



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 511

APPLICANT MZ

RESPONDENT X Ltd

The Tribunal orders:

X Ltd is to pay MZ \$1,414.00 on or before 13 November 2023.

Reasons

1. MZ bought return tickets for her parents to fly to [Country] from the website operated by X Ltd. The website asked her to enter the first name and then the last name of each parent for the ticket. The tickets were purchased and a confirmation letter was sent. MZ checked all the details, including the spelling of her parents' names. On the day of departure her parents were not allowed to board because the names as recorded on the tickets were not the same as those recorded on the passports. The ticket name had the family name first and the individual name second, whereas the passport names were in the reverse order. MZ attempted to correct this on the day, by contacting X Ltd but X Ltd could not assist in time. Her parents missed their flight. MZ discovered that the return flights had been cancelled. She asked for compensation but X Ltd did not pay. MZ filed a claim in the Disputes Tribunal.
2. This is a claim for compensation for flights which were bought but unable to be used, in the sum of \$2,828.00.
3. The issues to be determined were as follows:
 - a. Has X Ltd breached its contract with MZ, or has it breached either or both the Consumer Guarantees Act 1993 or the Fair Trading Act 1986 in respect of the form for self service purchases for flight bookings requesting "first name, last name", in respect of cultures that put family or surnames first, and given or individual names last?
 - b. Did X Ltd breach the guarantee that services are to be carried out with reasonable care and skill in the Consumer Guarantees Act in respect of the assistance given to MZ on the day of the flight?
 - c. Did X Ltd breach the guarantee that services are to be carried out with reasonable care and skill in the Consumer Guarantees Act in respect of the cancellation of the return flights?
 - d. If yes to any of the above what compensation is payable to MZ, if anything?

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4. When two parties reach agreement about one providing services in exchange for payment, a legally binding contract arises. The parties are bound by the terms of the contract which were agreed at the time the agreement was entered into. In respect of terms and conditions in an online context, when for example the terms and conditions are available to the customer by clicking a hyperlink, it is the customer's responsibility to read the terms and conditions because they will be bound by them whether or not they read them.
5. The Consumer Guarantees Act 1993 (CGA) and the Fair Trading Act 1986 (FTA) however provide an overlay on agreed terms and conditions when the services are purchased by a consumer from a person in trade. The FTA, and the guarantees in the CGA, will apply to the contract, and generally any attempt by the service provider to exclude such terms will be of no effect, subject to specific exceptions in each Act.
6. A particular guarantee in the CGA is the requirement to provide services with reasonable care and skill. Failure to do so may lead to a requirement to refund or replace the services in appropriate cases. The FTA provides, amongst other things, that a person in trade may not engage in conduct that is misleading or deceptive, or is likely to mislead or deceive.
7. MZ bought airline tickets from X Ltd for her parents, an elderly [ethnicity] couple, for a flight to [Country], on [Airline]. The booking website page asked MZ to enter the names of the passengers in a box labelled “first name” and another box labelled “last name”. MZ said that traditionally, [ethnicity] names put the family name first, and the individual name second, which is the reverse of the order traditionally used in New Zealand. She entered the family name in the “first name” box, and the individual name in the “last name” box. This however was not the order in which the names of the passengers were recorded on their passports. When the passengers tried to check in, the passengers were refused the right to board because the names on the booking and the names on the passports were not in the right order. They were labelled a “no show”, which meant they missed their flights.
8. MZ claimed that the online form to buy the tickets was a breach of the guarantee in the CGA that services are to be provided with reasonable care and skill. In effect, she was saying that because the website described the names as “first name, last name” and without a clearer warning that name order was an important issue, she had been put in a position of inadvertently filling out the form incorrectly. She claimed that it would not be difficult to have put a clearer explanation of the requirements and risks on the website. She claimed that if X Ltd were to be found to have exercised appropriate care and skill, that would be unfair because it is not sufficient to only cater to the traditional New Zealand customer base, especially considering the numbers of [ethnicity] families in New Zealand these days. She said not explaining the issue more clearly was misleading, in breach of the FTA.
9. NP from X Ltd who appeared at the Tribunal argued that this was a customer error for which X Ltd was not responsible. He pointed out that there was a notice labelled “Heads up! Check your personal details” on the booking page and he provided a copy for the Tribunal. The notice said further:

Due to airline rules, it is crucial that traveller names entered match passport and/or photo identification or boarding may be denied, and the value of the ticket forfeited. Unfortunately we may not be able to assist you in correcting the name once the booking is confirmed.

10. NP also said that this problem had not occurred before to his knowledge. He indicated that because the likelihood of it occurring was therefore low, it would be disproportionate to find that X Ltd had breached the obligation in the CGA.

11. I am obliged in this case to agree with NP overall, in particular with his first point. The wording of the warning does not specifically refer to name order, but it does say “it is crucial that traveller names match passport”. I also accept that the incidence of this particular problem may be rare (NP said he has no such complaint in five years with X Ltd, and I have no reason to disbelieve that). However the fact that it has now occurred, and resulted in the current claim, might suggest that this excuse may not be available to X Ltd in a future similar case.
12. NP said the “first name, last name” designations were well known in the New Zealand community and would not cause confusion, and that this was sufficient to comply with the CGA and the FTA. I specifically disagree with this submission. What is required to comply with the CGA or the FTA might well change over time. Other cultures are entitled to have their traditions noted, and, where such traditions are sufficiently prevalent or known, for the law to adapt to require new standards of reasonable care and skill over time. It is reasonably well known that several cultures reverse the “last name, first name” as traditionally used in New Zealand.
13. To summarise, then, X Ltd are not liable in this instance because the wording of the warning on the booking page is probably sufficient for now bearing in mind the evidence about the low number of such cases of this particular problem. That is not to say that this requirement may not change in the future, or for that matter, even if it does, that it requires X Ltd to do more than amend the warning so it did comply.
14. I therefore find that X Ltd is not liable for the loss of the outgoing tickets bought by MZ.

Did X Ltd breach the guarantee that services are to be carried out with reasonable care and skill in the Consumer Guarantees Act in respect of the assistance given to MZ on the day of the flight?

15. MZ said that when her parents were refused permission to board, she was required to wait on hold for about 15 minutes. She also said that she was not told that her return flights would be cancelled.
16. I am unable to find that it is unreasonable for MZ to be required to wait on hold when phoning a travel agency’s help desk. This is not a breach of the CGA. X Ltd did what they could to assist her, but very little time was left in which anything could be done, and they were unsuccessful in the time available. That is not a breach of the CGA either.
17. As to MZ’s second point, I address this under the next heading.

Did X Ltd breach the guarantee that services are to be carried out with reasonable care and skill in the Consumer Guarantees Act in respect of the cancellation of the return flights?

18. MZ’s parents’ outgoing flights were not used. Some undefined time later the return flights were also cancelled. MZ alleged that X Ltd had cancelled them without her permission. NP’s evidence was that the flights had actually been cancelled by the airline and not X Ltd. I accept his evidence.
19. NP’s evidence was that when airline tickets are bought, outgoing and return flights are on one ticket. Airlines assume that if there is a “no show” for outgoing tickets, the return flights are not needed and they are cancelled, unless the airline is told otherwise. NP said this almost always happens, thereby conceding that this is well known in the travel business. He said that flights can sometimes be restored within a certain amount of time if a fee is paid. NP said that this was because, usually, the return flights would not be wanted if the outgoing flights were not used. He also said that because MZ had not paid for X Ltd to book the flights for her, and had paid only the internet service fee, she was not entitled to expect X Ltd to manage her flights and prevent the booking from being cancelled.
20. NP also argued that there was no evidence that proved either way whether MZ had or had not been told this information. However I disagree. X Ltd submitted as evidence in the hearing the

notes of the conversation the X Ltd call centre person had made in their discussion with MZ that day. The notes recorded a discussion about MZ's desire to book outgoing flights the next day. No mention was made in the notes that X Ltd provided to the Tribunal that showed the topic of cancellation being mentioned by X Ltd. Considering the details that the notes do record, it would be unlikely that referring to the cancellation issue would not have been recorded if it had been made. MZ said in the hearing that if she had been told of the likely cancellation, she would have acted to prevent it, and that appears to me to be self-evidently true. I find that it is more likely than not that X Ltd did not mention cancellation of the return flights.

21. The next question however is whether this failure to mention the likely cancellation of the return flights was a breach of the requirement to provide services with reasonable care and skill. NP said that MZ had made no effort to tell X Ltd or the airline that she did not want the return flights cancelled. This is true from the notes. NP said that this meant that the cancellation of the return flights was MZ's fault.
22. However, MZ had talked about taking outgoing flights the next day and it should have been obvious that she was assuming she could still use the return flights. She should have been informed by the call centre person that the cancellation would be highly likely, unless she took steps to prevent it, because that is commonly known in the travel industry. It is, I consider, not something that would necessarily be obvious to a member of the public.
23. Overall then, on this issue, I agree with MZ that she should have been told the return flights would probably be cancelled. I also note that MZ is not complaining that X Ltd did not manage her flight booking properly; she agreed in the hearing that she had not paid the fee for that service. She claimed that she was not told about the likelihood of cancellation, and as a result she did not learn that preventing the cancellation would be possible or that the tickets could be restored sometimes. Not realising she needed to act, she did not, and so the tickets were cancelled.
24. The requirement on X Ltd is minimal, to advise the client of something the client might not realise and which the client had already referred to in the discussion, in this case that the return flights would be automatically cancelled unless she took action. It cannot require them to act further, when the client has not paid for X Ltd to fully manage the booking.

If yes to any of the above what compensation is payable to MZ, if anything?

25. Breach of the CGA usually requires repair (if possible) or else a refund or replacement.
26. I have found no breach of the CGA, FTA or the contract in respect of the first two issues, though for the first issue, it was by a narrow margin. I have found that the failure to provide MZ with the information that her parents' return flights would be cancelled was a breach of the requirement to provide services with reasonable care and skill, again by a narrow margin. MZ's loss was the opportunity to actually use those return flights or avoid paying for new fares. In my view that means that MZ's loss which is attributable to X Ltd's actions that breached the CGA is the cost of the return flights or half of the amount claimed, in the sum of \$1,414.00.

Referee: M Wilson
Date: 16 October 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>.