



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 279

APPLICANT TH

RESPONDENT G Ltd

The Tribunal orders:

The claim is dismissed.

Reasons:

1. TH booked a holiday to [Destination country] through G Ltd. The package booked included flights with [Airline] and accommodation for a stopover in [Stopover city]. The [Airline] flight arrived in [Stopover city] at 9.20pm on 25 January 2023. Two nights accommodation was booked at the [Hotel] in [Stopover city]. The quote stated “*Check-in Wed, 25 Jan 2023, 15:00, Check-out Fri, 27 Jan 2023, 10:00*”. The outgoing flight to [Destination city] departed [Stopover city] at 00:15 (12.15am) on 27 January.
2. TH claims G Ltd misled her when booking two nights accommodation in [Stopover city] and with the wording of the quote as shown above. TH knew she only had one full day in [Stopover city], that day being 26 January, however TH also believed one full day meant she would get a full nights sleep on the 26th, depart the hotel at 10am on the 27th, and leave [Stopover city] at a quarter past midnight on the 28th. As a result, TH missed her 12.15am flight on the 27th.
3. Although all flights were cancelled by [Airline], as they had deemed TH a ‘no show’, G Ltd was able to obtain a credit for the missed flights and rebook. This however resulted in additional costs and time away as the original flights were no longer available and costs had increased since the original bookings were made. TH therefore claims in the Disputes Tribunal for compensation for the additional costs incurred.
4. It is for the Tribunal to determine if G Ltd provided a service with reasonable care and skill, and if not, whether TH is entitled to compensation for her losses.

Did G Ltd provide a service with reasonable care and skill?

5. The Consumer Guarantees Act 1993 contains a guarantee that services will be provided with reasonable care and skill. G Ltd therefore had an obligation to ensure their services met the required standard.

6. PD, Customer Relations Advisor for G Ltd, stated a second night is often booked to enable customers to enjoy a late checkout when they have a long late flight, such as TH's flight to [Destination city] that departed at 12.15am. The booking is usually made after discussions with the customer, however as the agent is no longer employed by G Ltd, it cannot in this case be confirmed what discussions took place. TH however states she was not asked if she wanted a second night for a late checkout, and if she had been asked, she would have declined the offer for budgetary reasons.
7. If read in isolation, the hotel booking information on the itinerary could suggest TH would be enjoying two full nights, with departure on the 27th being no later than 10am. However, the itinerary also provides flight information which clearly states the flight was leaving at 12.15am (00.15) on the 27th. This information was also provided on a separate document with further flight details.
8. Although G Ltd could have added a note to the itinerary to show the second night was merely for a late checkout, I do not consider this omission amounts to a failure to provide a service with reasonable care and skill. The reference to check out at 10am is clearly a standard check out time, in the same manner as the itinerary also shows the standard check in time, being 3pm on the 25th. TH was asked to check her itinerary before accepting it and before paying to ensure it met her needs. TH confirmed acceptance of the itinerary. The itinerary clearly states the flight time and date as being 12.15am on the 27th, not the 28th.
9. It is undisputed this situation has caused TH additional costs and stress; however, I am unable to find it was due to a failure of G Ltd to provide a service with reasonable care and skill as TH had been provided with all the relevant information about the date and time of her flight. As the claim has not been proven it is accordingly dismissed.

Referee: K. Edwards

Date: 17 July 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>.