



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 209

APPLICANT NX and QT

RESPONDENT X Ltd

The Tribunal orders:

The claim is dismissed.

Reasons

Did X Ltd breach the Fair Trading Act 1986 regarding advertised prices?

1. NX and QT have claimed that X Ltd has breached the Fair Trading Act 1986 (FTA). Their claim is that X Ltd offered prices for travel but fares were not available for the prices offered. The question is whether X Ltd engaged in misleading and deceptive conduct, (s.9 FTA) made false or misleading representations, (s13 FTA) or engages in bait advertising (s19 FTA).
2. NX and QT intended booking business class flights to [Country 1] from [Country 2]. They used the X Ltd website. After choosing their dates for travel they were taken to a webpage that gave various prices for travel. They selected their flight and then confirmed their choices by clicking 'Confirm' at the bottom of the page. The credit card details were accepted and the amounts for the fares were flagged on hold on their credit card statement. However, they were then informed that the flight was unavailable. NX and QT said that after attempting the booking again that the price had increased significantly. They called X Ltd but the person spoken to was unable to make the booking either. NX and QT believe that X Ltd should not have been offering prices for travel that it could not provide.
3. The question to be asked is whether the prices for travel that X Ltd advertised were unconditional or came with conditions. BC, from X Ltd, submitted that X Ltd advised people making bookings that some flights may not be available because of partner airlines and therefore notice was given that prices are conditional on availability.
4. Immediately below the list of fares for selection is a box bordered in purple. The fourth paragraph is relevant. Below that box is the button to confirm the booking. A person booking has to scroll past the purple box to confirm their choices.

Fares quoted are per adult.

Fares include applicable taxes and charges except where local airport departure fees are collected at departure. **Card payment fee of \$22.60 per person per one way journey may apply.**

Bookings are not complete or accepted by [X Ltd] until payment has been received and a booking reference number has been issued.

In some cases we may not be able to confirm availability of flights operated by partner airlines until your payment is processed and booking reference issued. (My bold)

CONFIRM

5. NX and QT believe that there should be more warning that the prices that appear are not guaranteed available fares when 'Confirm' is clicked and credit card details are taken. They have submitted that the writing in the box is not enough.
6. My finding is that X Ltd has not breached the FTA regarding NX and QT's booking. The booking process was not misleading either about prices or availability. It is a given that prices mean nothing without availability. The uncertainty about availability, where a flight involves a partner airline, is made known to people before confirming a booking. Therefore the website is effectively offering conditional prices where a partner airline is involved. The same does not apply where X Ltd is the only carrier. In those cases, one would expect to be ticketed at the advertised price after a customer confirms the booking and pays the fare.
7. For these reasons the claim must be dismissed.

Referee: B M Smallbone

Date: 28 April 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>.