



(Disputes Tribunal Act 1988)
ORDER OF DISPUTES TRIBUNAL

District Court

[2021] NZDT 1707

APPLICANT BK

RESPONDENT B Ltd

The Tribunal orders:

The claim is dismissed.

Reasons

[1] BK bought a number of tickets for B Ltd. He has been unable to use some of these flights, and seeks a credit for their price from B Ltd. He also requests an order that B Ltd credit him with the price of any future flights for which he has bought tickets in the event he may be unable to take those flights.

[2] BK flies frequently from [City 1], where he lives, to [City 2], because he works in [Town]. On 23 February 2021 he purchased four tickets for return flights, all of which were to take place between 18 November and December 13. Between 23 February and 27 September, he purchased another 28 tickets for return flights that were to take place in 2022. It was a condition of all of these tickets that their price was not refundable in the event that BK cancelled the flights.

[3] Before the date set for any of these flights, BK's employer required the staff of his business to work from home because of the Covid pandemic. BK did so. Thus, he did not use any of the first four flights that he booked, and the date set for each of those flights has now passed.

[4] BK said that, at the time he purchased each of the tickets, B Ltd had, because of the pandemic, a publicised policy in place that it would allow passengers to cancel flights for any reason and would provide a credit for the price of tickets, provided the flights in question were scheduled to be taken on or before certain stated dates. BK was unable to say exactly what was the applicable cut-off date for every ticket that he booked, but he said that B Ltd had extended the date for permitted cancellation with credits a number of times. He accepted that the last extension covered only flights that were due to depart on or before 31 October 2021. Subsequently, for flights departing after that date, B Ltd offered credits only for flights that could not lawfully be taken because of legislation restricting travel.

[5] BK's argument is that, given that B Ltd had extended its offer a number of times to provide credits for flights cancelled by passengers, a reasonable consumer would expect, on purchasing a ticket, that further extensions would continue to occur. In effect, his argument is that, although B Ltd had announced that credits would be provided for flights due to depart on or before 31 October, a credit should be provided if a ticket was bought before that date, even though the flight was to take place after it.

[6] B Ltd did not appear at the hearing, and has offered no defence to the claim to the Disputes Tribunal. BK provided copies of B Ltd's responses to his requests for credits. B Ltd's replies, in essence, were that credits were given only for flights due to depart on or before 31 October, and that none of the BK's booked flights were due to depart before that date.

The issue

[7] The question for me to decide is whether BK is entitled to be credited by B Ltd for the cost of the four flights that he did not take, and the future booked flights in the event that he does not take them.

The law

[8] BK bought tickets subject to the condition that their price would not be refunded if he cancelled. That was a term of his contract. BK asks that I imply a term that B Ltd would allow him a credit if he chose to cancel. He argues that B Ltd's practice of extending the date for which credits would be available reasonably raised an expectation on his part that he would be able to claim a refund if he did not proceed to take his flights, even though his bookings were for flights to be taken after 31 October. Alternatively, I must consider the Fair Trading Act 1986, and whether B Ltd's conduct was misleading or deceptive in some way.

Should a term be implied that allows BK the credit he seeks?

[9] I do not think that BK's purchases of his tickets can reasonably be taken to be subject to an implied term that he could receive a credit for cancelled flights regardless of the dates the flights were due to depart. The evidence provided by BK shows that any publicised offers of credits by B Ltd were subject to prescribed limiting dates. The last extension stated that credits were applicable to flights that were scheduled to depart on or before 31 October. BK had non-refundable tickets, and all his flights were to take place after 31 October. I consider that there is no ground in those circumstances to imply that he could receive a credit for those flights if he cancelled.

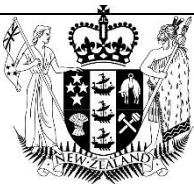
Has B Ltd's conduct shown to be misleading or deceptive?

[10] The evidence that I was given regarding B Ltd's policy announcements does not reveal any misleading or deceptive conduct on the part of B Ltd. I consider that a reasonable consumer who purchased a non-refundable ticket, being aware at the time of purchase that B Ltd had been allowing credits from time to time for certain clearly stated periods, would not expect a credit for cancelled flights scheduled outside of those announced dates. A reasonable consumer would expect that B Ltd's relaxation of the terms of its customers' tickets, a relaxation allowed because of the unusual circumstances of the pandemic, would not continue forever. Rather, it would reasonably be understood that credits would be allowed despite contrary terms in non-refundable tickets only for the limited time stated by B Ltd. The credit policy constituted a waiver of B Ltd's entitlements that would otherwise have applied to BK's tickets. I consider that a reasonable consumer would expect strict conditions to apply to such a waiver.

[11] Thus, BK has not established any ground to be allowed credits for the flights that he did not take, or those that he might take in the future. His claim must therefore be dismissed.

Referee: C Hawes

Date: 15 December 2021



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>.