



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

[2023] NZDT 618

APPLICANT **UW**

RESPONDENT **B Ltd**
 G

The Tribunal orders:

B Ltd is to pay UW the total sum of \$2000.00 on or before Tuesday 19 December 2023.

Reasons:

1. On 11 December 2023 UW arrived in Auckland from her flight from [City] flying G, operated by B Ltd. But her stroller which had been checked in did not arrive. Instead, she says it was delivered to her on 31 December 2022 in a damaged state.
2. UW claims \$3139.00, being \$3049.00 for the stroller and the \$90.00 Disputes tribunal fee.
3. B Ltd (the company) did not attend the hearing, but it did provide a written submission, which I considered. Pursuant to section 42 of the Disputes Tribunal Act 1988, the Tribunal is entitled to rely on the available evidence.
4. The issues to be determined are:
 - a. Is the company responsible for the baggage delay/damage and did UW report the loss/damage within the prescribed timeframes set out in the Montreal Convention?
 - b. If so, is UW entitled to the sum claimed?

Is the company responsible for the baggage delay/damage and did UW report the loss/damage within the prescribed timeframes set out in the Montreal Convention?

5. International carriage by air liability is principally governed by the 1999 Montreal Convention For The Unification of Certain Rules For International Carriage by Air (the Montreal Convention), which is incorporated into and set out in the Civil Aviation Act at Schedule 6, and the common law of contract as set out in any ticketing terms and conditions.
6. Article 31 of the Convention provides that there must be timely notice of complaints, and in the absence of any complaint, receipt of the baggage is evidence it has been delivered in good condition. Where there is damage, the recipient must complain in writing to the carrier forthwith after discovery of the damage, and at the latest, within seven days from the date of receipt in the case of checked baggage. But in the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

7. In its submission, the company did not dispute and so I accept that it was responsible for the delay in the stroller's arrival but as I understand its submission, its position is that the stroller was delivered on or about 30 December, and that the report was not made until March 2023, outside the requisite time frame. Also, its position is that it was not responsible for the damage and that it was wear and tear.
8. However, I gave weight to UW's evidence that her claim was not declined on the grounds of any late property report but because the company relied upon wear and tear. Also, on balance, I accept that it was reported within the requisite period as I preferred her evidence that quite apart from reporting the missing stroller at the outset, she then reported the damage to the stroller on 31 December which she says is the day it was delivered, and that this report was acknowledged by email with a claim reference number. I also gave weight to the evidence of her repeated efforts to communicate with the company, and that the subsequent communication after the claim was acknowledged related largely to form and legibility.
9. In relation to the condition of the stroller, on balance, I accept UW's evidence that the stroller was in very good condition when it was checked in. I say this for reasons which include:
 - a. There was no supporting evidence from the company to show that when it had been checked in it was in a damaged state, such as any accompanying airline tag;
 - b. I preferred UW's evidence that while the stroller had been purchased on 3 May 2021, about 18 months before the loss, that it was a high quality Cybex brand, that the sun visor attachment that had been part of the stroller when checked in was still missing and that the damage to the top of the pram was consistent with this sun visor having been torn off;
 - c. I accept that UW reported the damage described above on the day the stroller was delivered; and
 - d. In the absence of evidence to the contrary I accept that she had only used the stroller with the sun visor attachment for a short period for her youngest child, so it was most likely still in very good condition.

If so, is UW entitled to the sum claimed?

10. Article 22(1) of the Convention prescribes that the limit of liability for damage or delay or lost baggage (baggage is considered lost after 21 days) is 1,288 SDR (special drawing rate, is a globally recognised unit of account), unless there is a special declaration, or unless the carrier has elected any higher amount (Article 25).
11. In this case, I accept that the maximum liability is 1,288 SDR, which is about \$NZ 2795.00.
12. The company's submission is that if the Tribunal were to conclude, on the balance of probabilities, that the alleged damage was caused while the stroller was on board the aircraft or whilst it was in the company's care, UW would not be entitled to receive the purchase price of the pram, and instead her damages would be limited to the repair cost of the damage which, it said based on the photographic evidence, would be a nominal sum.
13. On balance, in the absence of evidence to the contrary I accept that the stroller was purchased for \$1,749.00 Euro which equated to about \$3,107.00 NZ dollars. I saw no evidence that the stroller could easily be repaired, and the sun visor is still missing. So, allowing for some devaluation, and in the absence of any quantifiable evidence of the value to the contrary, I have assessed UW's loss as \$NZ 2,000.00.
14. As discussed at the hearing, pursuant to s43 of the Disputes Tribunal Act 1988, the Disputes Tribunal fee is not recoverable, except in exceptional circumstances which do not apply in this case.
15. So, I order B Ltd to pay UW the total sum of \$2000.00 on or before Tuesday 19 December 2023.

Referee: G.M. Taylor
Date: 28 November 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>.