



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2024] NZDT 23

APPLICANT QT

RESPONDENT L Ltd

The Tribunal orders:

The claim by QT is dismissed.

Reasons

1. This dispute arose from a travel booking made by QT for a crossing of [redacted] on the [Ferry 1] at 8.45 am on 7 April 2023. Due to a technical fault on the [Ferry 1], QT's wife (who was driving the family's campervan) was rescheduled to travel on a different ferry on the evening of 7 April instead. QT had intended to avoid their two children making the long road trip. He therefore had, prior to the ferry crossing being rescheduled, booked flights to [location 2] for himself and his children, expecting to meet [his wife] there on the evening of 7 April. The rescheduled ferry crossing then made that impossible, requiring QT to rebook the flights for himself and his children to [location 3] instead.
2. QT sought to be compensated by L Ltd trading as L Ltd (and hereafter: L Ltd) for the rebooking fees of (in total) \$660.00.
3. The following issues require to be determined:
 - (a) Did L Ltd provide its services with reasonable care and skill?
 - (b) If there has been a breach, what remedy is appropriate?
4. As a matter of law QT, as the applicant in this proceeding, bears the burden of proof. He has to show that L Ltd breached its legal obligations to him. He has to do so on the balance of probabilities, i.e. as 'more likely than not'.

Did L Ltd provide its services with reasonable care and skill?

5. Section 28 of the Consumer Guarantees Act 1993 (CGA) provides a guarantee for consumers that the services provided by a business will be carried out with reasonable care and skill.
6. QT claimed that the repeated technical problems experienced by the [Ferry 1], which required the rescheduling of the crossing he had booked for his wife, show that L Ltd did not provide its services with reasonable care and skill. While he accepted that there may be matters outside of

L Ltd's control (such as adverse weather) and he was not able to access and provide direct technical evidence such as L Ltd's maintenance records, it was clear, he said, that there was a pattern of insufficient maintenance of the vessel leading to the cancelled sailing and requiring the rescheduling of Mrs QT's [redacted] crossing. There were, he said, three instances of failures to the ship's propulsion system (engine and steering) in short order, and while efforts had been made to remedy the various technical problems, the continued breakdowns were in themselves proof of the ferry services not being provided with reasonable care and skill.

7. QT further referred to the decision by Maritime New Zealand to file a charge against L Ltd in relation to an incident in January 2023 when the [Ferry 1] lost power during a [redacted] crossing.
8. Finally, QT argued there ought to be a degree of proportionality in the assessment of his evidence, given the relatively low amount in dispute.
9. L Ltd accepted the CGA applied to its services, albeit the scope of its services was limited by its conditions of carriage, which clarified that schedules and departure times were not guaranteed. L Ltd further claimed its services had been provided with reasonable care and skill. The operation of ferry services was complex and highly regulated. The technical problems with the [Ferry 1]'s gearbox that led to the 7 April sailing being cancelled were different from an earlier instance where the vessel had lost power. The gearbox had been overhauled by the manufacturer when the ship had been in dry dock in about September 2022. That maintenance had been certified by the regulator and the subsequent failure of the gearbox was clearly outside of L Ltd's control. There was no proof of any lack of reasonable care and skill in the provision of services.
10. L Ltd advised that the preliminary report by the Transport Accident Investigation Commission (TAIC) which had been critical of L Ltd's maintenance of the vessel, had been challenged by the company. TAIC has not yet issued its final report.
11. I do not accept that the repeated breakdowns of the [Ferry 1] show, on their own, that L Ltd's maintenance was so poor as to amount to a breach of their legal duties. I note in this context that the charge by Maritime New Zealand related to a different incident to the one that led to Mrs QT's sailing being cancelled. In any event, this charge has not yet been heard in court. I also note that the final TAIC report remains pending.
12. I accept L Ltd's evidence that the maintenance of the gearbox (the failure of which had led to the cancelled sailing on 7 April 2023) had been carried out by the manufacturer when the ship was in dry dock and had been certified by the regulator and that the subsequent failure was outside L Ltd's control.
13. In light of the evidence before me I am not satisfied that QThas discharged his burden of proof in relation to the sailing on 7 April 2023 being cancelled as a result of L Ltd providing services without reasonable care and skill.

If there has been a breach, what remedy is appropriate?

14. There being no breach, this issue does not arise. The claim is dismissed accordingly.

Referee: P Moses
Date: 21 February 2024



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>.