



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 657

APPLICANT **MI**

RESPONDENT **E Ltd**

The Tribunal orders:

The claim is dismissed.

Reasons:

1. MI purchased tickets to a [concert 1] at the [venue] originally scheduled for 1 April 2023. On 31 March the concert was postponed to a rain date of 2 April 2023. MI was unable to attend on the 2 April so requested a refund of her tickets. E Ltd, the company running the concert, declined to give a refund as the contingency rain date had been included in the terms and conditions.
2. MI claims the sum of \$1,528.70 for the price of the tickets, her time spent trying to resolve this matter, and the Tribunal filing fee.
3. At the hearing the name of the respondent was corrected from B Ltd, to E Ltd.
4. The issues to be determined are as follows:
 - a. What were the terms and conditions of the tickets, and has E Ltd breached them?
 - b. Was the decision to invoke the rain date made with reasonable care and skill?
5. Tickets to the concert were sold online through a third party. In order to purchase tickets customers had to check a box which states they agree to the terms and conditions. Those terms and conditions could be viewed by clicking on the words “terms and conditions” next to the confirmation box.
6. The terms and conditions include the following:

In the event [concert 1] – In the [venue] is rained out the postponement date is the 2nd April 2023. Please ensure upon purchasing you can attend both the original date of April 1st, 2023, plus the postponement date”

No refunds on tickets except where required by the Consumer Guarantees Act 1993. No refunds or other compensation will be given if an advertised artist or act is changed, cancelled, or the length or content of their performance is changed.

7. MI argued that the rain date may have been put into the terms and conditions after she purchased her ticket. E Ltd's representative, EI, acknowledged that there had been some online speculation about this. However, he stated that the term had always been there. In support of his position, he provided copies of performers contracts, which also included the rain date, and a statement by the third party ticketing provider that the terms had always been included. I accept this evidence and find that the rain date was a term of the contract at the time MI purchased her tickets.
8. There was one change in the line-up of performers as a result of the rain date. MI argued that this was further reason to provide a refund. However, this is also addressed in the terms and conditions and a refund is not available as a result of this change.
9. MI stated that other concerts, such as [band], provide refunds if ticket holders can't go. She argued that this concert should also provide refunds, and that it is not fair to rely on a clause in a standard form contract not to give refunds. However, there is no legal obligation for E Ltd to provide refunds. It may choose to include such terms and conditions in its contracts, and purchasers who accept those terms are bound by them.
10. MI also referred to the consumer website and its information regarding unfair contractual terms. She said that the cancellation terms are harmful because the consumer can lose money, be inconvenienced, and distressed. However, the discussion on that webpage is in relation to the Commerce Commission's ability to apply to the courts for a declaration that terms are unfair and is not applicable to this claim.

Was the decision to invoke the rain date made with reasonable care and skill?

11. The Consumer Guarantees Act 1993 (CGA) implies guarantees into consumer contracts for the protection of consumers. Section 28 provides a guarantee that services will be carried out with reasonable care and skill.
12. Part of the service provided to concert goers was the decision regarding the rain date. There was some rain in central [City 1] on both the 1st and 2nd of April. MI argued that concert was advertised as an all-weather event, and the rain was not significant, so the concert should not have been postponed.
13. EI explained that while the concert could go ahead with some degree of rain or poor weather, there were limits to the conditions in which the concert could go ahead. He presented a forecast that was provided to him by the MetService on 31st March. That forecast included a warning of a rainband, with thunderstorms, and stated that these bring:

a risk of localised downpours (intense rainfall) to [City 1]. The peak risk time for thunderstorms is approximately 6pm-9pm in [City 1]." It predicted a rain rate of 25-40mm per hour, and stated " While not everyone in [City 1] will see a downpour on Saturday night, the risk is potentially large enough that MetService will consider issuing a SEVER[E] THUNDERSTORM WATCH on Saturday morning, indicating the risk of localised downpours and or localised flooding to [City 1 residents]1 for Saturday night.
14. EI explained that given context of severe weather events and flooding in [City 1] earlier in the year, the decision to cancel the [concert 2] that was made late, and the formal forecast from the MetService, he made the decision to postpone. He argued that it was a reasonable decision in the circumstances, and although the weather was not as wet as forecast, he did not have the luxury of waiting until Saturday to make the decision.

15. I accept EI' arguments; the forecast makes it clear that there was a real risk of severe thunderstorms and flooding. In those circumstances the decision to postpone was reasonable and there has not been any failure to meet the guarantee under the CGA.

Conclusion

16. For these reasons I find that it is not proven that MI is entitled to a refund of the ticket price, and the claim must be dismissed.

17. As discussed at the hearing the tribunal does not have jurisdiction to award costs, including preparation time and the filing fee in these circumstances. (s 43 Disputes Tribunals Act 1988).

Referee: K Rendall

Date: 28 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>.