date."

6. HM says that despite this acknowledged practice F failed to send her a reminder that she had Points that would expire on 31 December 2022. I have regard to the evidence provided by F showing that an email was sent to HM on 6 December 2022 advising her of the pending date of expiration of her Points on 31 December 2022. I find it more likely than not that an advisory email was sent to HM.

7. F' position, even if an advisory email had not been sent to HM, is that when signing up to the Points scheme, the applicant agrees that their participation is subject to the F's [Loyalty Programme Rules] (Rules). Section 9.4 of the Rules states that members are responsible to keep track of their Points and when they will expire.

8. I find the Rules constitute the contract that is relevant to the claim, and under that contract HM was responsible to keep track of her Points and their expiry dates. I find the communications by F referred to by HM are a courtesy to their Points scheme members, and were particularly so during the time of the response to the COVID -19 pandemic, and do not change the contractual obligations of the parties as they are set out in the Rules.

9. I find F has not breached its contract with HM as claimed. I dismiss the claim.

10. In light of my decision it is not necessary to consider the remaining issue.

Referee: B Curtis
Date: 29 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>.