



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 407

APPLICANT SD

RESPONDENT W Ltd

**SECOND
RESPONDENT** X Ltd

The Tribunal orders:

1. X Ltd is added as a respondent party to the claim.
2. The claim is dismissed.

Reasons:

1. SD purchased airline tickets, through a [Travel Agent], for he and his family to travel to [Country] for a family holiday. Because of COVID the holiday was cancelled and SD was told by [Travel Agent] a credit would be held. Subsequently the airline was placed in voluntary administration. Further the airline now only flies out of [City] and does not fly any routes to [Country]. SD says a credit is not useable and he seeks a refund of \$2231.75 instead of the credit being held.
2. The issues I must decide are:
 - a. Who is the correct respondent?
 - b. Is X Ltd in breach of its obligations to refund SD?
 - c. If yes, is the amount claimed reasonable?

Who is the correct respondent?

3. HL, the [staff] for X Ltd, appeared for the respondent. Written submissions had been received by the Tribunal explaining who the correct respondent was. HL confirmed to the Tribunal, in his oral evidence, the correct respondent was X Ltd. HL told the Tribunal he waived the companies right to eight working days' notice of the claim.
4. SD presented no evidence on this matter.
5. I accepted the written evidence and HL's oral evidence and added the second respondent. For these reasons I find the correct respondent to this claim is X Ltd.

Is X Ltd in breach of its obligations to refund SD?

6. The relevant law is the law of contract. In this situation the contract was formed between SD (through his agent, [Travel Agent]) and X Ltd by way of the purchase of airline tickets.
7. SD states he outlaid \$2231.75 for return flights from [City 2] to [Country]; leaving [City 2] 2 May 2020 and returning 8 May 2020. He states his flights were cancelled because of COVID and [Travel Agent] told him the money would be held in credit for use at a future date. SD states the credit has now become unusable because he only wishes to go to [Country] and X Ltd does not fly there anymore. Further he states X Ltd only flies out of [City] now and not from any other New Zealand airport. SD states he just wants to be able to use the credit to take his family to [Country] and would gladly oblige X Ltd if it could arrange the credit to be used with one of its partner airlines.
8. HL told the Tribunal the tickets purchased by HL were non-refundable and as well X Ltd was placed into voluntary administration on 20 April 2020. He states the effect of voluntary administration was that any flights booked prior to 20 April 2020 were, at law, unable to be refunded and no other monetary compensation was available. He states that under the terms of administration, on 17 November 2020, the creditors of X Ltd cancelled any rights to refunds and monetary compensation and approved customers receive a future flight credit to the value of their cancelled flights. HL states for SD, this means he has a future flight credit with X Ltd for [international currency] \$1597.64 to be used by 31 December 2023. HL told the Tribunal X Ltd understands HL's disappointment that X Ltd now neither flies out of [City 2] nor to [Country]. HL also told the Tribunal it was not possible to transfer the future flight credits to a partner airline.
9. First, the tickets purchased by SD were non-refundable tickets, but this became immaterial because X Ltd cancelled all flights on 17 March 2020 because of COVID and very shortly thereafter X Ltd was placed into voluntary administration. The deed of company arrangement, approved by X Ltd's creditors, provided that future flight credits be provided for those whose flights were cancelled. This is the situation SD is in. Unfortunately, the rules of the voluntary administration prevail and for these reasons I find SD is entitled only to future flight credits to be booked before 31 December 2023 and he is not entitled to a refund.
10. For these reasons I must dismiss the claim and I am not required to consider the remaining issue.

Referee: C Murphy
Date: 22 August 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>.