



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

[2023] NZDT 719

**APPLICANT**      **MK**

**APPLICANT**      **OC**

**RESPONDENT**    **R Ltd**

**The Tribunal orders:**

R Ltd is to pay the sum of \$4,426.00 to MK and OC on or before Monday 15 January 2024.

**Reasons:**

1. On 5 May 2022, OC and MK (the passengers) paid \$7,246.36 for return tickets to fly with R Ltd (the airline) from [City 1] to [City 2]. Due to an error, the airline failed to issue the tickets.
2. On 16 May, the passengers rebooked their flights through the airline's call centre. Later that day, the airline claimed not to have received the payment due to a systems error, and asked the passengers to pay again. The airline said it would refund the money if the earlier payment came through, but the refund was not received until around seven months later. The passengers paid a third time, but the airline issued tickets with an incorrect return date (one month later than requested). The passengers then had to pay \$163.80 to correct the return date, but could no longer get a return flight on their original return date of 28 June, so their trip had to be extended to 2 July.
3. The passengers also had trouble booking an extra bag online for the return flight, there was an issue at the airport with the return tickets, and their bags were delayed by five days arriving in [City 1]. They claimed that their original tickets were premium economy class, but were unable to prove this.
4. The passengers now claim \$18,000.00 from the airline, comprising a refund of the fee to correct the return date, the costs of accommodation, food and a rental car for the extra three nights' stay, and compensation for stress, inconvenience, and loss of income.
5. The issues to be determined are:
  - a) Is the airline liable for faults in its services?
  - b) What damages, if any, are payable?

**Is the airline liable for faults in its services?**

6. 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. 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."

7. The Convention applies to the baggage delay, but I am not sure whether the Convention applies to problems in the booking process rather than in the actual carriage once the tickets have been booked. In any event, it would not affect the outcome on the present facts in either liability or quantum. If the Convention does not apply to some of the issues, then the relevant law would be s 28 of the Consumer Guarantees Act 1993 (CGA), which provides that where services are supplied to a consumer, there is a guarantee that the services will be carried out with reasonable care and skill.
8. The airline admitted that it was at fault, and I consider that the standard of service offered in the booking process was very poor in multiple respects. While the airline delivered the core service of the flights without incident, other than the delayed luggage, there was a clear failure to carry out ancillary services with reasonable care and skill. This resulted in the return flight failing to suit the passengers' original purpose of being home by 28 June.

#### **What damages, if any, are payable?**

9. The airline rightly conceded that it should compensate the passengers for the \$163.80 fee and their reasonable expenses for the extra three days they had to spend in [country] due to the later return date. The parties agreed that the fee plus expenses totalled \$1,826.00.
10. The passengers also claimed lost income. They provided evidence that they would have earned around \$6,594 and \$943 per day respectively, a total of around \$22,610 between them for three days. However, I am not persuaded that this is a true loss. The passengers knew of the later return date more than three weeks before their flight out on 11 June. Both were essentially self-employed, and are likely to have had ways of making up the three days' earnings if they wished, such as by working longer hours before they left or taking a shorter holiday next time. It would not be just for them to receive an extra three days' holiday with expenses paid as well as the earnings they would have made if they were not on holiday.
11. The passengers submitted that their holiday was spoiled by lack of funds due to not receiving the refund of their second payment for seven months. However, the courts have held that no damages are payable for late payment of money other than interest. Also, the passengers are not impecunious and could have mitigated the spoiling of their holiday by breaking into their investments or borrowing some money before they left.
12. Nevertheless, there is no doubt that the passengers were majorly inconvenienced by the airline's poor service. They were forced to take extra holidays at a time that was not of their choosing, and they provided evidence that they had spent a total of more than 14 hours on the phone to the airline. I also accept that the ongoing problems caused them unnecessary stress when the purpose of a holiday is to provide relaxation and enjoyment.
13. I have decided that the passengers should receive \$2,600.00 in compensation on top of their extra expenses. This includes a small amount of interest, and the remainder is for stress and inconvenience. (The interest would only be around \$100 at the statutory rate, so I have included it in a global figure rather than calculating it precisely.) The total sum payable is accordingly \$4,426.00.

**Referee: E Paton-Simpson**

**Date: 21 December 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>.