



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 232

APPLICANT TO

APPLICANT TA

RESPONDENT MB

The Tribunal orders:

MB is to pay TO the sum of \$2,779.54 and TA the sum of \$640.00 on or before 2 June 2023.

Reasons:

1. TO and TA purchased tickets from MB, to fly from [City 1] to [City 2], via [Country 1]. Their flight between [Country 1] and [Country 2] was cancelled, and they spent 26 hours at the airport while waiting for another flight. Their luggage also went missing, two bags were later found and returned to them with significant water damage, and the rest remain missing.
2. They claim the sum of \$25,953.00 for the cost of replacing lost items, compensation.
3. They originally filed the claim in TO's name only, however at the hearing TA was joined as a party because part of the claim relates to compensation for him as well as TO.
4. MB did not attend the hearing or provide any defence to the claim. The absence of a party does not prevent the hearing from going ahead.

The issue to be determined is what amount, if any, TO and TA are entitled to under the Montreal Convention 1999.

5. The Montreal Convention 1999 sets out airline liability in relation to death and injury of passengers, delays, and loss of or damage to baggage and cargo. Article 17 (2-3) details liability for lost or damaged baggage. Liability for damage caused by delay is set out in Article 19. Article 22 limits liability in relation to baggage to 1000 Special Drawing Units (SDR) per passenger. It also provides a limit on claims for delay of 4150 SDR.
6. The claim for lost and damaged baggage is for three bags belonging to TO. TA baggage has been covered by his travel insurance, however TO did not have insurance. The bags contained personal items, including clothing, shoes, engagement presents, and items belonging to TO's late father. The applicants have calculated the value of the contents at \$25,000.00. At the hearing they explained that the bags were initially lost, but that recently two had been returned with significant water damage. They showed photos of the contents which were all water damaged and mouldy. I accept that most, if not all, the items in those bags would need to be replaced.

7. TO is entitled to 1000 SDR or NZ\$2,139.54 under the Montreal Convention. Although the contents of her baggage were worth significantly more, this limit is set by the Montreal Convention.
8. TA and TO were told by MB that they would each be given US400.00 (NZ\$640.00) in compensation for the delay. MB has not paid them this amount. I accept that they are entitled to this amount, as it is within the amount provided for damage as a result of delay set out in the Montreal Convention.
9. They also claim the sum of \$153.00 for a hotel room which they argue they should have been provided with, as there was a delay of 26 hours. However, they did not book a hotel themselves, or spend that sum on any other sort of accommodation during that time. Therefore, I find that there is no proven loss, beyond what has been allowed or in the delay compensation, in relation to the failure to provide a hotel room.
10. For these reasons MB is to pay TO the sum of \$2,779.54, and TA the sum of \$640.00, by the date stated in the order.

Referee: K Rendall

Date: 5 May 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>.