



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 489

APPLICANT NT

RESPONDENT J Ltd

The Tribunal orders:

J Ltd is to pay NT the sum of \$150.00 on or before Tuesday 17 October 2023.

Reasons:

1. On 18 December 2022, NT purchased a return ticket from J Ltd for travel [City] /[Town 1] at a price of \$174.99, comprising \$91.00 for the outgoing leg and \$79.00 for the return trip, and a \$4.99 booking fee. This claim concerns her return trip from [Town 1] to [City] on 10 January where she got off the bus in [Town 2] in the afternoon to go to the toilet and the bus departed without her. While NT was then rebooked on the next bus, she did not arrive until 6.00 am the following day.
2. NT claims \$4999.00 for stress, clothes, backpackers fee and a meal, but primarily she said her claim was not about the money but to penalise the driver and the company.
3. The issues to be determined are:
 - a. Did the company carry out the services with reasonable care and skill?
 - b. If not, what sum, if any, must the company pay?

Did the company carry out the services with reasonable care and skill?

4. Section 28 of the Consumer Guarantees Act 1993 (CGA) provides that where services are supplied to a consumer, there is a guarantee that the service will be carried out with reasonable care and skill.
5. There was no dispute that the bus departed [Town 2] without NT, but the company's position is that the [Town 2] stop was not a scheduled rest stop as published, but a short stop to drop off and collect passengers en route. It also disputes NT's evidence of her conversation with the driver that he pointed out the rest room to her when she disembarked, and when departing saw her running and waving at him, and waved back at her.
6. On balance, I find that the company failed to exercise reasonable care and skill, when it departed [Town 2] without NT who had been onboard travelling to [City], so that she was unable to complete her scheduled trip. I say this for reasons which include:

- a. I gave greater weight to the direct evidence from NT of the interaction with the driver, as the driver did not give evidence, and the company's position was that he did not recall any interaction with her;
- b. I found NT's account of her interaction with the driver to be credible, namely that he knew she had got off the bus to go to the toilet because she asked him where it was and he pointed it out;
- c. There was no dispute that NT's bags were still on the departing bus;
- d. While I accept that the company has a timetable to run, NQ for the company acknowledged that despite the published rest stops the company's policy is to allow for an unscheduled stop, where there is a request for a toilet break; and
- e. In all these circumstances, and particularly where I accept that NT's toilet stop was brief, I find that the driver had a responsibility to take reasonable steps to check that she was back on board before departing.

If not, what sum, if any, must the company pay?

7. Section 32 of the CGA sets out the remedies where services do not comply with guarantees. Where the failure can be remedied, unless it is of a substantial character, the supplier must remedy it within a reasonable period of time. In addition section 32(c) provides for a consumer to obtain reasonably foreseeable consequential losses arising from the failure, other than loss or damage through reduction in the value of the service.
8. NT's position is that the company and the driver should be punished for their poor service and that her claim is not so much about the money but to achieve that outcome and also to reflect the stress she had suffered and the costs that she had incurred.
9. On balance, I accept that the company provided a replacement bus trip at no cost, so it did remedy the failure within a reasonable period of time. However, I also find that NT is entitled to compensation for reasonably foreseeable consequential loss. I say this for reasons which include:
 - a. I accept that she suffered stress and inconvenience, as there was no dispute that she had to spend an extra 9 hours in [Town 2] from about 3.30 pm to 1230 am, without her bags and instead of an 8.30 pm arrival in [City], she did not arrive until 6.00 am the following day;
 - b. I accept that it was foreseeable in these circumstances that she would require a meal, and a warmer top, while waiting in [Town 2] for the next bus, and given the delay to rest at the backpacker, rather than at the bus station; and
 - c. I also accept that her stress was aggravated by the 4 month delay in responding to her formal complaint.
10. I accept that the company has paid \$170.00 in good will, but I do not accept the company's position is that it has effectively provided \$241.00 in compensation, being the replacement bus trip valued at \$79.00 provided at no cost, as this is a remedial cost it must meet under s32(a) of the CGA.
11. NT stated that she paid \$100.00 for the backpackers, and about \$80.00 for pants and a top from the Chinese shop across the road, but provided no receipts. In these circumstances, I accept that the \$170.00 paid by the company sufficiently addresses those expenses. But I also find that NT is entitled to compensation of a further \$150.00 for the distress and inconvenience caused. While I recognise that NT sought more compensation as a punitive measure, I consider that having this complaint properly heard and determined is sufficient.
12. Consequently I order J Ltd to pay NT the sum of \$150.00 on or before Tuesday 17 October 2023.

Referee: G.M. Taylor
Date: 26 September 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>.