



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 354

APPLICANT **KN and PN**

RESPONDENT **V Inc**

The Tribunal orders:

V Inc is to pay the sum of \$2,898.92 to KN and PN on or before Friday 25 August 2023.

Reasons:

1. On 29 August 2022, KN and PN (the consumers) paid \$1,818.48 for two one-way tickets on V Inc from [NZ city] to [International city A] departing 13 November and arriving in [International city A] on 13 November.
2. The flight was initially delayed for several hours until later that evening, then was cancelled less than an hour before the original departure time. The consumers tried to get hold of V Inc, but the contact centre was busy and they had to wait on hold for a long time.
3. Meanwhile, they looked for alternative flights because KN needed to be in [International city A] by 9:00 am the next day, Monday 14 November, for an important training meeting with another [fellow professional] in the [university department]. The only flight pathway they could find to get them there in time was a flight on [Airline A] leaving at 8:15 pm that evening to [International city B], then a domestic flight to [International city A]. There were very few tickets left on the [Airline A] flight, so they purchased those tickets for \$3,366.00 and the domestic tickets for \$1,351.40, and requested a refund from V Inc.
4. The consumers now claim \$2,898.92 from V Inc for the extra cost of the replacement flights.
5. The issues to be determined are:
 - a) Are the consumers entitled to damages?
 - b) What sum, if any, is payable?

Are the consumers entitled to damages?

6. Both parties referred to the Consumer Guarantees Act 1993 (CGA). The CGA applies to domestic flights, but international carriage by air is governed in New Zealand by the Montreal Convention, which has been incorporated into New Zealand law by s 91C of the Civil Aviation Act 1990. The courts have held that the Convention regime is intended to be a uniform international code, and to be exclusive of any resort to the rules of domestic law.
7. Article 19 of the Convention states, "The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo." There is an exception where the carrier

proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures. However, the delay by V Inc in this instance was for operational reasons relating to crew availability, so the exception would not apply.

8. The provisions of the Convention are incorporated into the contract between the parties, and the contract cannot relieve the carrier of liability or fix a lower limit of liability than the Convention does. I therefore find that the consumers were entitled to compensation for damage caused by delay.

9. What sum, if any, is payable?

10. The amount of the consumers' claim is within the monetary limit set by the Convention, but the general principles of contractual damages also limit what can be claimed.
11. Consequential losses must not be too remote, but clearly it is within the reasonable contemplation of the parties that passengers whose flights are delayed or cancelled may need to catch different flights to get to the destination on time.
12. Another limit is that passengers faced with a delay cannot recover loss that could have been avoided by taking reasonable steps to mitigate the loss. The airline bears the onus of proving that the consumers failed to take reasonable steps to mitigate their loss.
13. V Inc gave evidence that it opened an extra section and offered new flights to the consumers sometime on 13 November after their flights were cancelled. These flights would not have arrived in time for the training meeting, but V Inc submitted that the consumers could have rearranged the meeting to a different date to mitigate their losses.
14. However, KN's meeting was in the nature of an observership with a [specialist] that could not easily be rescheduled. In the circumstances, I find that V Inc has failed to prove that it would have been reasonable for the consumers to accept the new flights.
15. I therefore conclude that the consumers are entitled to recover \$2,898.92 from V Inc for the cost of rebooking their flights.

Referee: E Paton-Simpson
Date: 11 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 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>.