



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 512

APPLICANT **NM**

RESPONDENT **U Ltd**

The Tribunal orders:

The claim is dismissed.

Reasons

1. NM booked two return tickets for his children to [Country] travelling on 19 December 2023 and returning to New Zealand on 13 January 2024 with [Airline]. U Ltd, through whom NM had bought his tickets, contacted him to advise of a change of scheduled flights made by the airline. NM was concerned that the flights would not work and sought to make changes or failing that, obtain a refund. He was given options by U Ltd that he found to be unacceptable. NM filed a claim in the Disputes Tribunal.
2. This is a claim for a refund of \$6,800.00 and \$700.00 in distress and anguish.
3. The issues to be decided were as follows:
 - a. Has U Ltd breached the Fair Trading Act 1986 or the Consumer Guarantees Act 1993?
 - b. If yes to either or both of the above, what compensation is NM entitled to?

Has U Ltd breached the Fair Trading Act 1986 or the Consumer Guarantees Act 1993?

4. A breach of section 9 of the Fair Trading Act 1986 (FTA) occurs if a person in trade acts in a way that is misleading or deceptive, or is likely to mislead or deceive. A breach of the Consumer Guarantees Act 1993 (CGA) may occur if services are provided by a person in trade without exercising the necessary care and skill.
5. NM's allegation was that he was presented with two options when the flights were changed by the airline. The first was he could rebook on an alternative route for the payment of \$40.00. The second was that he could seek a full refund minus any required fees, though it might take six to eight weeks for the airline to refund the money. There were a series of emails in which OH of U Ltd outlined the options, NM disputed the validity of the options and tried to negotiate other options, and OH restated the same options in different ways and in an increasing amount of detail. NM told me in the hearing that he understood that \$1,290.00 would be deducted from the refund if he requested the refund.
6. However after reading the email exchange between the parties I cannot agree with NM. OH clearly and thoroughly explained that a full refund would have necessary deductions in accordance with U Ltd's terms and conditions and in an email dated 10 August 2023 at 6.34am,

OH spelt out the details of what would be deducted and why. It was noted several times that NM had paid for the lowest level of travel agent assistance, (known as the Basic service package), and that the deductions were consistent with the terms of that level of service. Links to the terms and conditions were provided by OH in the email exchange with NM. OH then summarised that NM had paid \$6,697.62 and he would be refunded \$6,406.30, a deduction of \$291.32.

7. Then at 7.26am on 14 August 2023, OH emailed NM in response to NM's comment that the new schedule was not possible and also that NM could not pay the rebooking fee anyway because it was refusing to accept his payment. OH said plainly "if the new schedule does not work for you, you should not accept to pay the reissue fee. Then we can submit the refund for you". OH clearly explained that if NM accepted the new tickets and then wanted to change them again, he would be required to pay a higher level of fees including fees to the airline, because he would now be making a "voluntary" ticket change, as opposed to the "involuntary" cancellation because of the airline's schedule change. Most of the fees did not apply in an "involuntary" change, but they did apply if NM accepted the changed flights and then later wanted another change. OH set out the extent to which the fees would be higher.
8. NM emailed then to ask if he was right in his understanding that the options were either to pay a \$40.00 rebooking fee, or to cancel and accept \$600.00 in deductions. OH emailed back 21 minutes later to say that the deduction was not \$600.00, it was two deductions of \$80.00 (\$160.00) and \$131.32. NM clearly then decided he would rebook.
9. I am unable to see any breach of the FTA or the CGA in the email exchanges. OH's explanation was clear. If the real cause of concern that NM had was that it would take six to eight weeks for the airline to refund the tickets, it is difficult to see how that is the responsibility of a travel agency, in the absence of a contractual commitment to the contrary.
10. Because I can find no breaches of the FTA or the CGA, or for that matter the terms and conditions of the contract between NM and the company, the claim is therefore dismissed.

Referee: M Wilson
Date: 25 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>.