



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

**District Court**

**[2023] NZDT 92**

**APPLICANT**      **NT**

**RESPONDENT**    **GF Ltd**

**The Tribunal orders:**

The GF Ltd is to pay to NT the sum of \$3,050.00 on or before 3 April 2023.

**Reasons:**

1. In November 2022, NT contacted GF Ltd to book a flight from Deli, India to [City 1], New Zealand.
2. Messages were exchanged between the parties over [messaging platform].
3. NT booked a flight from Deli which transited through both Singapore and Noumea. The flight cost \$2,290.00
4. NT flew from India and arrived in Singapore on 15 November 2022. At Singapore airport, NT was not permitted by the airline to board his flight to Noumea. He was advised that he required a transit visa, and he did not have one.
5. NT contacted GF Ltd from the airport. It offered to book him another flight to New Zealand, but he was advised it would be at his cost.
6. NT booked another flight using an agent at the airport and paid \$3,611.91 for that flight.
7. NT is seeking to recover \$3,611.91 from GF Ltd as he says it gave him incorrect advice about a transit visa.
8. The issues the Tribunal has to consider are:
  - a. Did GF Ltd misrepresent the transit visa requirements to NT?
  - b. Did that induce NT to buy the ticket?
  - c. Did GF Ltd breach the Consumer Guarantees Act 1993 (“CGA”) by not providing its service with reasonable care and skill?
  - d. Is NT entitled to \$3,611.00 or any other amount in compensation?

**Did GF Ltd misrepresent the transit visa requirements to NT?**

9. Section 35 of the Contract and Commercial Law Act 2017 (“CCLA”) means that if someone is induced to enter a contract by a misrepresentation (which can be innocent or fraudulent) that person is entitled to damages from the other party as if the representation were a term of the contract that had been broken.
10. A misrepresentation is a representation of present or past fact that is false.
11. BT of GF Ltd says that there was no misrepresentation. He accepted that the [messaging platform] chat showed that NT asked whether a transit visa would be required for this flight and was told no. However, he says that was in relation to transiting through Singapore, for which no transit visa was required. BT stated that passport and visa requirements are the responsibility of the customer and that is stated on the terms and conditions that NT accepted when he asked GF Ltd to book the flight.
12. I am satisfied that GF Ltd did misrepresent the transit visa requirements to NT. NT produced the [messaging platform] messages exchanged between the parties from 7 November 2022 to 15 November 2022. In the messages other options were given to NT for flights, many of which transited through Australia. NT advised GF Ltd that he did not want to travel through Australia. He told the Tribunal that that was because he knew a transit visa would be required and he did not want to have to obtain a transit visa. Earlier in the chat NT was offered an option transiting through Melbourne. He asked, “*What about transit visa*”. The reply was “*Will help you in that.*” That option through Melbourne was not taken.
13. GF Ltd gave an option to travel through Singapore and Noumea in New Caledonia. BT said that option was a suggestion from a friend of NT’s as GF Ltd do not usually book with [airline]. NT was advised of the price of the ticket and was told it was self-check in at Singapore Airport. There was then some discussion about luggage allowance and a copy of NT’s passport was sent. NT then asked if he needed a transit visa for this and the reply was “*Not at all.*” NT proceeded with this booking.
14. I find that a reasonable consumer would find the answer received as indicating that no transit visa was needed for the entirety of this flight booking. There was no indication that GF Ltd was only referring to Singapore. The use of the words “*at all*” suggest that was for the entire itinerary. It was clear from the information provided from GF Ltd to NT that the booking also transited through New Caledonia. NT was entitled to take the advice given by GF Ltd as an indication that no transit visa was required at all.
15. That information was false as NT was not permitted to board his flight to New Caledonia in Singapore and was told that was because he did not have a transit visa for New Caledonia. I find it more likely than not, therefore, that NT required a transit visa for this part of his trip.
16. GF Ltd gave NT incorrect advice on the need for a transit visa when he was booking his ticket.

**Did that induce NT to buy the ticket?**

17. The applicant has to satisfy me that the misrepresentation induced him to enter into the contract. It must have produced a misunderstanding in his mind, he must have relied on it, and it must have been one of the reasons which induced him to make the contract. The misrepresentation does not have to be the sole reason for entering into the contract.
18. I am satisfied that NT purchased this ticket based on the information he was given about transit visas. He told the Tribunal that if he had been told a transit visa was required, he would not have booked this flight. He had already declined other flight options as they transited through Australia as he did not want to have to get a transit visa to do that.
19. NT was induced to buy this ticket because of the misrepresentation by GF Ltd.

**Did GF Ltd breach the CGA by not providing its service with reasonable care and skill?**

20. Section 28 of the CGA means that where services are supplied to a consumer there is a guarantee that the service will be carried out with reasonable care and skill.
21. I am satisfied that GF Ltd breached the CGA as it provided incorrect advice to NT regarding visa requirements.
22. BT said that booking was sent to NT and he was asked to check it. The itinerary states under "Other Information" that "*we are not responsible for visa status and transit visa required.*" The itinerary later states "*You are responsible for obtaining all entry and exit visa, health and other required documents.*"
23. If NT had not asked for any advice or information about visa requirements, then I accept it would have been his responsibility to check about those requirements and obtain any visas required. GF Ltd would not be liable if they had failed to advise about a transit visa requirement and the customer had not asked. However, what occurred here is different in that GF Ltd specifically told NT that no transit visa was required. NT was entitled to rely on that information.
24. BT said that GF Ltd simply did a search on Google as to whether a transit visa was required for New Caledonia for a passenger with an Indian passport, and the search results they got showed that no visa was required for a stay of up to 90 days in a six month period. That information was provided to NT after he was prevented from boarding his plane in Singapore. He said he told the airline that at the airport, but he was still not allowed to board and was told he needed to have a transit visa.
25. It was risky for GF Ltd to provide visa advice to a customer based on a Google search. There is no evidence that the website looked at by GF Ltd was an official website of New Caledonia. That is not providing a service with reasonable care and skill. It appears that while some passport holders do not require a transit visa for New Caledonia, holders of Indian passports, such as NT, do. As NT was not permitted to board his flight in Singapore, it seems likely that the information provided by GF Ltd from its Google search, was incorrect.
26. GF Ltd did not carry out its service with reasonable care and skill. If GF Ltd do provide advice regarding visa requirements, it needs to take reasonable steps to make sure the information given is correct. If there was any doubt about the need for a transit visa, GF Ltd should not have provided any advice and should have directed NT to make his own enquiries.
27. The submission made by BT that NT was asked to check his itinerary before proceeding with the booking does not change my findings. The itinerary sent to NT states that he is responsible for obtaining visas. As NT had already been advised by GF Ltd that no transit visa was required, that was unlikely to be something that would have concerned him.
28. GF Ltd was in breach of the CGA.

**Is NT entitled to \$3,611.00 or any other amount in compensation?**

29. Section 35 of the CCLA means that where a party has been induced to enter into a contract as a result of a misrepresentation by the other party, they would be entitled to damages from the other party in the same manner and to the same extent as if the representation were a term of the contract that has been breached.
30. Section 32 of the CGA deals with options for consumers where a service does not comply with a guarantee. Where the breach is not of a substantial character, the consumer must ask the supplier to remedy the problem and only if it does not do so or does not do so in a reasonable time, the consumer can have the problem remedied elsewhere and recover the reasonable costs of that work from the supplier.

31. BT says GF Ltd has since been refunded \$780.00 by the airline for the unused portion of NT's ticket. He says that is all GF Ltd can pay as that is all it has received back from the airline.
32. NT says he contacted GF Ltd while he was in Singapore airport and asked them to assist him. He was given other flight options but told he would have to pay for them himself. He accepts he eventually got to a point where he was too frustrated to deal with GF Ltd anymore and booked a flight at the airport.
33. GF Ltd offered NT an option of a flight from Singapore to [City 4] for \$3,050.00.
34. NT booked a flight from Singapore to [City 1], via [City 2] for \$3,611.91.
35. I am satisfied that NT is entitled to \$3,050.00. It is reasonably foreseeable that if a customer is unable to board a flight due to incorrect information given at the time of booking, a new booking will have to be made. It is also reasonably foreseeable that the cost of such a flight will be higher due to the last minute nature of the booking.
36. The reason I am not allowing the full amount sought by NT is that his original booking was for a flight to [City 3] and NT would have had to book another flight to [City 1] anyway. The final flight to [City 1] was not part of his original itinerary. The [City 1] part of the itinerary was not booked as a result of any misrepresentation or breach of the CGA.
37. A party is obliged to mitigate its losses where the other party is in breach. NT had a cheaper option available to him and chose to go with a more expensive option. While I appreciate his reasons for doing so, I am not satisfied he is entitled to recover the full amount from GF Ltd.
38. GF Ltd is to pay to NT the sum of \$3,050.00 on or before 3 April 2023.

**Referee:** P Byrne  
**Date:** 13 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>.