



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 19

APPLICANT NN

RESPONDENT FP

The Tribunal orders:

FP shall pay NN \$13,555.07 by 27 March 2023.

Reasons:

1. NN booked a business class fare to London in August 2022 for his wife and himself. NN chose FP Business Class based on FP promotional material about the features and amenities offered by FP.
2. The business class seat and amenities NN received were not as advertised. The promotional materials were based on an updated/new business class seat and service that is not in place in the older aircraft that FP flies to NZ. The newer planes with the advertised business class configuration are only very occasionally flown to NZ.
3. FP states that their contractual terms and conditions state that aircraft availability can be changed due to operational requirements and that their newer planes are required on other routes due to the NZ operations being operated at a loss.
4. NN paid \$3,388.77 to upgrade to first class on one leg of the trip so that he could have the lie flat seat he had contracted for.
5. NN seeks a partial refund to reflect the difference between what he contracted for and what he received on the basis of FP misrepresentations of the service it would provide.
6. The issues are: Did FP misrepresent the service offered in NZ? Is NN entitled to damages?

Did FP misrepresent the service offered in NZ?

7. FP advertised a business class service to NZ consumers that they were very unlikely to receive. This was the result of advertising a service that they were rarely delivering, not due to the occasional or one-off change of aircraft due to operational requirements.
8. The Fair Trading Act 1986 prohibits misleading and deceptive conduct in trade. The advertising of a service that FP knew would unlikely be delivered is misleading and deceptive.
9. The Consumer Guarantees Act 1993 (CGA) also applies. The Act requires that goods and services are supplied as described.

10. The seat recline and upholstery was important to NN for their long-haul trip and the seat they received was the older, less cushioned and less reclining than that advertised. NN states that the entertainment system was not the new upgraded system advertised and that due to its age, malfunctioned. There was also no internet connection or minibar as advertised.
11. NN argues that FP marketing materials were intended lure NZ customers away from other airline services to purchase a service from FP that essentially did not exist. The Tribunal agrees.
12. Accordingly, the Tribunal finds that FP misrepresented the business class service available to NZ customers and to NN in particular and is in breach of the FTA.

Is NN entitled to damages?

13. Pursuant to the FTA, NN is entitled to damages he has suffered as the result of FP misleading and deceptive conduct.
14. NN calculated damages on the basis of the difference between the amount he paid for their fares and what FP now charges for their new Premium Economy service and the cost of the first-class upgrade, for a total of \$19,064.77.
15. NN then re-calculated his loss to \$13,555.07, being 50% of the difference between Business Class and First Class for he and his wife for the 4 legs of their trip of their 6 leg trip.
16. FP argues that there was only a slight reduction in service provided versus what was advertised and calculates the difference to be 5% and has offered a refund of \$786.00.
17. Damages available under the FTA are not limited to just the difference in cost and may reflect the seriousness of the breach.
18. The Tribunal finds that NN's amended calculation of loss reasonably and fairly reflects the difference in service advertised and paid for versus the service received.
19. Therefore, the Tribunal awards damages in that amount.

Referee: L. Mueller

Date: 1 March 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>.