



(Disputes Tribunal Act 1988)  
**ORDER OF DISPUTES TRIBUNAL**

District Court

[2023] NZDT 443

**APPLICANT**            **UN**  
**APPLICANT**            **QN**  
**RESPONDENT &**        **U Ltd**  
**COUNTER-**  
**CLAIMANT**  
**(amended)**

**The Tribunal orders:**

U Ltd shall pay UN and QN \$500.00 by 26 September 2023.

U Ltd's counterclaim is dismissed.

**Reasons:**

1. The UN and QN have been staying at Holiday Park for a summer holiday every year for 20+ years. Site 129 was their favourite and one of the six adjacent waterfront sites they preferred.
2. As is customary in such holiday parks, long-term regular guests have the first option to rebook the same site for the next year. UN and QN would make that request each year for the next year when they departed.
3. When the UN and QN departed the holiday park at the end of their January 2021 stay, they requested the same site, 129, for January 2022, to which Holiday Park agreed.
4. Due to Covid-19 restrictions, UN and QN were detained in Australia and it appeared unlikely that they would get back to NZ for the January 2022 booking. UN called Holiday Park in November 2021 to advise them of the situation and to request that their January 2022 booking for site 129 be transferred to the following year, January 2023, to which Holiday Park agreed.
5. Holiday Park says its electronic booking system does not accept bookings more than 11 months in advance, so departing guests' requests are noted on booking request forms and then entered later once the system allows.
6. When UN and QN arrived for their January 2023 holiday, they were allocated a different site to the one requested and not one of the waterfront sites. UN and QN protested and refused to accept the alternate site. UN and QN state that they were advised by the manager that they would try to shift the current guests to an alternate site. UN and QN left, stayed at a motel and then came back the following morning expecting a waterfront site to be available but there wasn't.

7. UN and QN left again and went and spent their holiday elsewhere. UN and QN filed this claim on 7 March 2023 for \$3,284.00 for their petrol expense of \$129.00, alternate accommodation expense of \$155.00 and \$3,000.00 for “expectation damages, mental distress, disappointment and loss of amenity value”.
8. Holiday Park filed a counterclaim on 8 May 2023 for \$1,709.00 for a cancellation fee of \$864.00, a park interruption fee of \$200.00 and costs of \$600.00 (3 hours at \$200.00 per hour) to prepare for the hearing and \$45.00 filing fee.
9. The issues are: Did Holiday Park breach the contract with UN and QN? Are UN and QN entitled to damages? Is Holiday Park entitled to damages and costs?

#### **Did Holiday Park breach the contract with the UN and QN?**

10. The annual rollover booking worked well for many years. The arrangement went astray when the UN and QN were unable to make it for their January 2022 booking and it was moved to January 2023.
11. As the change was requested in November 2021, the booking could only be noted until the 11 months in advance window, being February 2022, was available to load into the booking system. UN claims she rebooked site 129 for January 2023 when the booking was changed in November 2021 and again in December 2021 and that Holiday Park verbally confirmed that this site would be rebooked for them.
12. Holiday Park states that the UN and QN were booked into the alternate rear site from the outset and that the site 129 was rebooked by the guests that used the site in January 2022 when the UN and QN couldn't make it. That booking occurred after the site had been promised to the UN and QN. Holiday Park failed to notify UN and QN that their 20+ year annually booked waterfront site booking had been altered.
13. On 2 December 2022, Holiday Park sent UN and QN a confirmation of their 16-night booking, the price and terms and conditions. The Holiday Park confirmations do not include the site number allocated, therefore UN and QN were unaware that they had been allocated a different site. In the fine print of the confirmation, it stated that “these sites do not have ocean views”, which the UN and QN did not notice and Holiday Park did not draw their attention to.
14. The Tribunal finds, on the balance of probabilities, that the site 129 was requested and that in November 2021, Holiday Park verbally agreed to transfer the booking for that site to January 2023. At no time before UN and QN arrival in January 2023 did Holiday Park notify the UN and QN that site 129, or an alternate waterfront site, was not available.
15. Accordingly, the Tribunal finds that Holiday Park breached the contract with the UN and QN.

#### **Are the UN and QN entitled to damages?**

16. UN and QN had not paid for the 16 night booking. If they had, the Tribunal would have ordered a full refund.
17. UN and QN alternate accommodation expense did not exceed the cost of the booking with Holiday Park, so there was not a consequential loss of additional accommodation expenses and fuel would have been used in either case.
18. UN and QN claim for general damages due to Holiday Park's breach of contract due to substantial disappointment over the dishonoured waterfront booking.
19. In light of the UN and QN history at Holiday Park, Holiday Park knew, or should have known, that the alternate rear site was not what the UN and QN expected, had not been agreed to and that they would not be happy with the change. Holiday Park should have notified the UN and

QN of the unavailability in advance and allowed them the opportunity to decide to come or not, not spring it on them at arrival.

20. The Tribunal finds that UN and QN were genuinely distraught to have travelled all the way to the holiday park and be told that their booking had been changed without notice and their annual waterfront holiday at Holiday Park would not be.
21. UN and QN went elsewhere, but as a booking was not made in advance, the UN and QN had no chance of securing a waterfront site on short notice.
22. Accordingly, the Tribunal awards the UN and QN \$500.00 in general damages for Holiday Park's breach of contract.

**Is Holiday Park entitled to damages and costs?**

23. Holiday Park has counterclaimed for damages in the form of cancellation and other breach of contract fees, as well as costs for preparing for and attending the hearing and the counterclaim filing fee.
24. As Holiday Park breached the contract by failing to honour UN and QN booking, the UN and QN were not required to meet their obligations under that contract, such as the cancellation or other fees. The counterclaim appears to be retaliatory for UN and QN making their claim.
25. Pursuant to s43 of the Disputes Tribunal Act 1988, parties may not claim costs in relation to preparing and filing a claim or appearing at a hearing.
26. Accordingly, the counterclaim is dismissed.

**Referee: L. Mueller**

**Date: 9 September 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>.