



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

**[2023] NZDT 533**

**APPLICANT**      **KD**

**APPLICANT**      **KX**

**RESPONDENT**    **B Ltd**

**The Tribunal orders:**

The claim is dismissed.

**Reasons:**

**Introduction:**

1. On the 21<sup>st</sup> of July 2022, KX and his sister KD were booked to fly from [City 1] to [City 2].
2. KX and KD missed the flight and had to book a flight with [Airline] the following day.
3. They claim \$5,592.00 for the cost of the Airline tickets that they had to purchase and \$619.00 for the hotel in [Country].
4. The issues to be resolved are:
  - a. Did B Ltd take reasonable steps to notify KX and KD about the updated departure time so that they could get to the departure gate on time?
  - b. If not, are KX and KD entitled to claim compensation of \$5,592.00

**Did B Ltd take reasonable steps to notify KX and KD about the updated departure time so that they could get to the gate on time?**

5. The Consumer Guarantees Act 1993 (CGA 1993) implies into all consumer contracts a set of minimum standards (guarantees) for services when they are supplied in trade to consumers. The services must be provided with reasonable care and skill. In addition, B Ltd's. conditions of carriage apply to all who fly with B Ltd.
6. The conditions of carriage are clear that it is the responsibility of the passenger to get to the departure gate on time. KX and KD accept this.
7. To comply with the guarantees under s.28 (CGA 1993), B Ltd had to take reasonable care to ensure that KX and KD were informed when the flight was departing.

8. I find B Ltd did take reasonable steps to notify KX and KD about the updated departure time so that they could get to the gate on time.
9. I make this finding for the following reasons:
- i. I considered the submissions of KX and KD that the departure board in the [airport area] had not shown and did not show a correct departure time, and that [airport area] staff from B Ltd had told them that the board was unreliable because it was run by the [City 1] Airport and not by B Ltd. Although the board may have been incorrect from time to time, I accept B Ltd's evidence that two announcements were made in the [airport area] directing KX and KD to go to the departure gate.
  - ii. I considered KX and KD's argument that they didn't hear the announcements because the speakers in that part of the [airport area] didn't work, and it was not until they were moving around the [airport area], they were able to hear announcements. They went on to say that because of this they had each independently gone to the [airport area] desk to ask about an updated flight departure time. They said they did not hear the specific announcements asking them to go to the gate. However, I accept that B Ltd made two separate boarding calls in the [airport area] asking KX and KD to go to the gate because B Ltd provided evidence of these two announcements. In addition, I am satisfied with B Ltd's statement that speakers in the [airport area] were working and that it was very busy and noisy in the [airport area].
  - iii. KX and KD said the message received on KX's phone did not alert them to go to the departure gate because KX had the phone on silent and did not see the message until later. B Ltd demonstrated the extra step it took to contact KX, by phoning KX's travel agent when it discovered it did not have KX's cellphone number. The travel agent rang KX, then left a voice message about the new departure time. That message was provided as evidence to the Tribunal. It was reasonable for B Ltd to assume that KX and KD would receive updates on a cellphone, given the change of flight time.
  - iv. I considered KX and KD's argument that if B Ltd sent staff to the [airport area] to look for them KX and KD had not seen them. However, I accept the evidence of B Ltd that [airport area] staff were sent to look for KX and KD. I find this is more likely than not true, even though KX and KD did not see them. KX and KD agree the [airport area] was busy on the night which is probably why B Ltd staff did not find them.
  - v. KX and KD said that because they were in the [airport area] and the flight was for a specific purpose and quite expensive B Ltd should have applied more effort to ensuring they got to the departure gate. However, as discussed above, B Ltd used a number of different methods to make contact and tell them to go to the departure gate and they meet the guarantee of providing service with reasonable care and skill.

**Conclusion:**

10. As B Ltd took reasonable steps to notify KX and KD about the updated time of their flight so they could get to the gate on time, there is no remedy under the CGA for KX and KD . Therefore, the claim is dismissed.

**Referee: Verdun Tawhara,**

**Date: 21<sup>st</sup> day 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>.