



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 149

APPLICANT ME

RESPONDENT B Ltd

The Tribunal orders:

B Ltd is to pay ME \$8513.60 on or before 21 July 2023.

Reasons

1. In August 2022 ME booked return business class flights to [Country 1] to attend a family event. She transferred \$16,000.00 onto her Visa Debit card to pay for the tickets online. However she discovered that she could not make the payment because of a \$10,000.00 limit on her card. Being a Saturday, she did not realise at the time that she could have rung her bank and changed the limit immediately, and wanting to get on with booking the tickets, she decided to pay for one flight that day, and the return flight the next day.
2. ME booked the [City] to [Country 1] flight on the Saturday and found, when trying to book the [Country 1] to [City] the next day, that that is only possible through the [Country] website for B Ltd and the cost of the one-way flight was going to be about \$1500.00 dearer. She rang B Ltd for advice.
3. B Ltd's customer representative suggested to ME that she cancel the flight she had booked and use the credit to pay for the new return flights to be booked all at once through the New Zealand website (by that stage ME had arranged for the daily limit on her card to be increased). ME did that, booking fares on exactly the same flights she had been trying to book all along. She also confirmed all her other travel arrangements such as accommodation for a month in the [Countries].
4. Unfortunately after the bookings were made, ME received a medical diagnosis that made her feel reluctant to travel on her own. She rang B Ltd in December 2022 with a view to confirming she could be refunded the cost of flights if she cancelled, before making any other cancellations. She was told that because she had booked fares, she would receive a full refund. She therefore cancelled the flights and proceeded to cancel all her other travel bookings.
5. When she had not received a refund by January 2023, she rang B Ltd again and it was again confirmed that she was entitled to a full refund. However she was phoned back the same day and told that, because part of her payment was made using a credit, that that portion, \$8513.60, could not be refunded. This was consistent with B Ltd's terms and conditions about credits, which state that once a credit is used it becomes non-refundable. ME says she was

also told that it is the airline's policy that money is paid back to where it came from (ie. to the same card payment was made from or to a credit if payment was made that way).

6. ME subsequently received a refund of \$7403.40 plus \$44.60 she had paid to alter the return flight date at an earlier stage, plus a credit note for \$8513.60. She claims a refund of the \$8513.60.
7. B Ltd did not provide the name or contact details of a representative to be phoned for the teleconference hearing, so the order is made in their absence.
8. The issue to be determined is:
 - Are B Ltd's terms and conditions relating to credits binding in the circumstances ME has outlined?
9. When ME cancelled her one-way ticket [City] to [Country 1] in order to book return flights on the same routes and same flights, she says she was not advised that once her original payment became a credit, it would become non-refundable once it was applied to another flight. It is a fundamental principle of contract law, that if one party to a contract proposes a change that would alter an essential term of a contract, that change and its effect must be specifically pointed out to the other party.
10. ME was booking fares so that her flights would be fully changeable and fully refundable in the event of unforeseen circumstances. In giving her advice on how to book everything through the New Zealand website, B Ltd was obliged to point out the implications of her one-way flight being cancelled and repaid via a credit. Further, given the policy that 'money is paid back to where it came from', it is not clear why payment for that flight was not refunded directly to her Visa Debit card.
11. This was a situation where ME was booking and re-booking the same routes and the same flight times and dates within 48 hours of each other. She did not use a pre-existing credit for any part of her booking, in which case it would be reasonable and valid for the airline's terms and conditions relating to credits to apply. Rather she paid the \$8513.60 from her Debit card and could just as easily have had that money refunded in order to re-book the same flights, if she had been told that a credit note would fundamentally alter her position.
12. For the reasons above, I find that B Ltd is liable to pay \$8513.60 to ME.

Referee Perfect

Date: 23 June 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>.