



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 274

APPLICANT LM

RESPONDENT U Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

1. LM hired a camper van from U Ltd, taking the inclusive package. The day after the camper was uplifted, LM unfortunately had an accident in which he collided with a parked car. As a result, the camper had to be towed and a replacement arranged. LM however was unhappy with the service provided by U Ltd, and the time it took to arrange a replacement camper. LM believes U Ltd should compensate him for time wasted in [City] waiting for a replacement camper, expenses incurred there, the poor service and the mental and physical suffering his party endured.
2. U Ltd have disputed any liability as they consider they have complied with their obligations under the hire agreement. LM has therefore filed a claim in the Disputes Tribunal for compensation for his losses.
3. The issues for the Tribunal to determine are:
 - i. Did LM receive the terms and conditions of hire? If so, is LM bound by those terms and conditions?
 - ii. Did U Ltd breach the term and conditions? If so, is LM entitled to compensation?

Did LM receive the terms and conditions of hire? If so, is LM bound by those terms and conditions?

4. U Ltd have provided evidence the terms and conditions were made available to LM when the booking was initially made. LM stated there was too much information provided and as his English is limited, he did not read the terms and conditions.
5. The terms and conditions are contained in a six-page document. I accept it may have been difficult for LM to read the document with English being his second language, however it is LM's responsibility to ensure he is aware of the terms and conditions of any contract he enters.
6. As LM signed as accepting the contract terms and conditions, I find he is bound by them.

Did U Ltd breach the term and conditions? If so, is LM entitled to compensation?

7. The terms and conditions contain the rights and obligations of both parties to the contract. LM has claimed the time taken to provide him with a replacement camper was excessive, however KQ, National Operations Manager for U Ltd, referred the Tribunal to clause 25 of the terms and conditions. Clause 25(c)(1) states:

The availability of an exchange vehicle is not guaranteed; provision is subject to availability, customer location, accident liability and remaining hire duration (provided that Mighty will act reasonably when exercising its discretion to provide an exchange vehicle in such circumstance).

8. Mr Power explained LM had been advised numerous times it would take time to source another vehicle, to prepare it and to have it delivered to a suitable location. Often, they have to wait for a vehicle to be returned before a replacement can be provided.
9. I have considered the wording of clause 25 and I find U Ltd have not breached the contract by taking 4 days to locate, prepare and deliver another camper.
10. LM claimed he was not told it could take 4 days, however KQ stated they made 14 calls to LM to update him on progress, and they received 25 calls from LM. LM was kept informed as best as possible and staff apologised to him for the delays.
11. LM was also concerned about the lack of adequate transport when his vehicle was towed after the accident, and the lack of suitable accommodation being arranged on their first night in [City]. However, I am unable to find any clause in the contract which places such a responsibility on U Ltd.
12. Although it is clear this was a frustrating experience for LM and his family, and not the experience they wanted on a New Zealand holiday, I am unable to find any breach of contract by U Ltd. The claim filed by LM must therefore be dismissed.

Referee: K. Edwards
Date: 10 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>.