



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2023] NZDT 240

APPLICANT TS

APPLICANT AS

RESPONDENT U Ltd

The Tribunal orders:

U Ltd is to pay TS and AS the sum of \$139.89 on or before Wednesday 14 June 2023.

Background

1. In November 2021, TS and AS purchased three tickets for a [band] concert to be held on [redacted] at a cost of \$129.90 per ticket, as well as an additional sum of \$29.97 to enable the tickets to be refundable.
2. Due to Covid, the concert was rescheduled by the promoter until 10 December 2022.
3. By that time TS and AS' son, for whom the third ticket was purchased, had relocated to live in [City 1] for work reasons.
4. Although keen to attend the concert, the cost of travel to [City 2] was high, and their son decided not to attend the concert. TS and AS therefore sought a refund under the terms of tickets.
5. Application was made through the website and electronic processes provided by U Ltd and a refund was declined. Ongoing attempts to discuss the issue further with U Ltd were unsuccessful as replies were not received to emails sent by TS and AS.
6. U Ltd were served with the claim at both the registered office and a trading address, as well as being provided details of the hearing by way of e-mail. On the day of the hearing, it was contacted on its 04 telephone number by the Referee but contact could not be made with a person - only the automated answering services could be accessed. Accordingly, the hearing proceeded in U Ltd's absence.
7. The issues to resolve the claim are:
 - a. Did TS and AS meet the terms under the ticket purchase agreement to be entitled to a refund?
 - b. If so, what is the amount which they are entitled to?

Are TS and AS entitled to a refund?

8. According to the terms of the ticket sales, a full refund on the tickets is available where a person has relocated for work. The terms state the requirement to move address needs to be imposed by the employer, and not be known to the person at the time of the purchase of the tickets.
9. At the time of the purchase of the tickets in November 2021 TS and AS' son lived in [City 2] and expected to be able to attend the concert which was due to be held on 19 March 2022.
10. TS and AS provided a letter from their son's employer which stated that in November 2022 they required him to relocate to [City 1] to fill a managerial role in the [City 1] region. Evidence was also provided to the Tribunal which showed the son resides in [City 1].
11. It is a further term of the ticket refund that the travel requirements to attend the booked for event are "unreasonable."
12. TS and AS stated that their son made due queries about the cost of travel to attend, as attendance was the desired outcome for all three of them, but the cost was prohibitive.
13. I am satisfied that the son was required to move to [City 1] for work, and that genuine attempts were made to consider travel to the concert venue in [City 2] from [City 1] but the cost was considered to be unreasonable. The Applicants are therefore entitled to a refund under the terms of the ticket sales.

What is the amount of the refund TS and AS are entitled to?

14. TS and AS are entitled to the cost of the ticket which is \$129.90 and one-third of the refundable tickets charge of \$29.97, which amounts to \$9.99. Together, these two sums come to \$139.89.
15. TS and AS also claimed the filing fee which they paid to bring this claim in the Tribunal. It was their view that U Ltd had been unresponsive and did not provide processes or mechanisms which made it possible to resolve the dispute directly with it. Although sympathetic to the frustration expressed by TS and AS, under the Disputes Tribunal Act 1988 the awarding of costs, including the filing fee is not possible, except in special circumstances, which are not made out here.

Conclusion

16. TS and AS have satisfied me that they were entitled to a refund in accordance with the terms of refundable tickets which they purchased.

Referee: S Simmonds DTR

Date: 1 June 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>.