



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 228

APPLICANT **TM**

RESPONDENT **B Ltd**

The Tribunal orders:

The claim by TM against B Ltd is struck out.

Reasons

1. TM travelled by air from [International city 1] via [International city 2] to [NZ city]. The [International city 2] to [NZ city] leg of his journey was operated by B Ltd. A dispute has arisen in relation to additional baggage charges levied by B Ltd for an air rifle TM was traveling with. He now seeks a refund of the extra baggage charge of US\$145.00 (which amounts to NZ\$233.45 according to TM's calculation). TM says B Ltd's baggage policy suggested there would be no additional charge for an extra piece of sporting equipment that did not exceed the usual baggage allowance, and accordingly he should not have been charged for it. In addition the air rifle arrived only a week following TM's arrival in New Zealand and he is also claiming \$60.00 as compensation for his time and expenses to return to [NZ city] airport to collect it.
2. The issues to be determined in this matter are:
 - (a) Does the Tribunal have jurisdiction to determine this claim?
 - (b) If there is jurisdiction, are the terms of B Ltd's baggage policy in relation to the free carriage of sporting equipment misleading and contrary to the Fair Trading Act 1986 (FTA)?
 - (c) If the terms were misleading, what remedy is TM entitled to?

Does the Tribunal have jurisdiction to determine this claim?

3. I invited the parties to address me on this question, which had not been apparent to either of them prior to the hearing. Given they were not legally represented, that is unsurprising and not a criticism. TM thought it was important to protect New Zealand consumers from misleading information such as that in B Ltd's baggage policy. He further said that if the Tribunal did not have jurisdiction, he might be able to make a claim in [Country 1] following his return to [International city 1] later this year. NL for B Ltd was unsure whether or how the contract of carriage determined jurisdiction in this matter but suggested that the proper jurisdiction might be either in [Country 2] or in [B Ltd's base country].
4. Under the Disputes Tribunal Act 1988, the Tribunal has jurisdiction over contract disputes. This matter is at its core a contractual dispute. However, the Tribunal does not have extra-territorial

jurisdiction. In this instance the air ticket on which TM travelled was purchased and issued in [Country 1]. This was therefore a contract to which [Country 1] law applies. The Tribunal does not have jurisdiction in relation to that contract.

5. International carriage by air is subject to the Montreal Convention. This convention is incorporated into New Zealand law by the Civil Aviation Act 1990 (in force at the time of TM's flight in September 2022) and now the Civil Aviation Act 2023. Chapter III of the Montreal Convention deals with airlines' liability for death or injury of passengers and damage to baggage. Article 33 *Jurisdiction* in chapter III, provides that in relation to a claim for damage the plaintiff has a choice where to bring a claim against the airline. These options include bringing a claim in the place of destination of the flight, in this instance New Zealand.
6. If his air rifle had been damaged on the flight to Auckland, TM would be able to make a claim for compensation in the Disputes Tribunal. However, the present dispute is about the charges for extra baggage. It is a contractual matter triggering questions about misrepresentation, breach of contract and/or fair trading. Specifically, the question whether the baggage policy is potentially misleading or deceptive contrary to sections 9 and 13 (g) FTA is reliant on the contract between the parties made in [Country 1]. I therefore find that the Tribunal does not have jurisdiction to determine this dispute.
7. Given the lack of jurisdiction, the remaining issues cannot be considered.

Referee: P Moses
Date: 14 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>.